

“MAY BE UNLAWFUL”: AMBIGUITIES SURROUNDING  
FEDERAL AND STATE LIMITS ON FIREARM  
POSSESSION BY DOMESTIC ABUSERS IN NORTH  
CAROLINA

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I. INTRODUCTION

Approximately one in three women and one in four men experience physical violence carried out by an intimate partner.<sup>1</sup> Moreover, about one in seven women and one in twenty-five men have been physically injured by the violence of an intimate partner.<sup>2</sup> For victims,<sup>3</sup> domestic violence can have significant, long-lasting consequences, including post-traumatic stress disorder, anxiety, depression, and substance abuse.<sup>4</sup>

While domestic violence is multifaceted, it generally tends to follow a three-part cycle of violence.<sup>5</sup> In some circumstances, domestic violence victims will temporarily leave their abusers an average of seven times before leaving permanently.<sup>6</sup> Because of the

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1. *See Domestic Violence*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, [https://www.speakcdn.com/assets/2497/domestic\\_violence2.pdf](https://www.speakcdn.com/assets/2497/domestic_violence2.pdf) (last visited Apr. 19, 2019).

2. *Id.*

3. Frequently, the preferred term for an individual who experienced domestic violence is “survivor.” While the author is mindful of this distinction, the term “victim” is used throughout the article to describe an individual who experienced domestic violence, irrespective of whether the abuse resulted in a fatality. *See generally Replicating the UN Multi-Country Study of Men and Violence: Understanding Why Some Men Use Violence Against Women And How We Can Prevent It*, PARTNERS FOR PREVENTION, [http://www.partners4prevention.org/sites/default/files/preferred\\_terminology\\_final.pdf](http://www.partners4prevention.org/sites/default/files/preferred_terminology_final.pdf) (last visited Apr. 24, 2019).

4. *Effects of Domestic Violence*, JOYFUL HEART FOUND., <http://www.joyfulheartfoundation.org/learn/domestic-violence/effects-domestic-violence> (last visited Apr. 19, 2019).

5. *See* April Paredes et al., *Domestic Violence*, 19 *GEO. J. GENDER & L.* 265, 281–82 (2018) (presenting the three stages of domestic violence as the tension-building phase, the battering stage, and the honeymoon phase).

6. *50 Obstacles to Leaving: 1–10*, NAT'L DOMESTIC VIOLENCE HOTLINE (June 10, 2013), <https://www.thehotline.org/2013/06/10/50-obstacles-to-leaving-1-10/>.

complex nature of domestic violence,<sup>7</sup> criminal domestic violence statutes and civil domestic violence protective orders, developed on the federal and state levels, are designed to protect victims.<sup>8</sup>

For example, various federal and state laws restrict the ability of domestic abusers to possess firearms.<sup>9</sup> The risk of femicide increases by at least 400% if a firearm is accessible to a domestic abuser.<sup>10</sup> As opposed to violent incidents involving bodily force or other types of weapons, domestic violence incidents involving firearms are twelve times more likely to result in death.<sup>11</sup> Since domestic violence is within the family law realm traditionally governed by state law,<sup>12</sup> the relevant federal provisions are intended “to supplement, *not* supplant the state remedies.”<sup>13</sup>

This Comment analyses the differences between current federal law and North Carolina state law regarding domestic violence firearm prohibitions. Part II discusses the Lautenberg Amendment to the federal Gun Control Act of 1996, which bans firearm possession by individuals convicted of domestic violence misdemeanors or subject to domestic violence protective orders. Part III provides an overview of N.C. Gen. Stat. § 50B, North Carolina’s domestic violence statute, and details how a victim can obtain a civil domestic violence protective order. Finally, Part IV analyzes the contradictions between federal law and North Carolina law regarding domestic violence firearm prohibitions.

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7. Domestic violence presents a complex legal and societal issue, in that victims often face ostracism for staying with their abusers. However, there are a multitude of obstacles that hinder a victim’s ability to flee. *See* Paredes, (explaining the effects of the “honeymoon phase,” and battered women’s syndrome); *see also* “*Why Don’t They Just Leave?*”, NAT’L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/is-this-abuse/why-do-people-stay-in-abusive-relationships/> (last visited Apr. 24, 2019).

8. *See infra* Parts II.A and III.A.

9. *See, e.g.*, 18 U.S.C. §§ 922(g)(8)–(9) (2012); N.C. GEN. STAT. § 50B-3.1 (2017).

10. *Guns and Domestic Violence*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, [https://www.speakcdn.com/assets/2497/guns\\_and\\_dv0.pdf](https://www.speakcdn.com/assets/2497/guns_and_dv0.pdf) (last visited Apr. 19, 2019). Although all genders are at risk of experiencing domestic violence, this article focuses on female victims because women are disproportionately impacted by domestic violence. Furthermore, there is increased risk of incidents of domestic violence when a firearm is introduced. *See Domestic Violence*, *supra* note 1.

11. *Id.*

12. *See* Margaret Groban, *The Federal Government’s Role in Securing Justice in Domestic Abuse Cases*, 69 ME. L. REV. 235, 239 (2017).

13. *Id.*

## II. FEDERAL RESPONSE TO DOMESTIC VIOLENCE

A. *The Lautenberg Amendment: Its History and Impact*

The Lautenberg Amendment to the Gun Control Act of 1996 is a significant federal domestic violence statute.<sup>14</sup> The Gun Control Act was passed to limit firearm possession by listed groups of individuals.<sup>15</sup> The Lautenberg Amendment, which was encoded in 18 U.S.C. §§ 922(g)(8) and (9), was added to the Gun Control Act to explicitly limit the ability of domestic abusers to possess firearms.<sup>16</sup>

Before the Lautenberg Amendment, federal law prohibited firearm possession by domestic abusers convicted of a felony.<sup>17</sup> However, many domestic abusers were only convicted of misdemeanors, instead of felonies, due to the nature of domestic assaults and the ready availability of plea deals.<sup>18</sup> As a result, 18 U.S.C. § 922(g)(9) was enacted by Congress to close this dangerous loophole.<sup>19</sup>

Under 18 U.S.C. § 922(g)(9), an individual is prohibited for life from possessing a firearm if he or she has been convicted in any court of misdemeanor domestic violence.<sup>20</sup> Moreover, 18 U.S.C. § 922(g)(8) prohibits an individual subject to a domestic violence protective order from possessing a firearm for the duration of the order.<sup>21</sup> For 18 U.S.C. § 922(g)(8) to apply, a state-issued protective order must meet three statutory requirements: (1) the defendant must have had notice of the hearing in which the order was issued and an opportunity to participate; (2) the order must restrain the defendant from harassing, stalking, or otherwise threatening the plaintiff; and (3) the order must include a finding that the defendant represents a credible threat to the plaintiff or a relevant child, or must explicitly prohibit the actual, attempted, or threatened use of physical force against the plaintiff or a relevant child.<sup>22</sup>

B. *Federal Courts' Interpretation of the Lautenberg Amendment*

While these statutes limit the Second Amendment right to bear arms, the United States Supreme Court recognized the constitutionality of prohibiting an individual with a misdemeanor

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14. Caitlin Valiulis, *Domestic Violence*, 15 GEO. J. GENDER & L. 123, 130 (2014). Such federal legislation regarding domestic violence is constitutional pursuant to the US Constitution's Commerce Clause. *See Groban, supra* note 12, at 238. This is largely because domestic violence costs the U.S. economy approximately \$5.8 billion to \$12.6 billion every year. *See Domestic Violence, supra* note 1.

15. *See Groban, supra* note 12, at 239.

16. *Id.*

17. *See* 142 CONG. REC. 22,985 (1996).

18. *See id.*; *see also Groban, supra* note 12, at 240.

19. *See* 142 CONG. REC. 22,985 (1996).

20. 18 U.S.C. § 922(g)(9) (2012).

21. *Id.* at § 922(g)(8).

22. *Id.*

domestic violence conviction from possessing a firearm.<sup>23</sup> There is a lack of Supreme Court precedent interpreting 18 U.S.C. § 922(g)(8), but the Court's decisions regarding 18 U.S.C. § 922(g)(9) suggest a federal public policy favoring an expansive interpretation of both provisions in order to protect victims.<sup>24</sup>

Together, two Supreme Court cases demonstrate a strong federal policy that favors broad firearm prohibitions for domestic abusers. First, in *United States v. Castleman*, the Supreme Court broadly defined “misdemeanor crime of domestic violence.”<sup>25</sup> Petitioner Castleman was indicted on a series of charges, including illegally selling firearms and a violation of 18 U.S.C. § 922(g)(9) for a prior domestic violence misdemeanor conviction.<sup>26</sup> Castleman contended his prior domestic violence misdemeanor conviction did not meet the definition in 18 U.S.C. § 922(g)(9) because the statute did not require the use of physical violence as an element.<sup>27</sup>

However, the Supreme Court broadly interpreted “physical assault” for purposes of 18 U.S.C. § 922(g) to mean just “offensive touching.”<sup>28</sup> The Court emphasized that physical violence was not necessary to support a charge under 18 U.S.C. § 922(g)(9) because domestic violence includes “acts that one might not characterize as ‘violent’ in a nondomestic context.”<sup>29</sup> The Court recognized that most physical domestic assaults are relatively minor, but these assaults are still significant because the repetition of such acts over time subjects the victim to the abuser's control.<sup>30</sup>

Second, just two years later, the Supreme Court went even further in *United States v. Voisine* by holding that a domestic violence misdemeanor conviction with a mens rea of recklessness qualifies under 18 U.S.C. § 922(g)(9).<sup>31</sup> Petitioner Voisine pled guilty to violation of a misdemeanor state statute that prohibited “intentionally, knowingly or recklessly” causing injury or offensive physical contact to another person.<sup>32</sup> Several years later, federal authorities began investigating Voisine for allegedly killing a bald eagle, and he was subsequently arrested for violating 18 U.S.C. § 922(g)(9) by owning a rifle.<sup>33</sup> Voisine challenged his indictment by arguing that 18 U.S.C. § 922(g)(9) was not applicable because his

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23. See *Voisine v. United States*, 136 S. Ct. 2272, 2281 (2016).

24. See, e.g., *United States v. Castleman*, 572 U.S. 157 (2014); *Voisine*, 136 S. Ct. at 2272.

25. *Castleman*, 572 U.S. at 162–63.

26. *Id.* at 161.

27. *Id.*

28. *Id.* at 162–63, 167.

29. *Id.* at 165.

30. *Id.* at 165–66.

31. *Voisine v. United States*, 136 S. Ct. 2272, 2276 (2016).

32. *Id.* at 2277 (quoting ME. REV. STAT. ANN., tit. 17–A, § 207(1)(A) (2017)).

33. *Id.*

domestic violence misdemeanor conviction could have been based on a merely reckless mens rea.<sup>34</sup>

However, in holding that 18 U.S.C. § 922(g)(9) applied to domestic violence misdemeanors with only a reckless mens rea, the Court emphasized that Congress did not focus on mens rea when it defined “domestic violence misdemeanor.”<sup>35</sup> Instead, Congress only required some level of physical force.<sup>36</sup> The Court reasoned that a broad interpretation of 18 U.S.C. § 922(g)(9) would be more congruent with congressional intent because this provision was enacted to prohibit firearm possession by abusers “convicted under run-of-the-mill misdemeanor assault and battery laws.”<sup>37</sup> The Court feared that limiting 18 U.S.C. § 922(g)(9) to only misdemeanors with a knowing or intentional mens rea would significantly hinder the provision’s purpose because, at the time, two-thirds of state domestic violence misdemeanor statutes included a reckless mens rea.<sup>38</sup>

### III. NORTH CAROLINA’S RESPONSE TO DOMESTIC VIOLENCE

#### A. N.C. Gen. Stat. § 50B: North Carolina’s Domestic Violence Protective Order System

By 1978, North Carolina was one of a handful of states that did not allow domestic violence victims to obtain civil protective orders against abusive spouses.<sup>39</sup> The North Carolina legislature responded in 1979 by passing the Domestic Violence Act,<sup>40</sup> which operates separately from North Carolina’s criminal domestic violence system.<sup>41</sup> Under the modern North Carolina protective order statute, domestic violence includes acts upon an aggrieved party, or a minor child in the care or custody of an aggrieved party, who has a personal relationship with the defendant.<sup>42</sup>

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34. *Id.*

35. *Id.* at 2278.

36. *Id.*

37. *Id.*

38. *Id.*

39. Michael J. Duane, *North Carolina’s Domestic Violence Act: Preventing Spouse Abuse*, 17 N.C. CENT. L.J. 82, 88 (1988).

40. *Id.*

41. *Id.*

42. N.C. GEN. STAT. § 50B-1(a)(1)–(3) (2017). According to the statute the following constitutes domestic violence:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or (2) Placing the aggrieved party or a member of the aggrieved party’s family or household in fear of imminent serious bodily injury or continued harassment . . . that rises to such a level as to inflict substantial emotional distress; or (3) Committing any [statutorily defined sexual assault].

*Id.*

The court will issue an ex parte protective order without giving the defendant prior notice if the aggrieved party proves there is a danger that domestic violence will be committed upon the aggrieved party or a minor child.<sup>43</sup> The court has considerable discretion to provide a variety of remedies in the ex parte order, including prohibiting the defendant from possessing firearms.<sup>44</sup>

However, a hearing must be held within ten days of the issuance of the ex parte order or within seven days of service of process on the defendant.<sup>45</sup> At this hearing, the court may grant a protective order for a fixed period of up to one year.<sup>46</sup> At the ex parte and ten day hearing, the court must ask the defendant about the defendant's access to a firearm, ownership of a firearm, or possession of a permit to carry a concealed firearm.<sup>47</sup> When granting an ex parte or one year order, the court shall order the defendant to surrender all firearms to the sheriff if the court finds any of the following:

- (1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
- (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
- (3) Threats to commit suicide by the defendant.
- (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.<sup>48</sup>

After the termination of the protective order, the defendant may petition for the return of any surrendered firearms through a court hearing.<sup>49</sup> According to the statute, the court shall refuse to return the surrendered firearms if "the defendant is precluded from owning or possessing a firearm pursuant to [s]tate or federal law or if the defendant has any pending criminal charges."<sup>50</sup>

#### *B. North Carolina Courts' Narrow Interpretation of Firearm Prohibitions*

Despite federal policy, North Carolina and the Fourth Circuit sometimes disfavor seizing firearms from domestic abusers convicted of misdemeanors or subject to state protective orders. For example, in *Untied States v. Vinson*, the Fourth Circuit struck down petitioner Vinson's indictment under 18 U.S.C. § 922(g)(9) because the state domestic violence misdemeanor statute under which

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43. *Id.* at § 50B(b)(1)–(6).

44. N.C. GEN. STAT. § 50B-3(a)(1)–(13) (2017).

45. *Id.* at § 50B-2(c)(5).

46. *Id.* at § 50B-3(a1)–(b).

47. *Id.* at § 50B-3.1(b)–(c).

48. *Id.* at § 50B(a)(1)–(4).

49. *Id.* at § 50B(f).

50. *Id.*

Vinson was convicted only required a mens rea of culpable negligence.<sup>51</sup> Under *Vinson*, simple assault and assault on a female, the most common charges for domestic violence incidents in North Carolina, do not qualify as misdemeanor crimes of domestic violence for purposes of 18 U.S.C. § 922(g)(9).<sup>52</sup> However, *Voisine*, decided by the Supreme Court a year after *Vinson*,<sup>53</sup> casts doubt on *Vinson* by indicating that a reckless mens rea, one step above culpable negligence, qualifies as a domestic violence misdemeanor for 18 U.S.C. § 922(g)(9).<sup>54</sup>

Furthermore, in *Griffin v. Reichard*, the North Carolina Court of Appeals demonstrated a similar unwillingness to seize firearms by reversing the firearm prohibition originally granted in a state domestic violence protective order.<sup>55</sup> In that case, plaintiff obtained a domestic violence protective order against defendant Reichard, who committed sexual battery against her while she was incapacitated.<sup>56</sup> Based on plaintiff's testimony that Reichard possessed several guns and that she believed he would be willing to use deadly force against her,<sup>57</sup> the ex parte and final protective orders prohibited Reichard from possessing a firearm.<sup>58</sup> Reichard then appealed the firearm prohibition portion of the protective order.<sup>59</sup>

The North Carolina Court of Appeals held that the trial court improperly prohibited Reichard from possessing a firearm because the trial court did not make any of the four § 50B statutory findings of fact required to prohibit firearm possession.<sup>60</sup> In its decision, the Court relied on the precedential holding in *State v. Poole* that at least one of the statutory factors listed in N.C. Gen. Stat. § 50B-3.1(a)(1)–(4) must be met before prohibiting firearm possession.<sup>61</sup> The Court emphasized that the sexual battery at issue “did not involve the use or threatened use of a firearm,” and that Reichard had never “used or threatened to use violence against” the plaintiff or her children.<sup>62</sup>

#### IV. THE PROBLEMATIC AMBIGUITIES IN NORTH CAROLINA'S DOMESTIC

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51. United States v. Vinson, 805 F.3d 120, 126 (4th Cir. 2015).

52. *Id.*

53. Compare *id.*, with *Voisine v. United States*, 136 S. Ct. 2272 (2016).

54. See Jeffrey B. Welty, *Vinson, Voisine, and Misdemeanor Crimes of Domestic Violence*, UNC SCH. GOV'T: N.C. CRIM. L. (July 18, 2016, 8:26 AM), <https://www.sog.unc.edu/blogs/nc-criminal-law/vinson-voisine-and-misdemeanor-crimes-domestic-violence>; see *Voisine*, 136 S. Ct. 2272, 2277–78.

55. See *Griffin v. Reichard*, No. COA14–687, 2015 WL 3793605, at \*1 (N.C. Ct. App. June 16, 2015).

56. *Id.* at \*3.

57. *Id.* at \*1.

58. *Id.* at \*3.

59. *Id.*

60. *Id.* at \*5.

61. *Id.*; see also *State v. Poole*, 745 S.E.2d 26, 37 (N.C. Ct. App. 2013).

62. *Griffin*, 2015 WL 3793605, at \*6.

## VIOLENCE FIREARM PROHIBITIONS

*A. The Contradictions between Federal Law and North Carolina Law*

Unfortunately, there is ambiguity on how 18 U.S.C. §§ 922(g)(8) and (9) apply to North Carolina domestic violence misdemeanors and protective orders. First, since *Voisine* addresses only the mens rea of recklessness, it is currently unsettled whether North Carolina misdemeanor domestic violence convictions, which require a mens rea of just culpable negligence,<sup>63</sup> are included under § 922(g)(9).<sup>64</sup> If a court broadly interprets 18 U.S.C. § 922(g)(9) as the Supreme Court did in *Voisine*,<sup>65</sup> then individuals with North Carolina misdemeanor domestic violence convictions would likely be barred from possessing a firearm by 18 U.S.C. § 922(g)(9). The inclusion of North Carolina misdemeanor domestic violence convictions in the definition of 18 U.S.C. § 922(g)(9) seems most consistent with Senator Lautenberg's expression of congressional intent to create a "policy of zero tolerance" for domestic abusers and firearms.<sup>66</sup>

In regard to individuals subject to protective orders, North Carolina's refusal to ban possession of a firearm unless the domestic violence incident satisfies at least one of the four § 50B statutory factors imposes an additional hurdle not present in 18 U.S.C. § 922(g)(8).<sup>67</sup> As previously discussed, 18 U.S.C. § 922(g)(8) imposes only three general requirements for a domestic violence protective order to qualify under this provision,<sup>68</sup> and North Carolina's protection orders seem to meet these requirements.<sup>69</sup> Since North Carolina domestic violence protection orders qualify, they should be subject to 18 U.S.C. § 922(g)(8)'s mandatory prohibition of firearm possession by individuals subject to these protective orders.<sup>70</sup>

However, under state law, a North Carolina district court may not prohibit firearm possession unless the court finds the defendant: (1) used or threatened to use a deadly weapon; (2) threatened to seriously injure or kill the aggrieved party or minor child; (3) threatened to commit suicide; or (4) inflicted serious injuries upon the aggrieved party or minor child.<sup>71</sup> Since these factors are not a

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63. *United States v. Vinson*, 805 F.3d 120, 126 (4th Cir. 2015).

64. *See Welty*, *supra* note 54.

65. *Voisine v. United States*, 136 S. Ct. 2272, 2278 (2016).

66. *See Groban*, *supra* note 12, at 240 (discussing statements made during congressional debate on the Lautenberg Amendment, which is codified as 18 U.S.C. § 922(g)(9)).

67. *Compare* N.C. GEN. STAT. § 50B-3.1(a)(1)–(4) (2017) (listing the statutory factors that govern when a North Carolina court can prohibit firearms in a protective order), *with* 18 U.S.C. § 922(g)(8) (2012) (omitting all of the North Carolina statutory factors).

68. *See supra* text accompanying note 22.

69. *See supra* Part III.A.

70. *See* 18 U.S.C. § 922(g) (2012).

71. *See* N.C. GEN. STAT. § 50B-3.1(a)(1)–(4).

part of 18 U.S.C. § 922(g)(8), a North Carolina court may lack the authority under state law to seize a defendant's firearms, even if the firearm prohibition seems to be otherwise required by 18 U.S.C. § 922(g)(8). A central issue inhibiting North Carolina courts' enforcement of 18 U.S.C. § 922(g)(8) through its own state firearm prohibition rules is the ambiguity surrounding the term "serious injuries."<sup>72</sup>

Although N.C. Gen. Stat. § 50B repeatedly uses the term "serious injuries" in its discussion of domestic violence, this vague phrase is not defined.<sup>73</sup> Thus, there is considerable judicial discretion to interpret this term, which can lead to problematic results. For example, in *Griffin*, the North Carolina Court of Appeals refused to uphold the firearm prohibition granted by the trial court because it emphasized that the assault did not involve the use of the firearm.<sup>74</sup> The court's focus on the lack of firearm use during the assault<sup>75</sup> seems to imply that the "serious injuries" factor is unlikely to be satisfied unless the defendant utilized a firearm. *Griffin* is an unpublished case that lacks true precedential value.<sup>76</sup> However, *Griffin* is still important because it may informally influence district judges' who seek to avoid reversal by drafting opinions that align with the appellate court's perspective.

#### *B. Negative Effects of the Ambiguities on Domestic Violence Victims and Defendants*

Due to the inconsistencies between federal law and North Carolina law, there are major issues hindering the enforcement of domestic violence firearm prohibitions. Since 18 U.S.C. §§ 922(g)(8) and (9) are federal law, enforcement is left to federal investigation officers and federal courts.<sup>77</sup> However, in practice, the availability of this remedy is sharply restricted by the limited resources of the federal government. For example, there are only about 22,000 federal agents and 10,000 federal prosecutors in the entire nation tasked with enforcing a wide variety of federal laws.<sup>78</sup> Thus, North Carolina fails domestic violence victims by relegating responsibility for firearm prohibition enforcement to the discretionary power of federal authorities.

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72. *Id.* at § 50B-3.1(a)(4).

73. *Id.* at § 50B.

74. *Griffin v. Reichard*, No. COA14-687, 2015 WL 3793605, at \*6 (N.C. Ct. App. June 16, 2015).

75. *Id.* at \*6.

76. *Id.* at \*1.

77. See MICHAEL KENT CURTIS, J. WILSON PARKER, WILLIAM G. ROSS, DAVISON M. DOUGLAS & PAUL FINKELMAN, *CONSTITUTIONAL LAW IN CONTEXT* 231 (4th ed. 2018).

78. *U.S. Department of Justice FY 2018 Budget Summary*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/jmd/page/file/968216/download> (last visited Apr. 24, 2019).

These problems with federal enforcement are demonstrated in *Castleman* and *Voisine* because both defendants were originally investigated for serious federal crimes.<sup>79</sup> In these cases, indictments for violation of 18 U.S.C. § 922(g)(9) were added to other indictments to increase the charges against the defendants.<sup>80</sup> It is doubtful whether the federal government would have devoted the resources to investigating and indicting them under 18 U.S.C. § 922(g)(9) without the other underlying federal charges.

Furthermore, these enforceability issues disproportionately harm low-income women because they are more likely to have been impacted by domestic violence than their high-income peers.<sup>81</sup> For these women, domestic violence creates or reinforces their financial instability; for example, “60% of domestic violence survivors report[] losing their jobs as a direct consequence of the [domestic] abuse.”<sup>82</sup> Moreover, “the majority of homeless women are domestic abuse survivors.”<sup>83</sup> The plaintiff in *Griffin* was represented by the non-profit Legal Aid of North Carolina,<sup>84</sup> which exemplifies how low-income women face significant obstacles in obtaining relief through domestic violence protection orders.

Defendants also suffer from the lack of statutory clarity. North Carolina provides vague warnings that defendants *may* be violating federal law if they choose to possess a firearm.<sup>85</sup> Also, North Carolina state law requires all defendants convicted of domestic violence misdemeanors to be provided with a copy of form AOC-CR-617,<sup>86</sup> which ambiguously warns that recipients that they “may” be violating federal law.<sup>87</sup>

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79. See generally *United States v. Castleman*, 572 U.S. 157 (2014); *Voisine v. United States*, 136 S. Ct. 2272 (2016).

80. See *Castleman*, 572 U.S. at 161; *Voisine*, 136 S. Ct. at 2274.

81. See Lecia Imbery, *The Intersection of Poverty and Domestic Violence*, YWCA (Oct. 16, 2014), <https://www.ywca.org/blog/2014/10/16/the-intersection-of-poverty-and-domestic-violence/>.

82. Sady Doyle, *Want to Reduce Domestic Violence? Treat It Like An Economic Issue*, TALK POVERTY (Sept. 19, 2016), <https://talkpoverty.org/2016/09/19/want-reduce-domestic-violence-treat-like-economic-issue/>.

83. *Id.*

84. See *Griffin v. Reichard*, No. COA14-687, 2015 WL 3793605 (N.C. Ct. App. June 16, 2015).

85. Specifically, a small statement at the bottom of each North Carolina domestic violence protection order form currently warns defendants that “[f]ederal law makes it a crime for you to possess, transport, ship or receive any firearm or ammunition while this order is in effect even if this order does not prohibit you from possessing firearms.” See *Domestic Violence Order of Protection AOC-CV-306A (2015)*, N.C. JUD. BRANCH, [https://www.nccourts.gov/assets/documents/forms/cv306-en.pdf?PXuSyuOIuOwIQ\\_h.S7ViQmwRocHtF91](https://www.nccourts.gov/assets/documents/forms/cv306-en.pdf?PXuSyuOIuOwIQ_h.S7ViQmwRocHtF91) (last visited Apr. 20, 2019).

86. See N.C. GEN. STAT. § 15A-1336 (2017).

87. The form provides:

If you are convicted of a misdemeanor involving violence where you are or were a spouse, intimate partner, parent, or guardian

Additionally, North Carolina statutes and judicial decisions provide attorneys with little information on how to advise their clients regarding domestic violence conviction and firearm possession.<sup>88</sup> Some North Carolina attorneys admit that the best advice they can give clients who have been convicted of domestic violence misdemeanors is to never possess a firearm just to be on the safe side.<sup>89</sup>

In North Carolina, if a defendant's firearms are seized as part of an emergency ex parte protective order, the court will return the firearms to the defendant if the one-year protective order is granted without a judicial finding that any of the four statutory factors required to prohibit a firearm are satisfied.<sup>90</sup> Therefore, by returning firearms to defendants who are likely barred by federal law from possessing them, North Carolina essentially aids these defendants in violating federal law. Defendants who do not notice or understand the warning at the bottom of the protective order place themselves in danger of federal prosecution for possession of a firearm, even if North Carolina courts unintentionally led them to believe they could lawfully possess firearms.

#### V. CONCLUSION

Federal law, such as the Lautenberg Amendment, demonstrates a strong federal public policy that favors prohibiting domestic abusers from possessing firearms. However, not all states share this same readiness to prohibit firearm possession.<sup>91</sup> The ambiguity regarding whether North Carolina domestic violence misdemeanors qualify under 18 U.S.C. § 922(g)(9), as well as North Carolina's restrictions on the court's ability to ban firearm possession in a protective order, hinder uniform enforcement of federal domestic violence firearm prohibitions.<sup>92</sup>

Even though the federal government cannot require North Carolina to enforce a federal regulatory scheme regarding domestic violence firearm prohibitions,<sup>93</sup> equivalence between North Carolina law and federal law would allow both levels of government to

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of the victim or are or were involved in another, similar relationship with the victim, *it may be unlawful for you to possess or purchase a firearm*, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 USC 922(g)(9) . . . .

*Firearm Prohibition Notice AOC-CR-617 (2007)*, N.C. JUD. BRANCH, <https://www.nccourts.gov/assets/documents/forms/cr617-en.pdf?wkVKEcn3BxmEbTfLqLbQ8l8yabM0vPFW> (last visited Apr. 20, 2019) (emphasis added).

88. See *supra* text accompanying notes 63–66.

89. See Welty, *supra* note 54.

90. See N.C. GEN. STAT. § 50B-3.1(f) (2017).

91. See *supra* Part III.A.

92. See *supra* Part IV.A.

93. See CURTIS, PARKER, ROSS, DOUGLAS & FINKELMAN, *supra* note 77.

cooperate in enforcing firearm prohibitions. North Carolina could easily accomplish equivalence by amending its domestic violence misdemeanors to require the mens rea of at least recklessness<sup>94</sup> and amending N.C. Gen. Stat. § 50B-3.1(a) to remove the additional statutory factors for firearm prohibitions.<sup>95</sup> Even without amending this statute, North Carolina law could be brought into accordance with 18 U.S.C. § 922(g)(8) through a broad interpretation of the statutory factors listed in N.C. Gen. Stat. §50B-3.1(a).

These modifications would protect domestic violence victims by allowing state and federal enforcement of the same firearm prohibitions, instead of forcing victims to rely on the federal government. Furthermore, equivalence between federal law and North Carolina law would benefit defendants by providing them with a clearer understanding of their legal rights and obligations.

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94. *See supra* text accompanying note 31 (discussing how the Supreme Court has held that 18 U.S.C. § 922(g)(9) covers domestic violence misdemeanors that have a mens rea of at least recklessness).

95. *See supra* text accompanying note 67 (discussing how 18 U.S.C. § 922(g)(8) is a broader prohibition of firearm possession than N.C. Gen. Stat. § 50B because it does not include the latter's statutory factors).