

In the  
**Supreme Court of the United States**

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UNITED STUDENT AID FUNDS, INC.,  
*Petitioner,*  
v.

BRYANA BIBLE, individually  
and on behalf of the proposed class,  
  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Seventh Circuit

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BRIEF OF NATIONAL ASSOCIATION OF  
MANUFACTURERS AND THE NATIONAL  
SHOOTING SPORTS FOUNDATION, INC.,  
AS *AMICI CURIAE* IN SUPPORT  
OF PETITIONERS

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IDENTITY AND INTERESTS  
OF AMICI CURIAE <sup>1</sup>

The National Association of Manufacturers (the “NAM”) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, and has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers operate under a clearly defined, consistent and reasonably balanced regulatory environment. Such an environment allows NAM’s member to compete successfully in the global economy and to create jobs across the United States. See the NAM’s website, <http://www.nam.org/>.

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<sup>1</sup> The parties consented to the filing of this brief after receiving 10 days notice of *amici curiae*’s intention to file, pursuant to Supreme Court Rule 37.2(a). No counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

**The National Shooting Sports Foundation, Inc.** (“NSSF”) is the trade association for America’s firearms, ammunition, hunting, and shooting sports industry. NSSF is a non-profit, tax-exempt corporation comprised of over 13,000 federally-licensed firearms manufacturers, distributors, and retailers nationwide. NSSF’s mission is to promote, protect and preserve hunting and the shooting sports. Since its founding in 1961, NSSF has been counted on to provide trusted leadership in addressing challenges faced by an industry that counts itself amongst the most regulated industries in the country. NSSF’s members rely on consistent interpretation of the innumerable federal rules and regulations that govern the firearms industry to run their businesses, which generated as much as \$42.96 billion in total economic activity across the country in 2014 alone. *See* NSSF’s website, <http://www.nssf.org>

NSSF and its members are likewise concerned that the federal regulatory process operate under clear and predictable rules and standards so that its members may guide their affairs in a reliable manner with guaranteed notice and rights of participation.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an ideal opportunity to overrule the deferential perspectives mandated by *Auer v. Robbins*, 519 U.S. 452 (1997) and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945). The urgency of this question is

underscored by the extraordinary deference that the court below gave to the present agency's interpretation of its own regulation in the face of conflicts with the governing statute, other regulations adopted through rulemaking, and previous agency interpretations.

The interpretation to which the court deferred was coined by the agency for the first time in an amicus curiae brief filed in this litigation – not from the measured and balanced process guaranteed by the Administrative Procedure Act (“APA”). By deferring to this *de novo* interpretation, the court below not only bypassed the APA, but also failed to exercise its own constitutional duty to “say what the law is.” See *Marbury v. Madison*, 5 U.S. 137, 177-78 (1803) (per Marshall, C.J.). As a result, the court further aggrandized “the danger posed by the growing power of the administrative state” – a danger that “cannot be dismissed.” *City of Arlington v. F.C.C.*, 133 S. Ct. 1863, 1879 (2013) (Roberts, C.J., dissenting, joined by Alito, J).

Serious concerns regarding *Auer* and *Seminole Rock* deference have been voiced by the Chief Justice and other members of this Court – to the point where “[t]he bar is now aware that there is some interest in reconsidering those cases, and has available to it a concise statement of the arguments on one side of the issue.” *Decker v. Nw. Env'tl. Def. Ctr.*, 133 S.Ct. 1326, 1339 (2013) (Roberts, C.J., concurring). Issues regarding *Auer* and *Seminole Rock* deference questions “arise as a matter of course on a regular basis” and go to the “heart of