Cause No. 14-24-00791-CR

COURT OF APPEALS FOR THE
FOURTEENTH DISTRICT OF TEXAS
Houston, Texas

EX PARTE BRANDIN ERIC LAW

Appeal from 176th Judicial District Court
Harris County, Texas
Trial Court Writ Cause No. 1881484
Hon. Nikita V. Harmon

APPLICANT BRANDIN ERIC LAW'S BRIEF

Naomi Howard
State Bar No. 24092541
slfofcounsel@ thesparkslawfirm.com

Monique C. Sparks
State Bar No. 24052177
monique@thesparkslawfirm.com

THE SPARKS LAW FIRM
1923 Blodgett Street
Houston, Texas 77004
Telephone: (512) 520-7000
Facsimile: 713-520-7013
eService:
larhonda@thesparkslawfirm.com

Attorneys for Applicant Brandin Eric Law

ORAL ARGUMENT REQUESTED

IDENTITIES OF JUDGE, PARTIES, AND COUNSEL

Pursuant to TEX. R. APP. P. 68.4(a), a complete list of the names of all interested parties is provided below.

Applicant: Brandin Eric Law
Respondent: The State of Texas

Trial Judge:
The Honorable Nikita V. Harmon
176th Judicial District Court
Harris County, Texas

Trial Counsel for Applicant:
Monique C. Sparks
THE SPARKS LAW FIRM
1923 Blodgett Street
Houston, Texas 77004

Appellate Counsel for Applicant:
Naomi Howard
THE SPARKS LAW FIRM
1923 Blodgett Street
Houston, Texas 77004

Trial Counsel for The State of Texas:
Assistant District Attorney Jason Campo
Assistant District Attorney Elizabeth Hirs
Assistant District Attorney Traemon Anderson
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
500 Jefferson St., Suite 600
Houston, Texas 77002

Appellate Counsel for The State of Texas:
Assistant District Attorney Jessica Alane Caird
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
500 Jefferson St., Suite 600
Houston, Texas 77002

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Constitutions

Statutes

Other Authorities

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is essential to the full development of the constitutional issue in this case. The similarity of two Penal Code statutes, §46.02 (a-7) and §46.04, regarding the rights of previously convicted individuals to bear arms, the language of the indictment, and the ever-evolving "Second Amendment" jurisprudence at state and federal levels, all counsel development through oral argument. Oral argument can help reconcile the written pleadings and hearing arguments in a somewhat muddied appellate record. Because the case law in Second Amendment jurisprudence is rapidly changing, oral argument might also be necessary to address relevant new cases in this area of law and their bearing on this case. For these reasons Applicant requests oral argument.

ISSUES PRESENTED

(1) Is Texas Penal Code § 46.02 (a-7) prohibiting individuals with a prior felony conviction from carrying a handgun facially unconstitutional under right to bear arms law embodied in the Second Amendment to the United States Constitution and Article I, § 23 of the Texas Constitution?

   a. Do Equal Protection guarantees ensure individuals with prior convictions are entitled to the same right to bear arms analysis under *Bruen* and *Rahimi*?

   b. Do Due Process and Due Course of Law require the prosecution to bear the initial burden of proving § 46.02 (a-7) is legitimate under the Second Amendment before the burden shifts to Defendant to show constitutional in all applications?

   c. Do Eighth Amendment limitations on punishment and Second Amendment Analysis under *Rahimi* imply § 46.02 (a-7) restrictions must be temporary?

(2) Has Texas Penal Code § 46.02 (a-7) prohibiting individuals with a prior felony conviction from carrying a handgun been unconstitutionally applied to Applicant under right to bear arms law embodied in the Second Amendment to the United States Constitution and Article I, § 23 of the Texas Constitution?

a. Prosecution's implication that Applicant is not entitled to *Bruen* analysis violates Equal Protection guarantees?

b. Do Due Process and Due Course of Law require the prosecution to bear the initial burden of showing a nexus between Applicant and threatening conduct to satisfy a *Rahimi* analysis of Applicant's right to bear arms?

c. Does the enhanced punishment Applicant faces if convicted under § 46.02 (a-7) violate both his Eighth Amendment rights and an analysis of his Second Amendment rights under *Rahimi*?

STATEMENT OF FACTS

"Felons - a class of individuals to which Applicant belongs - are not 'ordinary, law-abiding citizens.'"

—STATE'S ANSWER BRIEF[1]

"I think the big point is that there are not two kinds of humans: one the kind that commits crimes and gets imprisoned and another the kind that does not commit crimes. . . . I think there is but one kind of human beings, all of whom are a mix of good and bad, all of whom do a mix of good and bad things. As for the bad things, comparatively few of them have been labeled criminal. There is an infinite number of ways not declared crimes in which, without justification, we inflict pain and sorrow upon and exploit one another and destroy the thin envelope of air and water and soil in which we live."

—Hon. James E. Doyle, U.S. District Judge
for the Western District of Wisconsin[2]

Applicant Brandin Eric Law has not disputed his status as an individual previously convicted of a felony. [2RR 24: 9-15][3] But he denies that his status as an

---

1 [CR 12]

2 Cecelia Klingele, Article: *Labeling Violence*, 103 Marq. L. Rev. 847, 848 (Spring 2020) (quoting *Letter from Hon. James E. Doyle to Aaron A. Johnson* (Apr. 12, 1984), *in* The History of Judge James Doyle 45 n.4 (2013)).

3 All references to Clerk's Record will be abbreviated as [CR "page number"]. All references to the Reporter's Record will be abbreviated as ["volume number"RR "page number":"line number"].

The Harris County District Clerk has only filed Applicant's Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional in the underlying Unlawful Carrying of Weapon case, Cause No. 1822224, and did not file—despite appellate counsel's repeated written requests and designations of records filed with the Clerk's Office—the pretrial writ application into the newly created writ cause, 1881484, which means that Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional filed on August 21, 2024 is not in the Clerk's Record. Unfortunately, Applicant will have to refer to the file-marked copy of his pretrial writ application by the page numbers of the application itself, which has been included as **APPENDIX A: PRETRIAL MOTION 27: APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS—QUASHING INDICTMENT AS UNCONSTITUTIONAL**.

individual with a prior felony conviction *ipso facto* permanently precludes him from carrying arms outside of his home, especially if carried in self-defense.

On the day of his arrest, Mr. Law was fleeing for his life.[4] Mr. Law was confronted by three men with guns. During his attempt to escape the men who were firing on him, Mr. Law totaled the car he was driving. The three men cornered Mr. Law in the crashed car and at least one assailant jumped into the car with a gun.[5] However, upon hearing police sirens, his attackers rushed to scatter from the scene—one of them leaving behind his handgun in his rush to get out of the car.[6] Mr. Law, still in shock from plowing into a concrete pillar with his car and in fear for his life, grabbed the abandoned handgun and took off on foot.[7]

Unbeknownst to Mr. Law, one of his attackers ran up to the HPD officer who had responded to the crash and told the officer that Mr. Law had stolen his son's vehicle.[8] The officer then pursued Mr. Law and tackled him, causing the handgun to fire when Mr. Law hit the ground—the bullet hitting Mr. Law's hand.[9] The officer disarmed Mr. Law and placed him under arrest.[10] However, the indictment did not

---

4 [Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional ("Pretrial Writ") ¶ 5, p. 2]

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

alleged that Mr. Law was engaged in any unlawful activity while carrying the firearm. The charge of Unlawful Carrying of Weapon by Mr. Law is predicated on TEX. PENAL CODE § 46.02 (a-7) and its blanket (and permanent) prohibition of individuals who have previously been convicted of a felony offense carrying a weapon outside their home.[11]

SUMMARY OF THE ARGUMENT

Mr. Law should not have to choose between preservation of life and breaking a "status" law like TEX. PENAL CODE § 46.02 (a-7)which penalizes Mr. Law for his status as an individual previously convicted of a felony.[12] And, in fact, the U.S. Supreme Court's rulings in *N.Y. State Rifle & Pistol Ass'n v. Bruen* and *United States v. Rahimi* hold that wholesale restraints on the right to bear arms are unconstitutional, and the Texas Court of Criminal Appeals in *State v. Villanueva* has

---

[11] In his pretrial writ application, Applicant erroneously referred to TEX. PENAL CODE § 46.04 (a) as the statutory offense underlying the indictment in Cause Number 1822224. However, the indictment language tracks, and the prosecution asserts, both in oral arguments and briefing, that the underlying statutory offense is TEX. PENAL CODE § 46.02 (a-7). Applicant's argument for finding TEX. PENAL CODE § 46.04 (a) unconstitutional will be harmonized with the argument for finding TEX. PENAL CODE § 46.02 (a-7) unconstitutional in more detail later in this brief.

[12] "Because criminal liability under the statute before us turns upon the status of a person being a felon and because it is this status that makes the otherwise innocent conduct of possessing a firearm criminal, the statute before us prescribes a 'circumstances' offense." *Ex parte Woods*, 664 S.W.3d 260, 263 (Tex. Crim. App. 2022).

suggested in dicta that the Texas Constitution prescribes an even broader right to bear arms, especially in defense of oneself.[13]

Applicant alleges that TEX. PENAL CODE § 46.02 (a-7) infringes is both facially unconstitutional and unconstitutional as applied to him under U.S. CONST., amdt. II and TEX. CONST., art. 1, § 23.[14] TEX. PENAL CODE § 46.02 (a-7) creates a "class of individuals," those like Applicant who have previously been convicted of a felony offense, and permanently denies that class of individuals the right to carry a weapon in self-defense outside of their homes, which runs afoul of federal and state Equal Protection clauses contained in the U.S. CONST., amdt. XIV and TEX. CONST., art. 1, §§ 3 and 13; and the Due Process and Due Course of Law clauses contained in the U.S. CONST., amdt. V; TEX. CONST., art. 1, § 19; and TEX. CODE CRIM. Proc., art. 1.04. The permanent restriction on the right to bear arms by this class of individuals also violates state and federal constitutional limitations on punishment as described by U.S. CONST., amdt. VIII and TEX. CONST., art. 1, § 13.

---

13 *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022); *United States v. Rahimi*, 144 S. Ct. 1889 (2024); *State v. Villanueva*, 686 S.W.3d 752, 754 (Tex. Crim. App. 2024) (Newell, J., concurring).

14 U.S. CONST., amdt. II; TEX. CONST., art. 1, § 23.

ARGUMENT

1. Procedural Background

As previously described in the STATEMENT OF FACTS, Applicant Brandin Eric Law was charged with Unlawful Carrying of Weapon, Cause No. 1822224. Applicant filed his Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional on August 20, 2024 challenging the indictment in Cause No. 1822224.[15] The Application argued that the indictment filed on August 24, 2023 alleging the offense of Unlawful Carrying of Weapon against Mr. Law should be dismissed because it was predicated on a statute—TEX. PENAL CODE § 46.02 (a-7)—which is facially unconstitutional primarily under Right-to-Bear-Arms principles.

A hearing on the application was held on September 5th and the trial court denied the pretrial writ application on the same day. *See* [2RR 23-31] On September 13, 2024, Applicant filed a Request for Findings of Fact and Certification of Appeal as well as filing a Motion for Reconsideration of Writ of Habeas.[16] Applicant filed

---

15 As explained in Footnote 7 above, the Harris County District Clerk did not include Applicant's Pretrial Writ Application in the Clerk's Record despite Applicant's October 5th Request and Designation of Clerk's Record. *See* **APPENDIX A:** Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional; *see also*, [3RR 5:2-10].

16 The Harris County District Clerk's Office did not include Defendant's Motion for Findings of Fact and Conclusions of Law & Certification of Right to Appeal filed by Applicant on September 13, 2024, but did include the trial court's signed order granting the request. *See* [CR 63] and Defendant's Motion for Findings of Fact and Conclusions of Law & Certification of Right to Appeal. Applicant filed Defendant's Designation of Clerk's

his Notice of Appeal of Order Denying Application for Writ of Habeas—Quashing Indictment on September 30, 2024. [CR 52] On October 1, 2024, the trial court heard arguments from defense counsel and the prosecution on the Request for Findings of Fact and Certification of Appeal and Motion for Reconsideration of Writ of Habeas.[17] The trial court granted Applicant's requests for findings of fact and certification of right to appeal but denied Applicant's Motion for Reconsideration.[18] The trial court adopted the prosecution's proposed COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ("FINDINGS OF FACT") on October 1, 2024.

On October 10, 2024 Applicant filed a Motion to Stay the Proceedings Pending Interlocutory Appeal. The trial court heard arguments from the defense and the prosecution on October 15, 2024 on the motion to stay and denied the motion.

On October 25, 2024, jury selection in Cause No. 1822224 (Unlawful Carrying of Weapon) began before an associate judge but ended in a mistrial that day. Selection of a new jury began on October 28th and the prosecution's opening argument began the trial on October 29th. However, the guilt/innocence deliberations

---

Record on October 8th: "Mr. Law requests that all pleadings and orders in Cause No. 1881484 be included in the Clerk's Record." Defendant's Motion for Findings of Fact and Conclusions of Law & Certification of Right to Appeal should have been included in the Clerk's Record as it was filed into the trial court's record prior to October 8th.

17 The Docket Sheet filed by the District Clerk's Office incorrectly lists co-counsel, Naomi Howard, making appearances on October 1st and October 15th. The Sparks Law Firm associate attorney, Afshin Zand, made the appearance on October 1st and Monique C. Sparks appeared on October 15th.

18 [CR 63]; *see also*, DOCKET SHEET.

resulted in a hung jury after two days and a mistrial was declared on November 1, 2024. The Unlawful Carrying of Weapon remains pending.

Although Applicant's original notice of appeal was file-marked September 30, 2024 by the Harris County District Clerk's Office, the District Clerk's Letter of Assignment, filed with this Court October 22nd, lists October 8, 2024 as the date Notice of Appeal was filed. Twenty-three days after the original notice of appeal (15 days from October 8th), on October 23, 2024, the Reporter's Record was filed with this Court. Twenty-nine days after the original notice of appeal (21 days from October 8th), on October 29, 2024, the Clerk's Record was filed with this Court, completing the appellate record.

Because of the confusion caused by the differing records on the date of filing of the notice of appeal and no explicit designation of this appeal as "accelerated," defense counsel miscalculated the briefing deadline, which according to letter notices from the Court's Clerk was the accelerated appeal briefing deadline of twenty days from the date the appellate record became complete; thus, Applicant's brief was due on November 18, 2024. Applicant filed his Motion for Extension of Time to File Brief on November 21st and this Court graciously granted the motion on November 22nd, setting the extended deadline to Monday, December 2, 2024. Applicant now files his brief appealing the denial of his writ application on this day, December 10th, along with a Motion for Extension of Time to File Brief.

Prior to briefing arguments for finding TEX. PENAL CODE § 46.02 (a-7) unconstitutional, the following procedural issues need to be addressed.

1.1 Appellate Record Deficiency

Counsel calls the Court's attention to deficiencies in the clerk's record. Applicant's pretrial application for writ of habeas corpus has not been entered into the clerk's record. On August 20, 2024, Applicant filed Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional in cause number 1822224 which charged Applicant with Unlawful Carrying Weapon. On August 21, 2024 the trial court issued the writ and the Harris County District Clerk's Office generated a new cause number for the writ matter: 1881484. CR 5. However, Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional was never entered into the record of cause number 1881484.

On September 13, 2024 Applicant filed a Letter to the Harris County District Clerk with enclosures of docket summaries for cause numbers 1822224 and 1881484 and a table of pleadings to illustrate the deficiency in the 1881484 cause number. CR 20-42. Applicant also filed Defendant's Request and Designation of Clerk's Record on October 5, 2024, which again detailed the deficiency: no record of Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional).

Applicant needs the Court's intercession and requests the Court's Clerk to issue notice that the trial clerk's record must be supplemented with Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional.

1.2 Lack of Notice Implicates Due Process Violation

Giving adequate notice to defendants is a core tenet of Due Process and Due Course of Law. Trial by ambush is repugnant to the law. Applicant filed Pretrial Motion 27: Writ for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional on August 20, 2024 in Cause No. 1822224. The prosecution filed STATE'S ANSWER BRIEF at 8:21 PM on September 4th, the night before the trial court's hearing on the habeas application. [CR 7-17] Trial counsel did not view the STATE'S ANSWER BRIEF until the morning of the hearing, September 5th, and counsel alerted the Court:

> *MS. SPARKS:* And, Your Honor, for the record, I have just received the State's writ this morning via the clerk. The clerk accepted it and sent it over to me. This is my first opportunity to read the State's writ. So I'm not in a place to respond to what they wrote. I can just argue my writ.

[2RR 23: 15-21]

The trial court proceeded to hear arguments from defense counsel and the prosecution. After arguments concluded, the trial court ordered that the pretrial writ application was denied.

On September 13, 2024, Applicant filed his Motion for Reconsideration of Writ of Habeas, requesting that the trial court allow Applicant to respond to the arguments made by the prosecution on the day of the writ hearing. [CR 46-51] Applicant's counsel and counsel for the State approached the trial court regarding the Motion to Reconsider, but the trial court declared that no objection on the record or request for a continuance, so the trial court ruled that the motion was denied. [3RR 10:23-25; 11:1-2]

Applicant asserts that he did in fact alert the trial court to the untimely filing of the STATE'S ANSWER BRIEF before arguing his own brief to the trial court. [2RR 23: 15-21] Making some sort of objection on the record or requesting a continuance was not a prerequisite to the trial court's reconsideration of Applicant's pretrial writ application. The trial court could have remedied the lack of notice by the prosecution in several ways: *sua sponte* resetting the writ hearing; striking the STATE'S ANSWER BRIEF as untimely; requesting further post-hearing briefing; or granting the motion for reconsideration. The trial court abused its discretion by denying Applicant the benefit of Due Process and Due Course of Law and allowing the prosecution to argue its position by ambush.

1.3 Reconciling Arguments: § 46.04(a) and § 46.02(a-7)

One of the errors in the record was Applicant's mistake in citing the incorrect statute number underlying the indictment in Cause Number 1822224. Applicant briefed the constitutionality of Section 46.04(a), the offense commonly referred to as "Felon in Possession [of Firearm]." However, the statute underlying the indictment in this case is TEX. PENAL CODE § 46.02 (a-7), Unlawful Carrying of Weapon. The prosecution pointed out this error in STATE'S ANSWER BRIEF. [19] [CR 9-10]. Even so, the prosecution admits in its brief that TEX. PENAL CODE § 46.04 (a) is it is apparent from the record of the September 5th writ hearing that the trial court understood the statute underlying the indictment and the statute which Applicant was arguing as unconstitutionally impinging on his right to bear arms:

---

[19] It's unfortunate that Applicant did not become aware of his mistake before the writ hearing, so he could have amended his writ application or addressed the issue more fully in the writ hearing; thus, clarifying the record earlier.

So I look at -- I looked at the code, 46, and they did file under 46. Looking at the indictment here, it's 46.02. And that legislative intent of that particular code is to disallow or disarm an individual to misuse a firearm that poses a credible threat to the safety of another person.

So that in the event that if we can't -- in other words, we got to have some type of barriers. We got to have some type of control to say when a person is allowed to have a firearm and when they cannot have a firearm.

The argument about -- I think if it's a self-defense argument, then it's a self-defense argument, and that should be presented in trial. [20]

However, as the prosecution points out in its own brief, TEX. PENAL CODE § 46.02 (a-7) subsumes TEX. PENAL CODE § 46.04 (a). TEX. PENAL CODE § 46.02 (a-7) prohibits a person intentionally, knowingly, or recklessly carrying on or about his or her person a handgun when that person is (A) not on the person's own premises or premises under the person's control; or (B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; and, at the time of the offense, was prohibited from possessing a firearm under Section 46.04(a), (b), or (c). TEX. PENAL CODE § 46.04 (a) prohibits a person who has been convicted of a felony from possessing a firearm if that person, following a felony conviction, has been

[20] [2RR 30: 11-24]

released from confinement, community supervision, parole, or mandatory supervision within the last five years or, if five years have passed, the person possesses a firearm at any location other than home.

In *State v. Rosseau*, the Court of Criminal Appeals urged reviewing courts to look to substance rather than form:

> Although it could have been more clearly presented, appellee's motion adequately presented both facial and "as applied" challenges to the constitutionality of the bigamy provision. . . .
>
> Rather than focus on the presence of magic language, a court should examine the record to determine whether the trial court understood the basis of a defendant's request. *See Clark v. State,*365 S.W.3d 333, 339 (Tex. Crim. App. 2012) (noting that issue preserved without having been explicitly stated if "there have been statements or actions on the record that clearly indicate what the judge and opposing counsel understood the argument to be") (citing *Resendez v. State,* 306 S.W.3d 308, 315–16 (Tex. Crim. App. 2009)); *Lankston v. State,* 827 S.W.2d 907, 909 (Tex. Crim. App. 1992) (in issue-preservation context, there are "no technical considerations or form of words to be used. Straightforward communication in plain English will always suffice.").[21]

Applicant asks this Court to consider that the trial court and the parties understood which statute was at issue during the writ hearing and the trial court understood that Applicant was challenging the constitutionality of TEX. PENAL CODE § 46.02 (a-7) when denying Applicant's pretrial writ application. Applicant also urges the Court to consider that his arguments regarding

---

[21] 396 S.W.3d 550, 555 (Tex. Crim. App. 2013).

constitutionality apply just as much to TEX. PENAL CODE § 46.02 (a-7) as TEX. PENAL CODE § 46.04 (a). And TEX. PENAL CODE § 46.02 (a-7) may even be more constitutionally infirm under Applicant's constitutional analysis.

1.4 Jurisdiction Over Pretrial Habeas Appeal

Applicant is appealing the trial court's denial of his Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional. [CR 18] The trial court certified Applicant's right to a limited appeal of that denial of pretrial application for writ of habeas corpus. [CR 102] This appellate court has jurisdiction over this matter because the denial of relief on a pretrial writ of habeas corpus may be appealed immediately. *Ex Parte Smith*, 178 S.W.3d 797, 801–02 (Tex. Crim. App. 2005). The denial of habeas corpus relief, based on fundamental constitutional principles, permits an interlocutory appeal. *Id.*

Applicant is challenging the statutory basis of his indictment, TEX. PENAL CODE § 46.02 (a-7), as both facially unconstitutional and unconstitutional as applied to him, because the statute denies individuals with previous felony convictions from carrying firearms, in violation of an individual's right—including Applicant's own right—to bear arms as guaranteed by U.S. CONST., amdts. II, XIV; and TEX. CONST., art. 1, § 23. Because Applicant is challenging the denial of his application for pretrial writ of habeas corpus by the trial court, the denial of relief may be immediately appealed, and this Court has

jurisdiction over the appeal. *Ex Parte Perry*, 483 S.W. 3d 884, 902 (Tex. Crim. App. 2016); *see also*, *Ex Parte Smith*, 178 S.W.3d at 801–02.

The prosecution argued both in STATE'S ANSWER TO APPLICANT'S PRETRIAL WRIT RE: CONSTITUTIONALITY OF SECTION 46.04 ("STATE'S ANSWER BRIEF") and at the writ hearing that a constitutional challenge was not cognizable in a pretrial writ. *See* [CR 8]; [2RR 25: 17-22]. However, the Texas Court of Criminal Appeals explained in *Ex Parte Perry*, that facial challenges to the constitutionality of a statute, and some as applied challenges, are cognizable in a pretrial application for writ of habeas.[22]

The *Perry* Court explained: "The cases that have stated that pretrial resolution is not available when factual development is necessary did not involve constitutional rights (like double jeopardy) that include a right to avoid trial."[23] In *Ex parte Perry*, former governor Rick Perry was accused of misusing his official capacity and public funds. When the trial judge in the *Perry* case indicated he was inclined to grant a potential motion to quash the indictment based on lack of sufficient notice of the "act of misuse" element of the offense, the prosecution filed a Bill of Particulars in which the act of misuse was defined. The Court of Criminal Appeals held that, while the prosecution was free to abandon the act of misuse alleged in the Bill of

---

22 *Ex parte Perry*, 483 S.W.3d at 895-96.

23 *Id.*

Particulars, because the act of misuse at issue had not been disavowed by the prosecution in any of its appellate pleadings, the factual allegations in the Bill of Particular were sufficient to decide Perry's as-applied challenge.

Here too, in pleadings and in writ hearing argument, the prosecution has not argued that Applicant engaged in criminal at the time he was carrying a weapon and that criminal conduct could be connected to his carrying the weapon.[24] TEX. PENAL CODE § 46.02 (a-7) is unconstitutional as applied to him because the prosecution has not alleged that he poses a risk because of his conduct using a firearm but merely by virtue of his status as an individual previously convicted of a felony offense. Applicant argues that permanently denying his federal and state constitutional rights to bear arms solely based on his status violates his right to Equal Protection under the Law, to Due Process, and to reasonable limitations on punishments. Accordingly, Mr. Law's as-applied pretrial challenge to the constitutionality of TEX. PENAL CODE § 46.02 (a-7) is cognizable in a pretrial writ of habeas application and this Court has jurisdiction to hear the appeal.

---

[24] Although not part of the writ record, the prosecution did not produce evidence at trial that Mr. Law was a "prohibited person" and his carrying of a weapon was connected to any criminal activity during the jury trial which ended in mistrial on November 1, 2024.

2. Waiting on White Horse—Lack of Clear Precedent

The U.S. Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen,* "'fundamentally changed' our analysis of laws that implicate the Second Amendment rendering [courts'] prior precedent obsolete."[25] The lack of caselaw under the new *Bruen* analysis means the appellate courts are flooded with firearms cases as trial courts struggle to apply *Bruen*, and subsequently *United States v. Rahimi*.[26] The majority of cases discussing *Bruen* are federal cases challenging the constitutionality of 18 U.S.C. § 922 (g)(1)—the federal equivalent of the Texas Felon in Possession of a Firearm offense: "It shall be unlawful for any person-who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year. . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." We have had no post-*Rahimi* opinions issued by the Texas Court of

---

25 *United States v. Rahimi*, 61 F.4th 443, 450 (5th Cir. 2023) overruled by *United States v. Rahimi*, 144 S. Ct. 1889 (2024) (internal citations omitted).

26 Because *Rahimi* was a petition to the U.S. Supreme Court from the Fifth Circuit, reference to "*Rahimi*" can be confused. In this brief, all references to "*Rahimi*" refer to the opinion issued by the U.S. Supreme Court: *United States v. Rahimi*, 144 S. Ct. 1889 (2024). If reference is made to the Fifth Circuit opinion prior to the U.S. Supreme Court opinion, then it will be denoted as "*Pre-Supreme Court 5th Circuit Rahimi*" with its full citation: *United States v. Rahimi*, 61 F.4th 443 (5th Cir. Mar. 2, 2023). If reference is made to the Fifth Circuit opinion after the U.S. Supreme Court remanded the case, then it will be denoted as "*Remanded 5th Circuit Rahimi*" with its full citation: *United States v. Rahimi*, 117 F.4th 331 (5th Cir. Tex., Sept. 12, 2024).

Criminal Appeals, the Fifth Circuit, or the U.S. Supreme Court analyzing the constitutionality of the Texas firearms statutes TEX. PENAL CODE § 46.04 (a) or TEX. PENAL CODE § 46.02 (a-7). In other words, we have no "white horse law" analyzing the Texas statute.[27]

The Fifth Circuit opinions finding 18 U.S.C. § 922 (g)(1) was constitutional under *Bruen* were issued within days of the U.S. Supreme Court's ruling in *Rahimi*. Those 5th Circuit appellants who filed petitions for certiorari with the U.S. Supreme Court have so far been denied certiorari—most likely because they don't adequately address the *Rahimi* analysis.[28] Denial of certiorari, however, does not mean the U.S. Supreme Court endorses the lower court's ruling.[29]

---

27 The term white horse case has appeared in twenty-six published appellate cases in Texas. According to Bryan A. Garner, A Dictionary of Modern Legal Usage 577 (1987), this term (along with the terms horse case, gray mule case, goose case, spotted pony case, and pony case) means a reported case with virtually identical facts, which therefore should determine the disposition of the instant case. At least one source reports that this term was coined in Dallas, Texas. According to what is probably an apocryphal story, around the turn of the century a Texas law firm had a case in which a white horse owned by the client's taxi service reared in the street, causing an elderly woman to fall and injure herself. The partner handling the case asked a young associate to find a case on point. The associate came back several hours later with a case involving an elderly lady who had fallen in the street after a taxi company's black horse had reared in front of her. When the associate took this case to the partner, the partner said, "Nice try, son. Now, go find me a white horse case." *Hilland v. Arnold*, 856 S.W.2d 240, 242, n.1 (Tex. App.–Texarkana 1993, no writ).

28 *E.g.*, *Chavez v. United States*, No. 24-5639 (5th Cir. decided June 27, 2024) (cert. denied Nov. 4, 2024); *Steward v. United States*, No. 24-5479 (5th Cir., filed Sept. 4, 2024) (cert. denied Nov. 4, 2024); *Sanchez v. United States*, No. 24-5560 (5th Cir., filed Sept. 16, 2024) (cert. denied Oct. 15, 2024). *See also,* Survey of recent U.S. Supreme Court certiorari petitions on firearms law compiled by the Duke Center for Firearms Law (*Last updated* November 11, 2024).

29 "In an opinion of this kind, a Justice agrees that certiorari should be denied but emphasizes that the denial of review does not endorse the lower court's ruling." Tom Goldstein, *What*

Post-*Rahimi*, two federal district courts concluded that 18 U.S.C. § 922 (g)(1) was unconstitutional as applied to the defendants in those case and the government appealed those cases to the Fifth Circuit: *United States v. Leblanc*,[30] and *United States v. Bullock*.[31] On November 25, 2024, the Fifth Circuit, in an unpublished opinion, reversed the district court in *Bullock*, the Fifth Circuit has not yet ruled on the as-applied challenge in *LeBlanc*.[32]

Texas firearms legislation House Bill 1927, also known as Texas' "Constitutional Carry" laws, greatly expanded the freedom individuals in Texas have to exercise their right to bear arms.[33] However, as noted in an unpublished decision by the Eighth Court of Appeals in El Paso: the Texas Court of Criminal Appeals has not yet addressed the constitutionality of either TEX. PENAL CODE § 46.04 (a) or TEX. PENAL CODE § 46.02 (a-7) after *Bruen* and *Rahimi*.[34] However, Applicant asserts that, in light of Texas "Constitutional Carry" laws and the U.S. Supreme Court's decisions in *Bruen* and *Rahimi*,

---

you can learn from opinions regarding the denial of certiorari, SCOTUSBLOG (Nov. 18, 2013, 2:10 PM) *available at* https://www.scotusblog.com/2013/11/what-you-can-learn-from-opinions-regarding-the-denial-of-certiorari/.

30 *United States v. Leblanc,* 707 F. Supp. 3d 617 (M.D. La., Dec. 19, 2023) (filed in the 5th Circuit on Jan. 16, 2024).

31 *United States v. Bullock*, 679 F. Supp. 3d 501 (S.D. Miss. 2023).

32 *United States v. Bullock*, No. 23-60408, 2024 U.S. App. LEXIS 29938 (5th Cir. 2024).

33 Acts 2021, 87th Leg., ch. 809 (H.B. 1927), §§ 22, 26(8), effective September 1, 2021.

34 *See Swindle v. State*, No. 08-23-00057-CR, 2023 Tex. App. LEXIS 8281, at *8 n.1 (Tex. App.—El Paso Oct. 31, 2023, pet. ref'd).

TEX. PENAL CODE § 46.02 (a-7) is facially unconstitutional because (A) the statute violates the state and federal right to bear arms by denying firearms to an entire class of people with felony convictions without regard to the type or degree of felony offense; and (B) the state and federal right to bear arms outside the individual's home is denied permanently. Simply put, TEX. PENAL CODE § 46.02 (a-7) sweeps up too many non-violent individuals with prior felony convictions and imposes the prohibition without judicial determination of whether the restriction is needed in the first place.

3. Standard of Review—Facial vs. As-Applied Challenges

Appellate courts review *de novo* whether a statute is facially constitutional.[35] When the constitutionality of a statute is attacked, courts usually begin with the presumption that the statute is valid, and that the Legislature has not acted unreasonably or arbitrarily.[36]

3.1 Initial Burden of Proof Rests with Prosecution

The trial court's Findings of Fact misstated the initial burden of proof under a Second Amendment analysis:

---

35 *Ex Parte Lo*, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013).

36 *Id.* at 15.

9. Defendant fails to overcome the presumption of constitutionality and otherwise prove that TEX. PEN. CODE §46.04 (or §46.02) are facially unconstitutional.

[37]

Normally, the burden rests on the person challenging the law to establish its unconstitutionality.[38] However, the Supreme Court has held otherwise in its Second Amendment jurisprudence: "We also clarified [in *Bruen*] that when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'"[39] To pass constitutional muster, *Bruen* required that the government "must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[40]

The prosecution potentially faces an even heavier burden of proof under the Texas Constitution. As Judge Slaughter of the Texas Court of Criminal Appeals previously observed in her dissent to *State v. Villanueva*, the right to bear arms was regarded as an absolute right by the drafters of the Texas Constitution and the State Legislature was only given the authority to restrict how a firearm was worn.[41] The

---

37 [CR 62]

38 *Id*.

39 *United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024) (citing *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 24 (2022)).

40 *Bruen*, 142 S.Ct. at 2127.

41 686 S.W.3d 752, 760 (Tex. Crim. App. 2024) (Slaughter, J., dissenting).

historical tradition in Texas indicates an even stronger distaste for blanket restrictions on the possession of arms.

3.2 Facial vs. As-Applied Constitutional Review

Applicant Brandin Eric Law alleges that TEX. PEN. CODE § 46.02 (a-7) is facially unconstitutional under the U.S. CONST., amdts. II, V, VIII, XIV; TEX. CONST., art. 1, §§ 3, 13, 19, & 23; TEX. CODE CRIM. PROC., art. 1.04. He also alleges that TEX. PEN. CODE § 46.02 (a-7) infringes on his individual right to keep and bear arms. The proper standard of review for facial versus as-applied constitutional challenges to statutes differ, and because it's a question of law, the reviewing court is under no obligation to defer to the trial court's ruling. Applicant is making both facial and as-applied challenges to TEX. PENAL CODE § 46.02 (a-7).[42]

The prosecution urged the trial court to deny Applicant's writ because Applicant argued the facts of the case which is inappropriate for challenging the facial unconstitutionality of a statute. STATE'S ANSWER BRIEF [CR 8] The trial court

---

[42] Admittedly, Applicant's pleadings and hearing arguments were not always synchronous, but that would also be true of the prosecution's writ responses—"First, I believe that this is a facial challenge to a statute, which is inappropriately done pretrial. I think any of those challenges need to be done post-trial or post-conviction" [2RR 25: 17-22] *but see* "Pretrial habeas may not be used to advance an "as applied" challenge to a statute – that is, claims that the statute, as applied to the defendant, operate in an unconstitutional manner." STATE'S ANSWER BRIEF [CR 8]—and the District Clerk's record—Applicant's Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional (the very basis of this appeal) and other pleadings are missing from the appellate record.

adopted the prosecution's proposed FINDINGS OF FACT which included the following findings and conclusions regarding the type of constitutional challenge Applicant presented:

> 10. The Court finds from the face of the pleading despite that the Defendant's claim that he was facially challenging the constitutionality of the statute, he makes an applied to challenge throughout the pleading.
>
> [CR 60]

> 3. Pretrial habeas may not be used to assert an "as applied" challenge to a statute. *See Ex parte Weise*, 55 S.W.3d 617 (Tex. Crim. App. 2001); *Ex parte Ellis*, 309 S.W.3d at 79.
>
> [CR 61]

The trial court erroneously concluded that inquiry into the type of constitutional challenge presented need go no further than "the face of the pleading."[43] However, in *State v. Rosseau*, the Court of Criminal Appeals counseled reviewing courts: "Rather than focus on the presence of magic language, a court should examine the record to determine whether the trial court understood the basis of a defendant's request."[44] The Fifth Circuit, in *United States v. Perez*, also recently pointed out that

---

43 [CR 60]

44 *State v. Rosseau,* 396 S.W.3d 550, 555 (Tex. Crim. App. 2013).

"the distinction between as-applied and facial challenges is sometimes hazy."[45] Applicant respectfully asks the Court to consider the pleadings and oral arguments when determining that Applicant is making both a facial and as-applied challenge to the constitutionality of Section 46.02(a-7).

3.2.1 Facial Challenges—Standard after Rahimi

The Second Amendment to the United States Constitution states: "the right of the people to keep and bear Arms, shall not be infringed."[46] Individuals, even non-citizens, are guaranteed the right to carry firearms for self-defense in public or at home.[47] The U.S. Supreme Court made clear in *McDonald v. City of Chicago* that the Second Amendment right to bear arms was incorporated and made applicable to the states by the Due Process Clause of the Fourteenth Amendment.[48]

A facial challenge to the constitutionality of a statute is the "most difficult challenge to mount successfully," because it requires a defendant to "establish that no set of circumstances exists under which the Act would be valid."[49] That means that to prevail, the Government need only demonstrate that a firearms restriction is constitutional in some of its applications.[50]

---

45 *United States v. Perez,* 43 F.4th 437, 443 (5th Cir. 2022) (citation omitted).
46 U.S. CONST., amdt. II.
47 *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010).
48 *McDonald v. Chicago*, 561 U.S. 742 (2010).
49 *United States* v. *Salerno*, 481 U. S. 739, 745 (1987).
50 *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024).

However, *N.Y. State Rifle & Pistol Ass'n v. Bruen,* changed that initial burden and held that "[t]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[51] Subsequently, the Supreme Court refined the meaning of a historical tradition of firearm regulation in *United States v. Rahimi* and instructed courts to look for an "historical analogue" rather than an "historical twin" when evaluating offenses implicating the Second Amendment.[52] Once the government has satisfied the initial *Bruen* requirement of finding historical evidence, then *United States v. Rahimi*, outlined the more specific analysis for finding a statutory restriction constitutional.[53]

In *United States v. Rahimi*, the U.S. Supreme Court held that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."[54] The holding in *Rahimi* provides guidance on when possession of a firearm may be restricted in keeping with the Second Amendment: (a) the restriction must be temporary;[55] (b) the

---

51 *Rahimi*, 144 S. Ct. at 2127.
52 *Id*.
53 144 S. Ct. 1889 (2024).
54 *Id.* at 1903.
55 *Id.* at 1902 ("only prohibits firearm possession so long as the defendant 'is' subject to a restraining order").

restriction may only apply to an individual who poses a specific threat to the physical safety of another;[56] and (c) the threat must be credible.[57]

Although the Court of Criminal Appeals has yet to directly address whether a statute like TEX. PENAL CODE § 46.02 (a-7) is facially constitutional under a post-*Rahimi* analysis, Texas generally favors broad gun rights. TEX. CONST., art. 1, § 23 is even more explicit than the Second Amendment in its protection of the individual's right to bear arms: "Every citizen shall have the right to keep and bear arms *in the lawful defence of himself* or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." [emphasis added]

Recently, the Texas Court of Criminal Appeals denied a petition for discretionary review in *State v. Villanueva* for failure to preserve the constitutionality argument at trial, but in her dissent to the refusal of the petition, Judge Slaughter laid out a detailed historical analysis of the Texas Constitution's right to bear arms, pointing out that the right to bear arms was regarded as an absolute right by the drafters and the only power given to the State Legislature to restrict that

---

56 *But see id*. at 1901-02. ("While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, we note that Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another.").

57 *Id.* at 1902. "the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others."

right was the power to prescribe how the firearm was worn.[58] In his concurrence to the refusal of the petition, Judge Newell stated "the Court's refusal to grant discretionary review in this case should not be mistaken for a rejection of the merits of Appellee's claims or Judge Slaughter's arguments. . . . [should the issue be properly preserved for appeal] the Court would be able to give it the thoughtful consideration it undoubtedly deserves.[59]

3.2.2 As-Applied Challenges—Standard after Rahimi

While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, we note that Section 922(g)(8)

---

[58] In 1875, after the end of Reconstruction, delegates assembled to form a new state constitution. The document they drafted was aimed at preventing the perceived widespread abuses of power that had occurred during the preceding decade. The language adopted in Article I, Section 23, which remains in force today, "drastically curtailed" the Legislature's authority to enact regulations on the possession of firearms. In comparing the language of the 1876 Constitution with its 1869 predecessor, the new language "asserted the right [to bear arms] in an absolute form without making it contingent on legislative regulation, subject only to the power of the legislature to regulate how arms are worn." Further, "the new guarantee deleted any legislative power to regulate the keeping of arms. The possession, ownership, transportation, or other forms of 'keeping' arms, particularly on one's premises or while travelling, were intended to be beyond the parameters of legislative control." Rather, the provision was limited to allowing regulations on "how arms were to be worn, i.e., openly or concealed[.]" The provision "was intended to repeal the broad legislative power in the 1869 Constitution and in particular the unpopular 1871 act which prohibited the bearing of arms anywhere but on one's premises."
State v. Villanueva, 686 S.W.3d 752, 760 (Tex. Crim. App. 2024) (Slaughter, J., dissenting) (quoting Stephen P. Halbrook, *The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights*, 41 BAYLOR L. REV. 629, 655-57 (1989)) [internal citations omitted].

[59] *State v. Villanueva*, 686 S.W.3d 752, 754 (Tex. Crim. App. 2024) (Newell, J., concurring).

applies only once a court has found that the defendant "represents a credible threat to the physical safety" of another.[60] Prior to *Bruen*, the seminal case on the Second Amendment, *District of Columbia v. Heller*, made clear that an individual has a right to carry firearms for self-defense in public or at home.[61]

ANALYSIS

TEX. PEN. CODE § 46.02 (a-7) is facially unconstitutional under U.S. CONST., amdts. II, V, VIII, XIV; and TEX. CONST., art. 1, §§ 3, 13, 19, & 23; TEX. CODE CRIM. PROC., art. 1.04. Under the *Rahimi* analysis, TEX. PENAL CODE § 46.02 (a-7) fails to provide Due Process consistent with the Fifth and Fourteenth Amendments as well as limitations on punishment consistent with the Eighth Amendment. The prosecution has provided no arguments for how TEX. PENAL CODE § 46.02 (a-7) is constitutional on its face nor any arguments for how it is constitutional as applied to Applicant Brandin Eric Law.

The first hurdle the prosecution had to clear when it responded to Applicant's pretrial writ application was an explanation of what historical analogue provided a basis for the restrictions and penalties imposed by TEX. PENAL CODE § 46.02 (a-7).[62] Then the prosecution had to explain how TEX. PENAL CODE § 46.02 (a-7) satisfied

---

60 *United States v. Rahimi*, 144 S. Ct. 1889, 1901-02 (2024) (citing *Heller*, 554 U. S. at 626).
61 *District of Columbia v. Heller,* 554 U.S. 570 (2008).
62 *See Rahimi*, 144 S. Ct. at 2127.

Rahimi's three-part analysis: (a) the restriction must be temporary;[63] (b) the restriction may only apply to an individual who poses a specific threat to the physical safety of another;[64] and (c) the threat must be credible.[65] The prosecution did not show that TEX. PENAL CODE § 46.02 (a-7) only restricted individuals with a prior felony conviction who posed an immediate, specific, credible threat to the community and that any restriction imposed on such an individual was temporary. Because the prosecution did not satisfy its burden, the onus of a facial challenge to show TEX. PENAL CODE § 46.02 (a-7) is unconstitutional in all its applications does not shift to Applicant.[66] But even if the prosecution can carry its burden to show TEX. PENAL CODE § 46.02 (a-7) is facially constitutional, the prosecution cannot show that TEX. PENAL CODE § 46.02 (a-7) is constitutional as applied to Applicant because the indictment is missing key allegations necessary to constitutional application of TEX. PENAL CODE § 46.02 (a-7).

---

63 *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024) ("only prohibits firearm possession so long as the defendant 'is' subject to a restraining order")

64 *But see id*. at 1901-02. ("While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, we note that Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another.").

65 *Id.* at 1902. ("[T]he Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.")

66 *Id.* at 1903.

4 Facially Unconstitutional—Analysis Under *Rahimi*

The analysis of TEX. PENAL CODE § 46.02 (a-7) under *Rahimi* exposes the statute's vulnerability to violation of the right to bear arms pursuant to the U.S. CONST., amdt. II and TEX. CONST., art. 1, § 23. TEX. PENAL CODE § 46.02 (a-7) is facially unconstitutional because it fails to satisfy the Due Process and Limitation on Punishment guarantees of the U.S. and Texas Constitutions as explained in *Rahimi*.

4.1 Equal Protection for Persons with Prior Convictions

U.S. Const., amdt. XIV guarantees "equal protection of the laws." TEX. CONST., art. 1, § 3 states: "All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." The Texas Constitution explicitly acknowledges the "social compact," which is the agreement between the People writ large and their government, as embodied in our federal and state constitutions. We as a People have agreed that "free men" are guaranteed equal rights without favor to one group of people over another. Thus, if an individual is no longer under some sort of restraint by the government, such as imprisonment or

community supervision, then that person is free, a participant in the "social compact," and entitled to equal rights.

Denying people who have been previously convicted of a felony from freely carrying firearms in public, as every other person within the jurisdiction of the State of Texas is entitled to do, is to deny those people participation in the "social compact" which includes TEX. CONST., art. 1, § 23 guaranteeing the right to bear arms.

Not all felonies are created equal. Some examples of felony offenses which would subject a person to prohibition from carrying a firearm outside their home are:

- Consulting with a pirate[67]
- Third conviction for prostitution[68]
- Graffiti if the loss amount is over $2500[69]
- Criminal non-payment of child support[70]
- Bigamy[71]

---

67 18 U.S.C. § 1657 (Consulting, corresponding, or providing a pirate with provisions is a felony offense, punishable by up to 3 years in prison).

68 TEX. PENAL CODE § 43.02 (c)(2) (a state jail felony if the actor has previously been convicted three or more times of knowingly offering or agreeing to receive a fee from another to engage in sexual conduct [Prostitution]).

69 TEX. PENAL CODE § 28.08 Graffiti ("(b)(4) a state jail felony if the amount of pecuniary loss is $2,500 or more but less than $30,000").

70 TEX. PENAL CODE § 25.05 Criminal NonSupport ("(f) An offense under this section is a state jail felony").

71 TEX. PENAL CODE § 25.01 Bigamy("(e) An offense under this section is a felony of the third degree").

None of these felonies are violent on their face nor do they have a direct connection to conduct involving firearms. Thus, TEX. PENAL CODE § 46.02 (a-7) is unconstitutionally overbroad because the restriction on carrying firearms sweeps up too many individuals with felony convictions for which there is no nexus between their felony conviction and the risk of misuse of a firearm.

The Texas Constitution also protects those within its jurisdiction from being branded as an outlaw: "No citizen shall be outlawed."[72] "Outlawry" is the state of being outlawed. "To outlaw" is "to deprive of the benefits and protection of the law."[73] **"**The reasons given for including the 'outlawry' provision in our Constitution suggest that it was intended to prohibit the state only from either denying a citizen all legal rights or transporting a citizen out of the state as punishment for an offense."[74]

Lumping all individuals with prior felony convictions into one class of members is to ignore the possibility of rehabilitation. An individual with a prior felony conviction cannot be presumed to always be a risk to the safety of the community. In fact, after an individual has served the sentence of punishment, they

---

72 TEX. CONST., art. 1, § 20.

73 *Ex parte Perry*, No. WR-57,394-02, 2012 Tex. Crim. App. Unpub. LEXIS 530, at *3 (Tex. Crim. App. May 23, 2012) (J., Johnson, dissenting) (noting also that almost the same language outlawing outlawry appears in TEX. CODE CRIM. PROC., Art. 1.18).

74 *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 499 (Tex. 1995).

should be allowed to re-enter society without a cloud of suspicion hanging over their heads for time immemorial. The *Rahimi* Court said as much:

> Finally, in holding that Section 922(g)(8) is constitutional as applied to Rahimi, we reject the Government's contention that Rahimi may be disarmed simply because he is not "responsible." BRIEF FOR UNITED STATES 6; *see* TR. OF ORAL ARG. 8-11. "Responsible" is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law. In *Heller* and *Bruen*, we used the term "responsible" to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. *See*, *e.g.*, *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637; *Bruen*, 597 U. S., at 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387. But those decisions did not define the term and said nothing about the status of citizens who were not "responsible." The question was simply not presented.[75]

To presume that a person with a past felony conviction is no longer accorded the same constitutional right to bear arms is to deny that person Equal Protection under the federal and state constitutions.

4.2 Due Process: Assessment of Current and Temporary Restriction

The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.[76]

---

75 *United States v. Rahimi*, 144 S. Ct. 1889, 1903 (2024).

76 *Kolender* v. *Lawson*, 461 U.S. 352, 357-358 (1983).

Under the *Rahimi* analysis, TEX. PENAL CODE § 46.02 (a-7) the prosecution must show that the restriction on firearms may only apply to an individual who poses a specific threat to the physical safety of another.[77] and the threat must be credible.[78] The prosecution has presented no arguments as to how TEX. PENAL CODE § 46.02 (a-7)satisfies Due Process and provides for judicial determination that an individual previously convicted of a felony offense poses an immediate, specific, credible threat to the safety of the community. Applicant asserts that TEX. PENAL CODE § 46.02 (a-7) makes no such provision for a judicial evaluation of an individual's threat to the community but instead relies solely on an individual's status as having been previously convicted of a felony, without regard to the type of felony or the amount of time that has passed since the punishment for the felony conviction was discharged.

The Supreme Court in *Rahimi* looked to historical surety laws for comparison to the restrictions of 18 U.S.C. § 922 (g)(8):

> These laws often offered the accused significant procedural protections. Before the accused could be compelled to post a bond for "go[ing] armed," a complaint had to be made to a judge or justice of the peace by "any person having reasonable cause to fear" that the accused would

---

77 *But see id*. at 1901-02. ("While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, we note that Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another.").

78 *Id.* at 1902. ("the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.").

> do him harm or breach the peace. The magistrate would take evidence, and—if he determined that cause existed for the charge—summon the accused, who could respond to the allegations. Bonds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason.[79]

TEX. PENAL CODE § 46.02 (a-7) offers no such procedural protections. There is no provision for a complaint regarding an immediate fear for another's safety posed by an individual prohibited from carrying firearms; no collection of evidence regarding an immediate, specific, credible threat to community safety; no opportunity for a prohibited person to respond to the allegation; and no exception written for self-defense.

In his brief, Appellate counsel for Mr. Rahimi summarized the Due Process problem best:

> In other words, the Government views the existence of historically unprotected *conduct* to imply a legislative power to unprotect *persons*. That logic doesn't work for other constitutional rights: the power to ban obscenity and libel does not imply a power to decide who may speak in the first place; the power to ban riot and unlawful assembly does not imply a power over who may assemble in the first place. Although some individual rights are curtailed after a criminal conviction, that does not mean Congress may *eliminate* or *punish* the exercise of that right by others. *See Samson v. California*, 547 U.S. 843, 857 (2006); *United States v. Knights*, 534 U.S. 112, 122 (2001).[80]

---

79 *United States v. Rahimi*, 144 S. Ct. 1889, 1900 (2024) (citing Mass. Rev. Stat., ch. 134, §§ 1, 3-4, 16.

80 BRIEF FOR APPELLEE-RESPONDENT, *United States v. Rahimi*, 2023 U.S. S. CT. BRIEFS LEXIS 2918 *57-58 (Sept. 27, 2023).

U.S. Supreme Court Justice Clarence Thomas has also opined that the status of being a felon alone is too attenuated to the risk of harm to warrant complete prohibition:

> Standing alone, the elements of this offense— (1) unlawfully (2) possessing (3) a short-barreled shotgun — do not describe inherently dangerous conduct. As a conceptual matter, "simple possession [of a firearm], even by a felon, takes place in a variety of ways (e.g., in a closet, in a storeroom, in a car, in a pocket) many, perhaps most, of which do not involve likely accompanying violence." *United States v. Doe*, 960 F. 2d 221, 225 (CA1 1992).[81]

Due Process requires more of laws which interfere with the rights of individuals to bear arms.

4.3 Lifetime Restrictions Violate Eighth Amendment Limitations

The federal and state constitutional protections curbing the government's power to punish its citizens have been held by the U.S. Supreme Court and the Texas Court of Criminal Appeals to be evolve with changing social mores.[82]

> The Eighth Amendment prohibits "cruel and unusual punishments," and "reaffirms the duty of the government to respect the dignity of all persons." "To enforce the Constitution's protection of human dignity," we "loo[k] to the evolving standards of decency that mark the progress of a maturing society," recognizing that "[t]he Eighth Amendment is not fastened to the obsolete."[83]

The Court of Criminal Appeals has developed the following test for determining whether a punishment is grossly disproportionate to the offense:

---

81 *Johnson v. United States*, 576 U.S. 591, 610-11, (2015) (J., Thomas, dissenting).
82 *See* U.S. CONST., amdt. VIII; TEX. CONST., art. 1, § 13.
83 *Moore v. Texas*, 581 U.S. 1, 12 (2017).

(1) whether there is a national consensus against imposing the punishment for the offense;
(2) the moral culpability of the offenders at issue in light of their crimes and characteristics;
(3) the severity of the punishment; and
(4) whether the punishment serves legitimate penological goals.[84]

One recent article on the flood of constitutional challenges by people previously convicted of a felony after *Bruen* noted:

> A felon in possession of a firearm is one of the most commonly charged federal crimes, according to the U.S. Sentencing Commission. In 2022 and 2023, more than 7,000 people with felony records were convicted of this crime — in the federal court system alone.
>
> The majority of these defendants were Black, reflecting the criminal justice system's racial inequities, which have left thousands of people with felony convictions for minor drug offenses like marijuana possession.[85]

The sheer number of prosecutions for unlawful possession and carrying of firearms begs the question of whether or not society still finds individuals with a prior felony conviction who carry weapons to be morally culpable and whether or not the restriction serves any meaningful purpose.

The penalty is another relevant aspect of the government's burden to prove a restriction on firearms comports with the right to bear arms.[86] 18 U.S.C. § 922 (g)(8) only prohibited firearm possession as long as the defendant "is" subject to a

---

84 *Meadoux v. State*, 325 S.W.3d 189, 194 (Tex. Crim. App. 2010).

85 Chip Brownlee, *More Than a Thousand Felons Have Challenged Their Gun Bans Since the Supreme Court's Bruen Decision*, The Trace (Sept. 12, 2024) *available at* https://www.thetrace.org/2024/09/felon-gun-ban-law-bruen-supreme-court/.

86 *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024).

restraining order.[87] Applying the guidance from *Rahimi* to TEX. PENAL CODE § 46.02 (a-7), permanently denying citizens who have served out their sentence for a prior conviction from carrying a firearm outside their home is not a temporary restriction. Even restricting the right to bear arms of a person with a felony conviction, who has been released from confinement, community supervision, parole, or mandatory supervision within the last five years, may not satisfy the "temporary" nature of restraint on a person's Second Amendment right.

Both TEX. PENAL CODE § 46.02 (a-7) and TEX. PENAL CODE § 46.04 (a) restrict where a prohibited individual may "bear" arms. The provision for carrying a handgun when en route to an individual's own transport as described by TEX. PENAL CODE § 46.02 (a-7)(2) appears to be in conflict with TEX. PENAL CODE § 46.04 (a)(2) which restricts possession of a firearm to an individual's own home. However, *Bruen* intimates that the punishment of not being able to carry a firearm in public goes too far in its restriction:

> Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms, and the definition of "bear" naturally encompasses public carry. Moreover, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation," and confrontation can surely take place outside the home.[88]

---

87 *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024).

88 *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 4 (2022).

Also, if a person prohibited from possessing a firearm under TEX. PENAL CODE § 46.04 (a) is convicted under TEX. PENAL CODE § 46.02 (a-7), the sentence is severe: a minimum of five years imprisonment.[89] If the second-degree felony is enhanced by another prior felony, then the punishment can shoot up to a minimum of fifteen years and up to life imprisonment.[90] Enhanced with two other prior felonies, the punishment range is 25-life imprisonment.[91] This is no public-safety infraction enforced by a fine or forfeiture of the weapon or a very brief stay in the local jail.

For all the reasons above, this Court should find TEX. PENAL CODE § 46.04 (a) unconstitutional on its face.

5. Unconstitutional As Applied to Brandin Law

If this Court finds that TEX. PENAL CODE § 46.04 (a) is facially unconstitutional, then there is no need for an analysis of the statute as applied to Mr. Law. However, if the Court does find that TEX. PENAL CODE § 46.04 (a) is facially

---

89 *See* TEX. PENAL CODE § 46.02 (e)(1). Although described as a second-degree felony, which usually carries a punishment range of 2-20 years, the punishment for an actor prohibited from possessing a firearm under TEX. PENAL CODE § 46.04 (a) was specially enhanced to five years minimum by the Legislature in 2021. *See* Acts 2021, 87th Leg., ch. 809 (H.B. 1927), §§ 22, 26(8), effective September 1, 2021. In contrast, TEX. PENAL CODE § 46.04 (a) is a third-degree felony and the sentence range is 2-20 years. *See* TEX. PENAL CODE § 46.04 (e).

90 TEX. PENAL CODE § 12.42 (c)(1).

91 TEX. PENAL CODE § 12.42 (d).

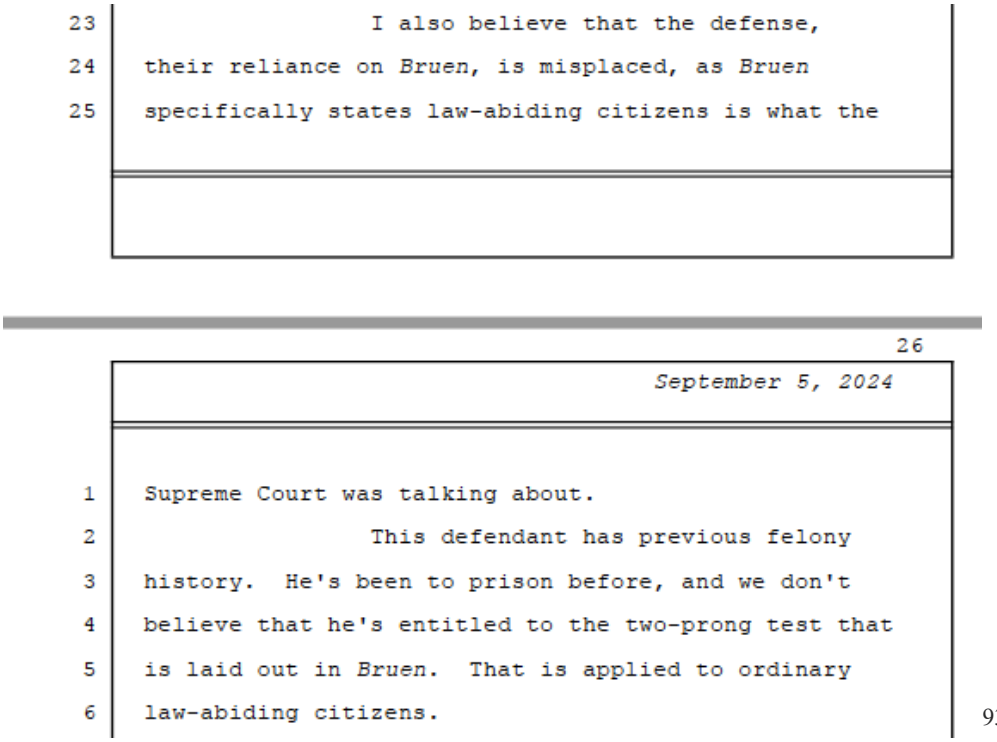
constitutional, then Mr. Law offers his arguments as to why TEX. PENAL CODE § 46.02 (a-7) is not constitutional as applied to him.

5.1 Prosecution Brands Mr. Law as Not One of Us

One of the disturbing assertions made in the STATE'S ANSWER BRIEF was: "Felons - a class of individuals to which Applicant belongs - are not 'ordinary, law-abiding citizens.'"[92] Mr. Law—without any evidence other than the indictment against him—was presumed not to be an ordinary, law-abiding citizen. In STATE'S ANSWER BRIEF the second ground the prosecution gave the trial court for denying Mr. Law's writ was that *Bruen's* two-step analysis did not apply to individuals like Mr. Law with previous felony convictions:

---

92 [CR 12]



I also believe that the defense, their reliance on *Bruen*, is misplaced, as *Bruen* specifically states law-abiding citizens is what the

Supreme Court was talking about.

This defendant has previous felony history. He's been to prison before, and we don't believe that he's entitled to the two-prong test that is laid out in *Bruen*. That is applied to ordinary law-abiding citizens.

The prosecution's assertion that those previously convicted of a felony offense are not entitled to analysis under Bruen was rejected by the Supreme Court in *Rahimi*:

> What distinguished the regimes, we observed [in *Bruen*], was that the surety laws "presumed that individuals had a right to . . . carry," whereas New York's law effectively presumed that no citizen had such a right, absent a special need. Section 922(g)(8)(C)(i) does not make the same faulty presumption. To the contrary, it presumes, like the surety laws before it, that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others.[94]

The trial court erred because no analysis under *Bruen* and *Rahimi* was applied to Mr. Law's pretrial writ application and his constitutional challenges to

---

93 [2RR 25: 23-25; 26:1-11]

94 *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024).

TEX. PENAL CODE § 46.02 (a-7). The trial court instead concluded that no analysis was needed based on Mr. Law's status as a person previously convicted of a felony. Mr. Law was denied Equal Protection pursuant to the U.S. CONST., amdt. XIV and TEX. CONST., art. 1, §§ 3, 13.

5.2 Due Process: Brandin Law Entitled to Analysis Under Bruen and Rahimi

Mr. Law does not pose a specific threat to the physical safety of another; quite the opposite, Mr. Law was defending himself from the threat to his physical safety as described both in his pretrial writ application and the hearing on the writ. The prosecution can show no credible evidence that Mr. Law was or is an ongoing threat to any specific person or the community; simply alleging that Mr. Law has been convicted of a prior felony cannot satisfy the requirement of showing how Mr. Law posed an immediate, specific, credible threat to the community and that any restriction imposed on him was temporary.

The language of TEX. CONST., art. 1, § 23 is particularly relevant as applied to Mr. Law because he was defending himself and the statute provides that "[e]very citizen shall have the right to keep and bear arms *in the lawful defence of himself*." Mr. Law briefly carried a handgun in order to lawfully defend himself from his attackers—a right that the Texas constitution endows to *every citizen* without restriction.

5.3 § 46.02 (a-7) Punishment of Brandin Law Too Severe Under Rahimi Analysis

Because Mr. Law has two prior felony convictions, the punishment range in his case is enhanced to a minimum of 25 years in custody to life imprisonment.[95] Even the minimum sentence of 25 years for carrying a gun when he was a prohibited person under TEX. PENAL CODE § 46.04 (a) seems Draconian, much less a life sentence. And Mr. Law will run the risk of life imprisonment any time he risks carrying a gun, because he will always be a prohibited person under TEX. PENAL CODE § 46.04 (a) and he will always have the two prior felonies with which prosecutors will enhance any future indictment under TEX. PENAL CODE § 46.02 (a-7).

It is unlikely the enhanced punishment of life imprisonment pursuant to TEX. PENAL CODE § 46.02 (a-7) and TEX. PENAL CODE § 12.42 (d) would pass the four-part test for determining whether a punishment is grossly disproportionate to the offense as articulated by the Court of Criminal Appeals in *Meadoux*:

(1) a national consensus against imposing life imprisonment for the offense of carrying a handgun as a prohibited person could probably be generated;
(2) Mr. Law's moral culpability for carrying a handgun when he believed he was in imminent danger, despite knowing he was prohibited from doing so, is low considering so many people in Texas carry guns;
(3) the severity of 25 years to life imprisonment for carrying a handgun seems the height of extreme; and

---

95 TEX. PENAL CODE § 12.42 (d).

(4) considering the permissive culture of guns in Texas, it is doubtful the punishment of five years to life imprisonment serves any legitimate penological goals.[96]

Subjecting Mr. Law to a minimum sentence of 25 years and a maximum of life imprisonment, violates his state and federal constitutional rights against cruel and unusual punishment. Under the rubric of *Rahimi*, the enhanced punishment faced by Mr. Law is also a basis for finding it unconstitutional as applied to him.

PRAYER FOR RELIEF

Applicant Brandin Eric Law has illegally restrained in his liberty by the indictment filed in Cause No. 1822224, captioned as *The State of Texas v. Brandin Eric Law*, because the indictment is predicated on TEX. PENAL CODE § 46.02 (a-7), which is both facially unconstitutional and unconstitutional as applied to him individually under both the federal and state constitutions. An indictment accusing an individual of violating a statute which is unconstitutional must be dismissed as void. Mr. Law prays this Court will find that TEX. PENAL CODE § 46.02 (a-7)is an unconstitutional restraint upon his state and federal constitutional rights to bear arms and reverse the order denying Pretrial Motion 27: Writ for Pretrial Writ of Habeas Corpus—Quashing Indictment in Cause No. 1881484, and any other relief to which he may be entitled.

---

[96] *Meadoux v. State*, 325 S.W.3d 189, 194 (Tex. Crim. App. 2010).

Respectfully Submitted,
THE SPARKS LAW FIRM, P.C.

/s/ Naomi Howard

Naomi Howard
State Bar No. 24092541
slfofcounsel@thesparkslawfirm.com

Monique C. Sparks
State Bar No. 24052177
monique@thesparkslawfirm.com

1923 Blodgett Street
Houston, Texas 77004
Telephone: (512) 520-7000
Facsimile: 713-520-7013
eService:
larhonda@thesparkslawfirm.com

Attorneys for Applicant Brandin Eric Law

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2024, a true and correct copy of the foregoing Applicant Brandin Eric Law's Brief was electronically filed and served on counsel of record for the Harris County District Attorney's Office as listed below:

Jessica Alane Caird *via electronic delivery*
Assistant District Attorney
Caird_Jessica@dao.hctx.net

Harris County District Attorney's Office
500 Jefferson St., Suite 600
Houston, Texas 77002
Phone: (713) 274-5800

/s/ Naomi Howard
Naomi Howard

CERTIFICATE OF COMPLIANCE

I hereby certify that Applicant Brandin Eric Law's Brief was prepared in Microsoft Word using 14-point Times New Roman font. The word count function shows that, excluding the sections exempted under TEX. R. APP. P., R. 9.4(i)(1), the brief contains 11,011 words of a maximum word count of 15,000 words as prescribed by TEX. R. APP. P., R. 9.4(i)(2)(B).

/s/ Naomi Howard
Naomi Howard

APPENDIX A

Pretrial Motion 27: Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional

Cause No. 1822224

	§	**IN THE 176TH JUDICIAL**
EX PARTE	§	
BRANDIN ERIC LAW	§	**DISTRICT COURT OF**
	§	
	§	**HARRIS COUNTY, TEXAS**

PRETRIAL MOTION 27:

APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS—QUASHING INDICTMENT AS UNCONSTITUTIONAL

TO THE HONORABLE JUDGE NIKITA K. HARMON:

Applicant **BRANDIN ERIC LAW**, by and through counsel, Monique C. Sparks, files this Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional pursuant to TEX. CODE CRIM. PROC., Art. 11.08 and *Ex parte Perry*, 483 S.W.3d 884, 896 (Tex. Crim. App. 2016).[1] Applicant is illegally restrained in his liberty by the indictment filed in Cause No. 1822224, captioned as *The State of Texas v. Brandin Eric Law*, because the indictment is predicated on TEX. PENAL CODE §46.04(a), which is facially unconstitutional under both the federal and state constitutions. An indictment accusing an individual of violating a statute which is facially unconstitutional must be dismissed as void. Applicant moves this Court to find that TEX. PENAL CODE §46.04(a) is an unconstitutional restraint of Applicant's constitutional rights to bear arms and order the indictment in Cause No. 1822224 dismissed for good cause shown as follows:

(1) This Court has jurisdiction over the subject matter of this writ by virtue of the authority vested in the district courts of the State by Article V, Section 8 of the Texas Constitution and Chapter 11 of the Texas Code of Criminal Procedure.

---

[1] "Facial constitutional challenges, however, are cognizable on pretrial habeas regardless of whether the particular constitutional right at issue would be effectively undermined if not vindicated prior to trial."

(2) On June 3, 2023, Applicant was arrested, and subsequently indicted on August 24, 2023, for the offense of Unlawful Possession of a Firearm by a Felon pursuant to TEX. PENAL CODE § 46.04(a).

(3) TEX. PENAL CODE § 46.04(a) prohibits a person who has been convicted of a felony from possessing a firearm if that person, following a felony conviction, has been released from confinement, community supervision, parole, or mandatory supervision within the last five years or, if five years have passed, the person possesses a firearm at any location other than home.

(4) On June 3, 2023, Applicant was on parole for the first-degree felony of aggravated robbery in Harris County, Cause No. 1310070.

(5) On the day of his arrest, Applicant Brandin Law was fleeing for his life. Mr. Law was leaving the house of a female acquaintance when he was confronted by three men who threatened him guns. Mr. Law attempted to escape the men by fleeing in his car. His attackers pursued him in another vehicle and fired their guns at Mr. Law during the car chase. ***See*** **EXHIBIT A**—Photos of Bullet Holes in Car. As bullets were hitting his car, Mr. Law attempted to evade further gunfire by making a U-turn under Highway 59, but he lost control of his vehicle and crashed into one of the overpass's concrete support pillars, totaling his vehicle. His attackers quickly cornered Mr. Law in his car and at least one assailant jumped into his car with a gun. However, when a Houston Police Department (HPD) officer approached the crash scene, his attackers scattered to take cover—one of them leaving behind his handgun in his rush to get out of the car. Mr. Law, still in shock from plowing into a concrete pillar with his car and in fear for his life, took the opportunity of his attackers' retreat to grab the abandoned handgun and

take off on foot. ***See*** **EXHIBIT B**—Video Surveillance Still Photo Showing Flight from Gunshots. Unbeknownst to Mr. Law, one of his attackers ran up to the HPD officer who had responded to the crash and told the officer that Mr. Law had stolen his son's vehicle. The officer then pursued Mr. Law, tackled Mr. Law, and disarmed Mr. Law who, in his confused and frightened state, did not understand who was pursuing him and obeyed the one imperative his brain had at that moment—run and survive. Mr. Law was charged with the instant offense and Aggravated Assault of a Public Servant, Cause No. 1822223. The man who accused Mr. Law of stealing his son's car left the scene and did not follow up with his allegation that Mr. Law stole his son's vehicle.

(6) Mr. Law was defending himself against three attackers, including the man who lied and told police Mr. Law had stolen his son's vehicle. Mr. Law has multiple bullet holes in his vehicle and crashed as a result of the nearly fatal car chase. ***See*** **EXHIBIT A**—Photos of Bullet Holes in Car. Mr. Law was found to be in possession of a firearm because he was exercising his right to self-defense against deadly force. Mr. Law should not have to choose between his life and breaking a "status" offense like TEX. PENAL CODE § 46.04(a) which penalizes Mr. Law for his status as an individual previously convicted of a felony.[2] And, in fact, the U.S. Supreme Court's latest Second Amendment jurisprudence supports the least restrictive constraints on an individual's right to bear arms and the Texas Court of Criminal Appeals has suggested that the Texas Constitution gives an even broader right to bear arms, especially in defense of oneself.

[2] "Because criminal liability under the statute before us turns upon the status of a person being a felon and because it is this status that makes the otherwise innocent conduct of possessing a firearm criminal, the statute before us prescribes a 'circumstances' offense." *Ex parte Woods*, 664 S.W.3d 260, 263 (Tex. Crim. App. 2022).

(7) Applicant alleges that TEX. PENAL CODE § 46.04 infringes on his individual right to keep and bear arms and is facially unconstitutional under the Second and Fourteenth Amendments to the United States Constitution and Article I, § 23 of the Texas Constitution.

(8) The Second Amendment to the United States Constitution states: "the right of the people to keep and bear Arms, shall not be infringed." The U.S. Supreme Court made clear in *McDonald v. City of Chicago* that the Second Amendment right to bear arms was incorporated and made applicable to the states by the Due Process Clause of the Fourteenth Amendment. 561 U.S. 742 (2010).

(9) Article I, Section 23 of the Texas Constitution is even more explicit in its protection of the individual's right to bear arms: "Every citizen shall have the right to keep and bear arms *in the lawful defence of himself* or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." [emphasis added] Recently, the Texas Court of Criminal Appeals denied a petition for discretionary review in *State v. Villanueva* for failure to preserve the constitutionality argument at trial, but in her dissent to the refusal of the petition, Judge Slaughter laid out a detailed historical analysis of the Texas Constitution's right to bear arms, pointing out that the right to bear arms was regarded as an absolute right by the drafters and the only power given to the State Legislature to restrict that right was the power to prescribe how the firearm was worn.[3] In his concurrence to the refusal of the petition, Judge Newell stated

[3] In 1875, after the end of Reconstruction, delegates assembled to form a new state constitution. The document they drafted was aimed at preventing the perceived widespread abuses of power that had occurred during the preceding decade. The language adopted in Article I, Section 23, which remains in force today, "drastically curtailed" the Legislature's authority to enact regulations on the possession of firearms. In comparing the language of the 1876 Constitution with its 1869 predecessor, the new language "asserted the right [to bear arms] in an absolute form without making it contingent on legislative regulation, subject only to the power of the legislature to regulate how arms are worn." Further, "the new guarantee deleted any legislative power to regulate the keeping

"the Court's refusal to grant discretionary review in this case should not be mistaken for a rejection of the merits of Appellee's claims or Judge Slaughter's arguments. . . . [should the issue be properly preserved for appeal] the Court would be able to give it the thoughtful consideration it undoubtedly deserves. *State v. Villanueva*, 686 S.W.3d 752, 754 (Tex. Crim. App. 2024) (Newell, J., concurring).[4]

(10) The U.S. Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022),[5] "'fundamentally changed' our analysis of laws that implicate the Second Amendment rendering [courts'] prior precedent obsolete." *United States v. Rahimi*, 61 F.4th 443, 450 (5th Cir. 2023) overruled by *United States v. Rahimi*, 144 S. Ct. 1889 (2024) (internal citations omitted).

(11) Prior to *Bruen*, the seminal case on the 2nd Amendment, *District of Columbia v. Heller*, 554 U.S. 570 (2008), made clear that an individual has a right to carry firearms for self-defense in public or at home.

(12) Following *Heller* and prior to *Bruen*, courts evaluating firearms regulations began to employ a two-step analysis that "combines history with means-end scrutiny." *Bruen*, 142 S. Ct. at 2125. "If a 'core' Second Amendment right is burdened, courts appl[ied] 'strict scrutiny' and ask whether the government can prove that the law is 'narrowly

---

of arms. The possession, ownership, transportation, or other forms of 'keeping' arms, particularly on one's premises or while travelling, were intended to be beyond the parameters of legislative control." Rather, the provision was limited to allowing regulations on "how arms were to be worn, i.e., openly or concealed[.]" The provision "was intended to repeal the broad legislative power in the 1869 Constitution and in particular the unpopular 1871 act which prohibited the bearing of arms anywhere but on one's premises."
State v. Villanueva, 686 S.W.3d 752, 760 (Tex. Crim. App. 2024) (Slaughter, J., dissenting) (quoting Stephen P. Halbrook, *The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights*, 41 BAYLOR L. REV. 629, 655-57 (1989)) [internal citations omitted].

[4] It should be noted that the specific firearms statute considered in *State v. Villanueva* was TEX. PENAL CODE § 46.02, which prohibits carrying a firearm in a motor vehicle or watercraft while engaging in criminal activity. Because § 46.04 is even more restrictive—forbidding individuals from possessing a firearm for mere status as

[5] ***See*** **APPENDIX** – Both U.S. Supreme Court cases, *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022) and *United States v. Rahimi*, 144 S. Ct. 1889 (2024), have been provided for the convenience of the Court.

tailored to achieve a compelling governmental interest.' Otherwise, they appl[ied] intermediate scrutiny and consider[ed] whether the Government can show that the regulation is 'substantially related to the achievement of an important governmental interest.'" *Id*. at 2126-27 (*internal citations omitted*).

(13) *Bruen* disposed of the means-end scrutiny altogether. "Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id*. at 2127.

(14) Under *Bruen*, there is no means-end scrutiny or balancing test that can save § 46.04(a). To pass constitutional muster, the State "must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 142 S.Ct. at 2127.

(15) In *United States v. Rahimi*, the U.S. Supreme Court overturned the Fifth Circuit's holding that a statute creating an offense for violation of a family violence restraining order which prohibited the possession of a firearm was unconstitutional under *Bruen*. 144 S. Ct. 1889 (2024). The Supreme Court instead held that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 144 S. Ct. 1889, 1903 (2024). The Supreme Court instructed courts to look for an "historical analogue" rather than an "historical twin" when evaluating offenses implicating the Second Amendment. *Id*. The holding in *Rahimi* provides guidance on when possession of a firearm may be restricted in keeping with the Second Amendment: (a) the restriction must be temporary;[6] (b) the

[6] *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024) ("only prohibits firearm possession so long as the defendant 'is' subject to a restraining order")

restriction may only apply to an individual who poses a specific threat to the physical safety of another;[7] and (c) the threat must be credible.[8]

(16) Applying the guidance from *Rahimi* to § 46.04(a), denying citizens who have served out their sentence for a prior conviction from possessing a firearm outside their home is not a temporary restriction. Even restricting the right to bear arms of a person with a felony conviction, who has been released from confinement, community supervision, parole, or mandatory supervision within the last five years, may not satisfy the "temporary" nature of restraint on a person's Second Amendment right. Applicant does not pose a specific threat to the physical safety of another; quite the opposite, Applicant was defending himself from the threat to his physical safety. The prosecution can show no credible evidence that Applicant is an ongoing threat to any specific person; simply alleging that Applicant's status as a felon cannot satisfy the prosecution's burden to justify the regulation.

(17) The prosecution faces an even heavier burden of proof under the Texas Constitution. As Judge Slaughter of the Texas Court of Criminal Appeals previously observed in *State v. Villanueva*, 686 S.W.3d 752, 760 (Tex. Crim. App. 2024) (Slaughter, J., dissenting), right to bear arms was regarded as an absolute right by the drafters of the Texas Constitution and the State Legislature was only given the authority to restrict how a firearm was worn. The historical tradition in Texas shows an even stronger distaste for blanket restrictions on the possession of arms. The specific language of Article I,

---

[7] *But see id.* at 1901-02. ("While we do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, see *Heller*, 554 U. S., at 626, we note that Section 922(g)(8) applies only once a court has found that the defendant 'represents a credible threat to the physical safety' of another.").

[8] *Id.* at 1902. "the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others."

Section 23 is particularly relevant because Applicant was defending himself and the statute provides that "[e]very citizen shall have the right to keep and bear arms *in the lawful defence of himself*." Applicant possessed the handgun in order to lawfully defend himself from his attackers—a right that Texas endows to *every citizen* without restriction.

(18) There is no historical tradition of firearms regulation, under either the federal or state constitutions, that dispossesses an entire class of persons from the right to bear arms as § 46.04(a) strips those convicted of felony offenses. Accordingly, it is facially unconstitutional.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Court GRANT his Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional and ORDER the indictment in Cause No. 1822224 is dismissed, Applicant is discharged from further restraint in this cause, and any other relief to which Applicant may be entitled.

Respectfully Submitted,
THE SPARKS LAW FIRM, PC

/s/: **Monique C. Sparks**

Monique C. Sparks
State Bar No. 24052177
monique@thesparkslawfirm.com

1923 Blodgett Street
Houston, Texas 77004
Phone: (713) 520-7000
Fax: (713) 520-7013
E-Service:
larhonda@thesparkslawfirm.com

Attorneys for Brandin Eric Law

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2024, a true and correct copy of the above Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional has been served, via the Court's electronic filing system, to the attorney for the State.

Elizabeth Hirs
Assistant District Attorney
Hirs_Elizabeth@dao.hctx.net

HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
500 Jefferson St., Suite 600
Houston, Texas 77002
Phone: (713) 274-5800

via electronic delivery

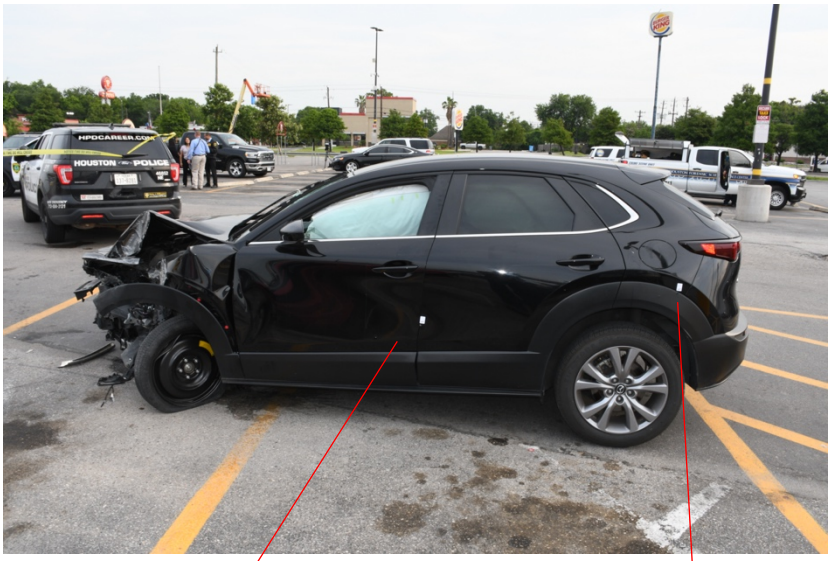
/s/: **Monique C. Sparks**
Monique C. Sparks

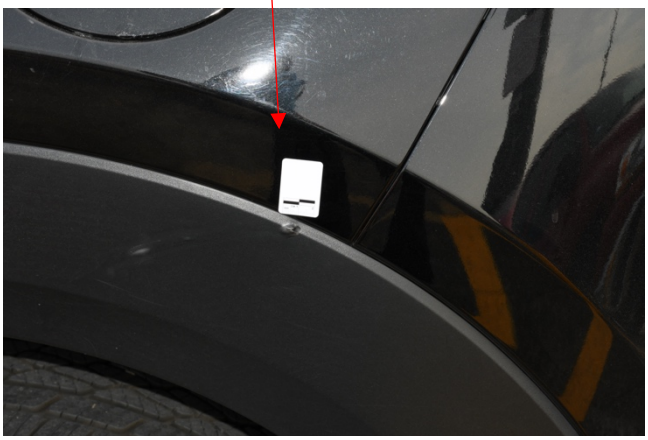
EXHIBIT A

Photos of Bullet Holes in Car

Passenger Side View of Applicant Brandin Law's Car

Driver's Side View of Applicant Brandin Law's Car





Passenger Side Rear Bumper View of Applicant Brandin Law's Car

EXHIBIT B

Video Surveillance Still Photos Showing Flight from Gunshots

Applicant Brandin Law can be seen running from the area of the crash to the Mi Tienda parking lot

Applicant Brandin Law can be seen looking back as he runs from a car entering the parking lot

Applicant Brandin Law can be seen running from a second car entering the parking lot behind the first car

Applicant Brandin Law can be seen hitting the pavement as he tries to avoid being shot by his assailants in the two cars entering the parking lot

APPENDIX

***N.Y. State Rifle & Pistol Ass'n v. Bruen*,**
597 U.S. 1 (2022)

N.Y. State Rifle & Pistol Ass'n v. Bruen

Supreme Court of the United States

November 3, 2021, Argued; June 23, 2022, Decided

No. 20-843.

Reporter
597 U.S. 1 *; 142 S. Ct. 2111 **; 213 L. Ed. 2d 387 ***; 2022 U.S. LEXIS 3055 ****; 29 Fla. L. Weekly Fed. S 440; 2022 WL 2251305

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL., PETITIONERS v. KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.

Notice: The Lexis pagination of this document is subject to change pending release of the final published version.

Subsequent History: As Revised July 29, 2022.

Prior History: **[****1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

N.Y. State Rifle & Pistol Ass'n v. Beach, 818 Fed. Appx. 99, 2020 U.S. App. LEXIS 27455, 2020 WL 5032995 (2d Cir. N.Y., Aug. 26, 2020)

Disposition: Reversed and remanded.

Syllabus

[*1] **[***395]** **[**2117]** The State of New York makes it a crime to possess a firearm without a license, whether inside or outside the home. An individual who wants to carry a firearm outside his home may obtain an unrestricted license to "have and carry" a concealed "pistol or revolver" if he can prove that "proper cause exists" for doing so. N. Y. Penal Law Ann. §400.00(2)(f). An applicant satisfies the "proper cause" requirement only if he can "demonstrate a special need for self-protection distinguishable from that of the general community." *E.g.*, *In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256, 257.

Petitioners Brandon Koch and Robert Nash are adult, law-abiding New York residents who both applied for unrestricted licenses to carry a handgun in public based on their generalized interest in self-defense. The **[***396]** State denied both of their applications for unrestricted licenses, allegedly because Koch and Nash failed to satisfy the "proper cause" requirement. Petitioners then sued respondents—state officials who oversee the processing of licensing applications—for declaratory and injunctive relief, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications **[****2]** for failure to demonstrate a unique need for self-defense. **[*2]** The District Court dismissed petitioners' complaint and the Court of Appeals affirmed. Both courts relied on the Second Circuit's prior decision in *Kachalsky* v. *County of Westchester*, 701 F. 3d 81, which had sustained New York's proper-cause standard, holding that the requirement was "substantially related to the achievement of an important governmental interest." *Id*., at 96.

Held: New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense. Pp. 8-63.

(a) In *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894, the Court held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense. Under *Heller*, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. Pp. 8-22.

(1) Since *Heller* and *McDonald*, the Courts of Appeals have developed a "two-step" framework for analyzing Second Amendment challenges that combines history with means-end scrutiny. The Court rejects that two-part approach as having one step **[****3]** too many. Step one is broadly **[**2118]** consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not support a second step that applies means-end scrutiny in the Second Amendment context. *Heller*'s methodology centered on constitutional text and history. It did not invoke any means-end test such as strict or intermediate scrutiny, and it expressly rejected any interest-balancing inquiry akin to intermediate scrutiny. Pp. 9-15.

(2) Historical analysis can sometimes be difficult and nuanced, but reliance on history to inform the meaning of constitutional text is more legitimate, and more administrable, than asking judges to "make difficult empirical judgments" about "the costs and benefits of firearms restrictions," especially given their "lack [of] expertise" in the field. *McDonald*, 561 U. S., at 790-791, 130 S.

Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion). Federal courts tasked with making difficult empirical judgments regarding firearm regulations under the banner of "intermediate scrutiny" often defer to the determinations of legislatures. While judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution **[***397]** demands here. The Second Amendment "is the very product of an interest **[****4]** balancing by the people," and it "surely elevates above all other interests the right of law-abiding, **[*3]** responsible citizens to use arms" for self-defense. *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Pp. 15-17.

(3) The test that the Court set forth in *Heller* and applies today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. Of course, the regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. But the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it. See, *e.g.*, *United States* v. *Jones*, 565 U. S. 400, 404-405, 132 S. Ct. 945, 181 L. Ed. 2d 911. Indeed, the Court recognized in *Heller* at least one way in which the Second Amendment's historically fixed meaning applies to new circumstances: Its reference to "arms" does not apply "only [to] those arms in existence in the 18th century." 554 U. S., at 582, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

To determine whether a firearm regulation is consistent with the Second Amendment, *Heller* and *McDonald* point toward at least two relevant metrics: first, whether modern and historical regulations impose a comparable burden on the right of armed self-defense, and second, whether **[****5]** that regulatory burden is comparably justified. Because "individual self-defense is 'the *central component*' of the Second Amendment right," these two metrics are "'*central*'" considerations when engaging in an analogical inquiry. *McDonald*, 561 U. S., at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (quoting *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637).

To be clear, even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster. For example, courts can use analogies to "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" to determine whether modern regulations are constitutionally permissible. *Id.,* at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. That said, respondents' attempt to characterize New York's proper-cause requirement as a "sensitive-place" law lacks merit because there is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" **[**2119]** simply because it is crowded and protected generally by the New York City Police Department. Pp. 17-22.

(b) Having made the constitutional standard endorsed in *Heller* more explicit, the Court applies that standard to New York's proper-cause requirement. Pp. 23-62.

(1) It is undisputed that petitioners Koch and Nash—two ordinary, law-abiding, adult **[****6]** citizens—are part of "the people" whom the Second Amendment protects. See *Heller*, 554 U. S., at 580, 128 S. Ct. 2783, 171 L. Ed. 2d 637. And no party disputes that handguns are weapons "in common **[***398]** use" today for self-defense. See *id*., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The Court has little difficulty concluding also **[*4]** that the plain text of the Second Amendment protects Koch's and Nash's proposed course of conduct—carrying handguns publicly for self-defense. Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms, and the definition of "bear" naturally encompasses public carry. Moreover, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation," *id*., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and confrontation can surely take place outside the home. Pp. 23-24.

(2) The burden then falls on respondents to show that New York's proper-cause requirement is consistent with this Nation's historical tradition of firearm regulation. To do so, respondents appeal to a variety of historical sources from the late 1200s to the early 1900s. But when it comes to interpreting the Constitution, not all history is created equal. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Heller*, 554 U. S., at 634-635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical **[****7]** evidence that long predates or postdates either time may not illuminate the scope of the right. With these principles in mind, the Court concludes that respondents have failed to meet their burden to identify an American tradition justifying New York's proper-cause requirement. Pp. 24-62.

(i) Respondents' substantial reliance on English history and custom before the founding makes some sense given *Heller*'s statement that the Second Amendment "codified a right 'inherited from our English ancestors.'" 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637. But the Court finds that history ambiguous at best and sees little reason to think that the Framers would have thought it applicable in the New World. The Court cannot conclude from this historical record that, by the time of the founding, English law would have justified restricting the right to publicly bear arms suited for self-defense only to those who demonstrate some special need for self-protection. Pp. 30-37.

(ii) Respondents next direct the Court to the history of the Colonies and early Republic, but they identify only three restrictions on public carry from that time. While the Court doubts that just three colonial regulations could suffice to show a tradition of public-carry regulation, even looking **[****8]** at these laws on their own terms, the Court is not convinced that they regulated

public carry akin to the New York law at issue. The statutes essentially prohibited bearing arms in a way that spread "fear" or "terror" among the people, including by carrying of "dangerous and unusual weapons." See 554 U. S., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Whatever the likelihood that handguns were considered "dangerous and unusual" during the colonial period, they are today "the quintessential self-defense **[***399]** weapon." *Id*., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Thus, these colonial laws provide no **[*5]** justification for laws restricting the public carry of **[**2120]** weapons that are unquestionably in common use today. Pp. 37-42.

(iii) Only after the ratification of the Second Amendment in 1791 did public-carry restrictions proliferate. Respondents rely heavily on these restrictions, which generally fell into three categories: common-law offenses, statutory prohibitions, and "surety" statutes. None of these restrictions imposed a substantial burden on public carry analogous to that imposed by New York's restrictive licensing regime.

Common-Law Offenses. As during the colonial and founding periods, the common-law offenses of "affray" or going armed "to the terror of the people" continued to impose some limits on firearm **[****9]** carry in the antebellum period. But there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry.

Statutory Prohibitions. In the early to mid-19th century, some States began enacting laws that proscribed the concealed carry of pistols and other small weapons. But the antebellum state-court decisions upholding them evince a consensus view that States could not altogether prohibit the public carry of arms protected by the Second Amendment or state analogues.

Surety Statutes. In the mid-19th century, many jurisdictions began adopting laws that required certain individuals to post bond before carrying weapons in public. Contrary to respondents' position, these surety statutes in no way represented direct precursors to New York's proper-cause requirement. While New York presumes that individuals have no public carry right without a showing of heightened need, the surety statutes presumed that individuals had a right to public carry that could be burdened only if another could make out a specific showing of "reasonable cause to fear an injury, or breach of the peace." Mass. Rev. Stat., ch. 134, §16 (1836). Thus, unlike New York's regime, a showing of special need **[****10]** was required only *after* an individual was reasonably accused of intending to injure another or breach the peace. And, even then, proving special need simply avoided a fee.

In sum, the historical evidence from antebellum America does demonstrate that the manner of public carry was subject to reasonable regulation, but none of these limitations on the right to bear arms operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose. Pp. 42-51.

(iv) Evidence from around the adoption of the Fourteenth Amendment also does not support respondents' position. The "discussion of the [right to keep and bear arms] in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves," *Heller*, 554 U. S., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637, generally demonstrates that **[*6]** during Reconstruction the right to keep and bear arms had limits that were consistent with a right of the public to peaceably carry handguns for self-defense. The Court acknowledges two Texas cases—*English* v. *State*, 35 Tex. 473 **[***400]** and *State* v. *Duke*, 42 Tex. 455—that approved a statutory "reasonable grounds" standard for public carry analogous to New York's proper-cause requirement. But these decisions were outliers and therefore provide little insight **[****11]** into how postbellum courts viewed the right to carry protected arms in public. See *Heller*, 554 U. S., at 632, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Pp. 52-58.

(v) Finally, respondents point to the slight uptick in gun regulation during the late-19th century. As the Court suggested in *Heller*, however, late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence. In addition, **[**2121]** the vast majority of the statutes that respondents invoke come from the Western Territories. The bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry. See *Heller*, 554 U. S., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Moreover, these territorial laws were rarely subject to judicial scrutiny, and absent any evidence explaining why these unprecedented prohibitions on all public carry were understood to comport with the Second Amendment, they do little to inform "the origins and continuing significance of the Amendment." *Ibid.*; see also The Federalist No. 37, p. 229. Finally, these territorial restrictions deserve little weight because they were, consistent with the transitory nature of territorial government, short lived. Some were held unconstitutional shortly after passage, and others did not survive **[****12]** a Territory's admission to the Union as a State. Pp. 58-62.

(vi) After reviewing the Anglo-American history of public carry, the Court concludes that respondents have not met their burden to identify an American tradition justifying New York's proper-cause requirement. Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor have they generally required law-abiding, responsible citizens to "demonstrate a special need for self-protection distinguishable from that of the general community" to carry arms in public. *Klenosky*, 75 App. Div. 2d, at 793, 428 N. Y. S. 2d, at 257. P. 62.

(c) The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald*, 561 U. S., at 780, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion). The exercise of other

constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense **[*7]** is no different. New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear **[****13]** arms in public. Pp. 62-63.

818 Fed. Appx. 99, reversed and remanded.

Counsel: Paul D. Clement argued the cause for petitioners.

Barbara D. Underwood argued the cause for respondents.

Judges: Thomas, J., delivered the opinion of the Court, in which Roberts, C. J., and Alito, Gorsuch, Kavanaugh, and Barrett, JJ., joined. Alito, J., filed a concurring opinion. Kavanaugh, J., filed a concurring opinion, in which Roberts, C. J., joined. Barrett, J., filed a concurring opinion. Breyer, J., filed a dissenting opinion, in which Sotomayor and Kagan, JJ., joined.

Opinion by: THOMAS

Opinion

[*8] **[***401]** **[**2122]** JUSTICE THOMAS delivered the opinion of the Court.

In *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), we recognized that the Second and Fourteenth Amendments protect the **[*9]** right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self- **[*10]** defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

[*11] The parties nevertheless dispute whether New York's licensing regime respects the constitutional right to carry handguns publicly for self-defense. In 43 States, the government issues licenses to carry based on objective criteria. But in six States, including New York, the government **[****14]** further conditions issuance of a license to carry on a citizen's showing of some additional special need. Because the State of New York issues public-carry licenses only when an applicant demonstrates a special need for self-defense, we conclude that the State's

licensing regime violates the Constitution.

I

A

New York State has regulated the public carry of handguns at least since the early 20th century. In 1905, New York made it a misdemeanor for anyone over the age of 16 to "have or carry concealed upon his person in any city or village of [New York], any pistol, revolver or other firearm without a written license . . . issued to him by a police magistrate." 1905 N. Y. Laws ch. 92, §2, pp. 129-130; see also 1908 N. Y. Laws ch. 93, §1, pp. 242-243 (allowing justices of the peace to issue licenses). In 1911, New York's "Sullivan Law" expanded the State's criminal prohibition to the possession of all handguns—concealed or otherwise—without a government-issued license. See 1911 N. Y. Laws ch. 195, §1, p. 443. New York later amended the Sullivan Law to clarify the licensing standard: Magistrates could "issue to [a] person a license to have and carry concealed a pistol or revolver without regard to employment or place of possessing such weapon" only if that person proved "good moral character" **[****15]** and "proper cause." 1913 N. Y. Laws ch. 608, §1, p. 1629.

Today's licensing scheme largely tracks that of the early 1900s. It is a crime in New York to possess "any firearm" **[*12]** without a license, whether inside or outside the home, punishable by up to four years in prison or a $5,000 fine for a felony offense, and **[***402]** one year in prison or a $1,000 fine for a misdemeanor. See N. Y. Penal Law Ann. §§265.01-b (West 2017), 261.01(1) (West Cum. Supp. 2022), 70.00(2)(e) and (3)(b), 80.00(1)(a) (West 2021), 70.15(1), 80.05(1). Meanwhile, possessing a loaded firearm outside one's home or place of business without a license is a felony punishable by up to 15 years in prison. §§265.03(3) (West 2017), 70.00(2)(c) and (3)(b), 80.00(1)(a).

A license applicant who wants to possess a firearm *at home* (or in his place of business) must convince a "licensing officer"—usually **[**2123]** a judge or law enforcement officer—that, among other things, he is of good moral character, has no history of crime or mental illness, and that "no good cause exists for the denial of the license." §§400.00(1)(a)-(n) (West Cum. Supp. 2022). If he wants to carry a firearm *outside* his home or place of business for self-defense, the applicant must obtain an unrestricted license to "have and carry" a concealed "pistol or revolver." §400.00(2)(f). To secure that license, the applicant must prove that "proper cause exists" to issue **[****16]** it. *Ibid.* If an applicant cannot make that showing, he can receive only a "restricted" license for public carry, which allows him to carry a firearm for a limited purpose, such as hunting, target shooting, or employment. See, *e.g.*, *In re O'Brien*, 87 N. Y. 2d 436, 438-439, 663 N. E. 2d 316, 316-317, 639 N.Y.S.2d 1004 (1996); *Babernitz* v. *Police Dept. of City of New York*, 65 App. Div. 2d 320, 324, 411 N. Y. S. 2d 309, 311 (1978); *In re O'Connor*, 154 Misc. 2d 694, 696-698,

585 N. Y. S. 2d 1000, 1003 (Westchester Cty. 1992).

No New York statute defines "proper cause." But New York courts have held that an applicant shows proper cause only if he can "demonstrate a special need for self-protection distinguishable from that of the general community." *E.g.*, *In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256, 257 (1980). This "special need" standard is demanding. For example, living or working in an area "'noted for criminal activity'" **[*13]** does not suffice. *In re Bernstein*, 85 App. Div. 2d 574, 445 N. Y. S. 2d 716, 717 (1981). Rather, New York courts generally require evidence "of particular threats, attacks or other extraordinary danger to personal safety." *In re Martinek*, 294 App. Div. 2d 221, 222, 743 N. Y. S. 2d 80, 81 (2002); see also *In re Kaplan*, 249 App. Div. 2d 199, 201, 673 N. Y. S. 2d 66, 68 (1998) (approving the New York City Police Department's requirement of "'extraordinary personal danger, documented by proof of recurrent threats to life or safety'" (quoting 38 N. Y. C. R. R. §5-03(b))).

When a licensing officer denies an application, judicial review is limited. New York courts defer to an officer's application of the proper-cause standard unless it is "arbitrary and capricious." *In re Bando*, 290 App. Div. 2d 691, 692, 735 N. Y. S. 2d 660, 661 (2002). In other words, the decision "must be upheld if the record shows a rational basis **[****17]** for it." *Kaplan*, 249 App. Div. 2d, at 201, 673 N. Y. S. 2d, at 68. The rule leaves applicants little recourse if their local licensing officer denies a permit.

New York is not alone in requiring a permit to carry a handgun in public. But the vast majority of States—43 by our count—are "shall issue" jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing **[***403]** officials discretion to deny licenses based on a perceived lack of need or suitability.[1] Meanwhile, only six States and **[*14]** the District of Columbia have **[**2124]** "may

[1] See Ala. Code §13A-11-75 (Cum. Supp. 2021); Alaska Stat. §18.65.700 (2020); Ariz. Rev. Stat. Ann. §13-3112 (Cum. Supp. 2021); Ark. Code Ann. §5-73-309 (Supp. 2021); Colo. Rev. Stat. §18-12-206 (2021); Fla. Stat. §790.06 (2021); Ga. Code Ann. §16-11-129 (Supp. 2021); Idaho Code Ann. §18-3302K (Cum. Supp. 2021); Ill. Comp. Stat., ch. 430, §66/10 (West Cum. Supp. 2021); Ind. Code §35-47-2-3 (2021); Iowa Code §724.7 (2022); Kan. Stat. Ann. §75-7c03 (2021); Ky. Rev. Stat. Ann. §237.110 (Lexis Cum. Supp. 2021); La. Rev. Stat. Ann. §40:1379.3 (West Cum. Supp. 2022); Me. Rev. Stat. Ann., Tit. 25, §2003 (Cum. Supp. 2022); Mich. Comp. Laws §28.425b (2020); Minn. Stat. §624.714 (2020); Miss. Code Ann. §45-9-101 (2022); Mo. Rev. Stat. §571.101 (2016); Mont. Code Ann. §45-8-321 (2021); Neb. Rev. Stat. §69-2430 (2019); Nev. Rev. Stat. §202.3657 (2021); N. H. Rev. Stat. Ann. §159:6 (Cum. Supp. 2021); N. M. Stat. Ann. §29-19-4 (2018); N. C. Gen. Stat. Ann. §14-415.11 (2021); N. D. Cent. Code Ann. §62.1-04-03 (Supp. 2021); Ohio Rev. Code Ann. §2923.125 (2020); Okla. Stat., Tit. 21, §1290.12 (2021); Ore. Rev. Stat. §166.291 (2021); 18 Pa. Cons. Stat. §6109 (Cum. Supp. 2016); S. C. Code Ann. §23-31-215(A) (Cum. Supp. 2021); S. D. Codified Laws §23-7-7 (Cum. Supp. 2021); Tenn. Code Ann. §39-17-1366 (Supp. 2021); Tex. Govt. Code Ann. §411.177 (West Cum. Supp. 2021); Utah Code §53-5-704.5 (2022); Va. Code Ann. §18.2-308.04 (2021); Wash. Rev. Code §9.41.070 (2021); W. Va. Code Ann. §61-7-4 (2021); Wis. Stat. §175.60 (2021); Wyo. Stat. Ann. §6-8-104 (2021). Vermont has no permitting system for the concealed carry of handguns. Three States—Connecticut, Delaware, and Rhode Island—have discretionary criteria but appear to operate like "shall issue" jurisdictions. See Conn. Gen. Stat. §29-28(b) (2021); Del. Code, Tit. 11, §1441 (2022); R. I. Gen. Laws §11-47-11 (2002). Although Connecticut officials have discretion to deny a concealed-carry permit to anyone who is

issue" licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated **[*15]** cause or suitability for the relevant license. Aside from New York, then, only California, the District of Columbia, Hawaii, Maryland, Massachusetts, and New Jersey have analogues to the "proper cause" standard.[2] All of these "proper cause" analogues have been upheld by the Courts of Appeals, save **[***404]** for the District of Columbia's, which has been permanently enjoined since 2017. Compare *Gould* v. *Morgan*, 907 F. 3d 659, 677 (CA1 2018); *Kachalsky* v. *County of Westchester*, 701 F. 3d 81, 101 (CA2 2012); *Drake* v. *Filko*, 724 F. 3d 426, 440 (CA3 2013); *United States* v. *Masciandaro*, 638 F. 3d 458, 460 (CA4 2011); *Young* v. *Hawaii*, 992 F. 3d 765, 773 (CA9 2021) (en banc), with *Wrenn* v. *District of Columbia*, 864 F. 3d 650, 668, 431 U.S. App. D.C. 62 (CADC 2017).

B

As set forth in the **[****18]** pleadings below, petitioners Brandon Koch and Robert Nash **[**2125]** are law-abiding, adult citizens of Rensselaer County, New York. Koch lives in Troy, while Nash lives in Averill Park. Petitioner New York State Rifle & Pistol Association, Inc., is a public-interest group organized to defend the Second Amendment rights of New Yorkers. Both Koch and Nash are members.

In 2014, Nash applied for an unrestricted license to carry a handgun in public. Nash did not claim any unique danger to his personal safety; he simply wanted to carry a handgun for self-defense. In early 2015, the State denied Nash's application **[*16]** for an unrestricted license but granted him a restricted license for hunting and target shooting only. In late 2016, Nash asked a licensing officer

---

not a "suitable person," see Conn. Gen. Stat. §29-28(b), the "suitable person" standard precludes permits only to those "individuals whose conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon." *Dwyer* v. *Farrell*, 193 Conn. 7, 12, 475 A. 2d 257, 260 (1984) (internal quotation marks omitted). As for Delaware, the State has thus far processed 5,680 license applications and renewals in fiscal year 2022 and has denied only 112. See Del. Courts, Super. Ct., Carrying Concealed Deadly Weapon (June 9, 2022), https://courts.delaware.gov/forms/download.aspx?ID=125408. Moreover, Delaware appears to have no licensing requirement for open carry. Finally, Rhode Island has a suitability requirement, see R. I. Gen. Laws §11-47-11, but the Rhode Island Supreme Court has flatly denied that the "[d]emonstration of a proper showing of need" is a component of that requirement. *Gadomski* v. *Tavares*, 113 A. 3d 387, 392 (2015). Additionally, some "shall issue" jurisdictions have so-called "constitutional carry" protections that allow certain individuals to carry handguns in public within the State without *any* permit whatsoever. See, *e.g.*, A. Sherman, More States Remove Permit Requirement To Carry a Concealed Gun, PolitiFact (Apr. 12, 2022), https://www.politifact.com/article/2022/apr/12/more-states-remove-permit-requirement-carry-concea/ ("Twenty-five states now have permitless concealed carry laws . . . The states that have approved permitless carry laws are: Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Iowa, Georgia, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming").

[2] See Cal. Penal Code Ann. §26150 (West 2021) ("Good cause"); D. C. Code §§7-2509.11(1) (2018), 22-4506(a) (Cum. Supp. 2021) ("proper reason," *i.e.*, "special need for self-protection"); Haw. Rev. Stat. §§134-2 (Cum. Supp. 2018), 134-9(a) (2011) ("exceptional case"); Md. Pub. Saf. Code Ann. §5-306(a)(6)(ii) (2018) ("good and substantial reason"); Mass. Gen. Laws, ch. 140, §131(d) (2020) ("good reason"); N. J. Stat. Ann. §2C:58-4(c) (West Cum. Supp. 2021) ("justifiable need").

to remove the restrictions, citing a string of recent robberies in his neighborhood. After an informal hearing, the licensing officer denied the request. The officer reiterated that Nash's existing license permitted him "to carry concealed for purposes of off road back country, outdoor activities similar to hunting," such as "fishing, hiking & camping etc." App. 41. But, at the same time, the officer emphasized that the restrictions were "intended to *prohibit* **[****19]** [Nash] from carrying concealed in ANY LOCATION typically open to and frequented by the general public." *Ibid.*

Between 2008 and 2017, Koch was in the same position as Nash: He faced no special dangers, wanted a handgun for general self-defense, and had only a restricted license permitting him to carry a handgun outside the home for hunting and target shooting. In late 2017, Koch applied to a licensing officer to remove the restrictions on his license, citing his extensive experience in safely handling firearms. Like Nash's application, Koch's was denied, except that the officer permitted Koch to "carry to and from work." *Id*., at 114.

C

Respondents are the superintendent of the New York State Police, who oversees the enforcement of the State's licensing laws, and a New York Supreme Court justice, who oversees the processing of licensing applications in Rensselaer County. Petitioners sued respondents for declaratory and injunctive relief under Rev. Stat. 1979, 42 U. S. C. §1983, alleging that respondents violated their Second and Fourteenth Amendment rights by denying their unrestricted-license applications on the basis that they had failed to show "proper cause," *i.e.*, had failed to demonstrate a unique need for self-defense.

The **[****20]** District Court dismissed petitioners' complaint and the Court of Appeals affirmed. See 818 Fed. Appx. 99, 100 **[*17]** (CA2 2020). Both courts relied on the Court of Appeals' prior decision **[***405]** in *Kachalsky*, 701 F. 3d 81, which had sustained New York's proper-cause standard, holding that the requirement was "substantially related to the achievement of an important governmental interest." *Id*., at 96.

We granted certiorari to decide whether New York's denial of petitioners' license applications violated the Constitution. 593 U. S. ___, 141 S. Ct. 2566, 209 L. Ed. 2d 590 (2021).

II

In *Heller* and *McDonald*, we held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense. In doing so, we held unconstitutional two laws that prohibited the possession and use of handguns in the home. In the years since, the Courts of Appeals have coalesced around a "two-step" framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.

[2126]** Today, we decline to adopt that two-part approach. In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent **[****21]** with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg* v. *State Bar of Cal.*, 366 U. S. 36, 50, n. 10, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961).[3]

[*18] A

Since *Heller* and *McDonald*, the two-step test that Courts of Appeals have developed to assess Second Amendment claims proceeds as follows. At the first step, the government may justify its regulation by "establish[ing] that the challenged law regulates activity falling outside the scope of the right as originally understood." *E.g.*, *Kanter* v. *Barr*, 919 F. 3d 437, 441 (CA7 2019) (internal quotation marks omitted). But see *United States* v. *Boyd*, 999 F. 3d 171, 185 (CA3 2021) (requiring claimant to show "'a burden on conduct falling within the scope of the Second Amendment's guarantee'"). The Courts of Appeals then ascertain the original scope of the right based on its historical meaning. *E.g.*, *United States* v. *Focia*, 869 F. 3d 1269, 1285 (CA11 2017). If the government can prove that the regulated conduct falls beyond the Amendment's original scope, "then the analysis can stop there; the regulated activity is categorically unprotected." *United States* v. *Greeno*, 679 F. 3d 510, 518 (CA6 2012) (internal quotation marks omitted). But if the historical evidence at this step is "inconclusive or suggests that the regulated activity is *not* categorically unprotected," the **[***406]** courts generally proceed **[****22]** to step two. *Kanter*, 919 F. 3d, at 441 (internal quotation marks omitted).

At the second step, courts often analyze "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right." *Ibid.* (internal quotation marks omitted). The Courts of Appeals generally maintain "that the core Second Amendment right is limited to self-defense *in the home*." *Gould*, 907 F. 3d, at 671 (emphasis added). But see *Wrenn*, 864 F. 3d, at 659 ("[T]he Amendment's core generally covers carrying in public for self defense"). If a "core" Second Amendment right is burdened, courts apply "strict scrutiny" and ask whether

[3] Rather than begin with its view of the governing legal framework, the dissent chronicles, in painstaking detail, evidence of crimes committed by individuals with firearms. See *post*, at 1-9 (opinion of BREYER, J.). The dissent invokes all of these statistics presumably to justify granting States greater leeway in restricting firearm ownership and use. But, as Members of the Court have already explained, "[t]he right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications." *McDonald* v. *Chicago*, 561 U. S. 742, 783, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (plurality opinion).

the Government can prove that the law is "narrowly tailored **[*19]** to achieve a compelling governmental interest." *Kolbe* v. *Hogan*, 849 F. 3d 114, 133 (CA4 2017) (internal quotation marks omitted). Otherwise, they apply intermediate scrutiny and consider whether the Government can show that the regulation is "substantially related to the achievement of an important governmental interest." *Kachalsky*, 701 F. 3d, at **[**2127]** 96.[4] Both respondents and the United States largely agree with this consensus, arguing that intermediate scrutiny is appropriate when text and history are unclear in attempting to delineate the scope of the right. See Brief for Respondents 37; Brief for United States as *Amicus Curiae* 4.

B

Despite the popularity of this two-step approach, **[****23]** it is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.

1

To show why *Heller* does not support applying means-end scrutiny, we first summarize *Heller*'s methodological approach to the Second Amendment.

[*20] In *Heller*, we began with a "textual analysis" focused on the "'normal and ordinary'" meaning of the Second Amendment's language. 554 U. S., at 576-577, 578, 128 S. Ct. 2783, 171 L. Ed. 2d 637. That analysis suggested that the Amendment's operative clause—"the right of the people to keep and bear Arms . . . shall not be infringed"—"guarantee[s] the individual right to possess and carry weapons in case of confrontation" that does not depend on service in the militia. *Id*., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

[*407]** From there, we assessed whether our initial conclusion was "confirmed by the historical background of the Second Amendment." *Ibid.* We looked to history because "it has always been widely understood that the Second Amendment . . . codified a *pre-existing* right." *Ibid.* The Amendment "was not intended to lay down a novel principle but **[****24]** rather codified a right

[4] See *Association of N. J. Rifle & Pistol Clubs, Inc.* v. *Attorney General N. J.*, 910 F. 3d 106, 117 (CA3 2018); accord, *Worman* v. *Healey*, 922 F. 3d 26, 33, 36-39 (CA1 2019); *Libertarian Party of Erie Cty.* v. *Cuomo*, 970 F. 3d 106, 127-128 (CA2 2020); *Harley* v. *Wilkinson*, 988 F. 3d 766, 769 (CA4 2021); *National Rifle Assn. of Am., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F. 3d 185, 194-195 (CA5 2012); *United States* v. *Greeno*, 679 F. 3d 510, 518 (CA6 2012); *Kanter* v. *Barr*, 919 F. 3d 437, 442 (CA7 2019); *Young* v. *Hawaii*, 992 F. 3d 765, 783 (CA9 2021) (en banc); *United States* v. *Reese*, 627 F. 3d 792, 800-801 (CA10 2010); *GeorgiaCarry.Org, Inc.* v. *Georgia*, 687 F. 3d 1244, 1260, n. 34 (CA11 2012); *United States* v. *Class*, 930 F. 3d 460, 463, 442 U.S. App. D.C. 257 (CADC 2019).

inherited from our English ancestors." *Id*., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (alterations and internal quotation marks omitted). After surveying English history dating from the late 1600s, along with American colonial views leading up to the founding, we found "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id*., at 595, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

We then canvassed the historical record and found yet further confirmation. That history included the "analogous arms-bearing rights in state constitutions that preceded and immediately followed adoption of the Second Amendment," *id*., at 600-601, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century," *id*., at 605, 128 S. Ct. 2783, 171 L. Ed. 2d 637. When the principal dissent charged that the latter category of sources was illegitimate "postenactment legislative history," *id*., at 662, n. 28, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (opinion of Stevens, J.), we clarified that "examination of a variety of legal and other **[**2128]** sources to determine *the public understanding* of a legal text in the period after its enactment or ratification" was "a critical tool of constitutional interpretation," *id*., at 605, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (majority opinion).

[*21] In assessing the postratification history, we looked to four different types of sources. First, we reviewed **[****25]** "[t]hree important founding-era legal scholars [who] interpreted the Second Amendment in published writings." *Ibid.* Second, we looked to "19th-century cases that interpreted the Second Amendment" and found that they "universally support an individual right" to keep and bear arms. *Id*., at 610, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Third, we examined the "discussion of the Second Amendment in Congress and in public discourse" after the Civil War, "as people debated whether and how to secure constitutional rights for newly free slaves." *Id*., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Fourth, we considered how post-Civil War commentators understood the right. See *id*., at 616-619, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

After holding that the Second Amendment protected an individual right to armed self-defense, we also relied on the historical understanding of the Amendment to demark the limits on the exercise of that right. We noted that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Ibid.* For example, we found it "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" that the Second Amendment protects **[***408]** the possession and use **[****26]** of weapons that are "'in common use at the time.'" *Id*., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (first citing 4 W. Blackstone, Commentaries on the Laws of England 148-149 (1769); then quoting *United States* v. *Miller*, 307 U. S. 174, 179, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939)). That said, we cautioned that we were not "undertak[ing] an exhaustive

historical analysis today of the full scope of the Second Amendment" and moved on to considering the constitutionality of the District of Columbia's handgun ban. 554 U. S., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

[*22] We assessed the lawfulness of that handgun ban by scrutinizing whether it comported with history and tradition. Although we noted that the ban "would fail constitutional muster" "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights," *id*., at 628-629, 128 S. Ct. 2783, 171 L. Ed. 2d 637, we did not engage in means-end scrutiny when resolving the constitutional question. Instead, we focused on the historically unprecedented nature of the District's ban, observing that "[f]ew laws in the history of our Nation have come close to [that] severe restriction." *Id*., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Likewise, when one of the dissents attempted to justify the District's prohibition with "founding-era historical precedent," including "various restrictive laws in the colonial period," we addressed each purported analogue and concluded that they were either irrelevant or "d[id] **[****27]** not remotely burden the right of self-defense as much as an absolute ban on handguns." *Id*., at 631-632, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see *id*., at 631-634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Thus, our earlier historical analysis sufficed to show that the Second Amendment did not countenance a "complete prohibition" on the use of "the most popular weapon chosen by Americans for self-defense in the home." *Id*., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

2

As the foregoing shows, *Heller*'s methodology centered on constitutional text and **[**2129]** history. Whether it came to defining the character of the right (individual or militia dependent), suggesting the outer limits of the right, or assessing the constitutionality of a particular regulation, *Heller* relied on text and history. It did not invoke any means-end test such as strict or intermediate scrutiny.

Moreover, *Heller* and *McDonald* expressly rejected the application of any "judge-empowering 'interest-balancing inquiry' that 'asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests.'" *Heller*, 554 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quoting *id*., at 689-690, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (BREYER, J., dissenting)); see also *McDonald*, 561 **[*23]** U. S., at 790-791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion) (the Second Amendment does not permit—let alone require—"judges to assess the costs and benefits of firearms restrictions" under means-end scrutiny). We declined to engage **[****28]** in means-end scrutiny because "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* **[***409]** insisting upon." *Heller*, 554 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed.

2d 637. We then concluded: "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Ibid.*

Not only did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge us to adopt. Dissenting in *Heller*, JUSTICE BREYER's proposed standard—"ask[ing] whether [a] statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests," *id*., at 689-690, 128 S. Ct. 2783, 171 L. Ed. 2d 637—simply expressed a classic formulation of intermediate scrutiny in a slightly different way, see *Clark* v. *Jeter*, 486 U. S. 456, 461, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988) (asking whether the challenged law is "substantially related to an important government objective"). In fact, JUSTICE BREYER all but admitted that his *Heller* dissent advocated for intermediate scrutiny by repeatedly invoking a quintessential intermediate scrutiny precedent. **[****29]** See *Heller*, 554 U. S., at 690, 696, 704-705, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (citing *Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997)). Thus, when *Heller* expressly rejected that dissent's "interest-balancing inquiry," 554 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (internal quotation marks omitted), it necessarily rejected intermediate scrutiny.[5]

[*24] In sum, the Courts of Appeals' second step is inconsistent with *Heller*'s historical approach and its rejection of means-end scrutiny. We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's **[**2130]** conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg*, 366 U. S., at 50, n. 10, 81 S. Ct. 997, 6 L. Ed. 2d 105.

C

This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms. 554 U. S., at 582, 595, 606, 618, 634-635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. In that context, "[w]hen the Government restricts speech, the Government bears the

[5] The dissent asserts that we misread *Heller* to eschew means-end scrutiny because *Heller* mentioned that the District of Columbia's handgun ban "would fail constitutional muster" "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights." *Heller*, 554 U. S., at 628-629, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see *post*, at 23 (opinion of BREYER, J.). But *Heller*'s passing observation that the District's ban would fail under any heightened "standar[d] of scrutiny" did not supplant *Heller*'s focus on constitutional text and history. Rather, *Heller*'s comment "was more of a gilding-the-lily observation about the extreme nature of D.C.'s law," *Heller* v. *District of Columbia*, 670 F. 3d 1244, 1277, 399 U.S. App. D.C. 314 (CADC 2011) (Kavanaugh, J., dissenting), than a reflection of *Heller*'s methodology or holding.

burden of proving the constitutionality of its actions." *United States* v. **[***410]** *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 816, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000); see also *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U. S. 767, 777, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986). In some cases, that burden includes showing whether the expressive conduct falls outside of the category of protected **[****30]** speech. See *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 U. S. 600, 620, n. 9, 123 S. Ct. 1829, 155 L. Ed. 2d 793 (2003). And to carry that burden, the government must generally point to *historical* evidence about the **[*25]** reach of the First Amendment's protections. See, *e.g.*, *United States* v. *Stevens*, 559 U. S. 460, 468-471, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010) (placing the burden on the government to show that a type of speech belongs to a "historic and traditional categor[y]" of constitutionally unprotected speech "long familiar to the bar" (internal quotation marks omitted)).

And beyond the freedom of speech, our focus on history also comports with how we assess many other constitutional claims. If a litigant asserts the right in court to "be confronted with the witnesses against him," U. S. Const., Amdt. 6, we require courts to consult history to determine the scope of that right. See, *e.g.*, *Giles* v. *California*, 554 U. S. 353, 358, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008) ("admitting only those exceptions [to the Confrontation Clause] established at the time of the founding" (internal quotation marks omitted)). Similarly, when a litigant claims a violation of his rights under the Establishment Clause, Members of this Court "loo[k] to history for guidance." *American Legion* v. *American Humanist Assn.*, 588 U. S. ___, ___, 139 S. Ct. 2067, 2087, 204 L. Ed. 2d 452 (2019) (plurality opinion). We adopt a similar approach here.

To be sure, "[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions, and making nuanced judgments about which evidence to consult and how to interpret it." *McDonald*, 561 U. S., at 803-804, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (Scalia, J., **[****31]** concurring). But reliance on history to inform the meaning of constitutional text—especially text meant to codify a *pre-existing* right—is, in our view, more legitimate, and more administrable, than asking judges to "make difficult empirical judgments" about "the costs and benefits of firearms restrictions," especially given their "lack [of] expertise" in the field. *Id*., at 790-791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion).[6]

[2131]** **[*26]** If the last decade of Second Amendment litigation has taught this Court

[6] The dissent claims that *Heller*'s text-and-history test will prove unworkable compared to means-end scrutiny in part because judges are relatively ill equipped to "resolv[e] difficult historical questions" or engage in "searching historical surveys." *Post*, at 26, 30. We are unpersuaded. The job of judges is not to resolve historical questions in the abstract; it is to resolve *legal* questions presented in particular cases or controversies. That "legal inquiry is a refined subset" of a broader "historical inquiry," and it relies on "various evidentiary principles and default rules" to resolve uncertainties. W. Baude & S. Sachs, Originalism and the Law of the Past, 37 L. & Hist. Rev. 809, 810-811 (2019). For example, "[i]n our adversarial system of adjudication, we follow the principle of party presentation." *United States* v. *Sineneng-Smith*, 590 U. S. ___, ___, 140 S. Ct. 1575, 1579, 206 L. Ed. 2d 866 (2020). Courts are thus entitled to decide a case based on the historical record compiled by the parties.

anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm **[***411]** regulations under the banner of "intermediate scrutiny" often defer to the determinations of legislatures. But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment "is the very *product* of an interest balancing by the people" and it "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms" for self-defense. *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. It is this balance—struck by the traditions of the American people—that demands our unqualified deference.

D

The test that we set forth in *Heller* and apply today requires courts **[****32]** to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. In some cases, that inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern **[*27]** regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Heller itself exemplifies this kind of straightforward historical inquiry. One of the District's regulations challenged in *Heller* "totally ban[ned] handgun possession in the home." *Id*., at 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The District in *Heller* addressed a perceived societal problem—firearm violence in densely populated communities—and it employed a regulation—a flat ban on the **[****33]** possession of handguns in the home—that the Founders themselves could have adopted to confront that problem. Accordingly, after considering "founding-era historical precedent," including "various restrictive laws in the colonial period," and finding that none was analogous to the District's ban, *Heller* concluded that the handgun ban was unconstitutional. *Id*., at 631, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also *id*., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (describing the claim that "there were somewhat similar restrictions in the founding period" a "false proposition").

New York's proper-cause requirement concerns the same alleged societal problem addressed in *Heller*: "handgun violence," primarily in "urban area[s]." *Ibid.* Following the course charted by *Heller*, we will consider whether "historical precedent" from before, during, and even after the **[**2132]** founding evinces a comparable tradition of regulation. *Id*., at 631, 128 S. Ct. 2783,

171 L. Ed. 2d 637. And, as we explain below, we find no such tradition in the historical materials that respondents and their *amici* have brought to bear on that question. See Part III-B, *infra*.

While the historical analogies here and in *Heller* are relatively simple to **[***412]** draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach. The regulatory challenges **[****34]** posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. Fortunately, the Founders created a **[*28]** Constitution—and a Second Amendment—"intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch* v. *Maryland*, 17 U.S. 316, 4 Wheat. 316, 415, 4 L. Ed. 579 (1819) (emphasis deleted). Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated. See, *e.g.*, *United States* v. *Jones*, 565 U. S. 400, 404-405, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted").

We have already recognized in *Heller* at least one way in which the Second Amendment's historically fixed meaning applies to new circumstances: Its reference to "arms" does not apply "only [to] those arms in existence in the 18th century." 554 U. S., at 582, 128 S. Ct. 2783, 171 L. Ed. 2d 637. "Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Ibid.* (citations omitted). Thus, even though **[****35]** the Second Amendment's definition of "arms" is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense. Cf. *Caetano* v. *Massachusetts*, 577 U. S. 411, 411-412, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (*per curiam*) (stun guns).

Much like we use history to determine which modern "arms" are protected by the Second Amendment, so too does history guide our consideration of modern regulations that were unimaginable at the founding. When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or judge. Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm **[*29]** regulation requires a determination of whether the two regulations are "relevantly similar." C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993). And because "[e]verything is similar in infinite ways to everything else," *id*., at 774, one needs "some metric enabling the analogizer to assess which similarities are important and which are not," F. Schauer & B. Spellman, Analogy,

Expertise, and Experience, 84 U. Chi. L. Rev. 249, 254 (2017). For instance, a green truck and a green hat are relevantly similar if one's metric is "things that are green." See *ibid.* ***[****36]*** They are not relevantly similar if the applicable metric is "things you can wear."

While we do not now provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment, we do **[***413]** think **[**2133]** that *Heller* and *McDonald* point toward at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense. As we stated in *Heller* and repeated in *McDonald*, "individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald*, 561 U. S., at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (quoting *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637); see also *id*., at 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637 ("the inherent right of self-defense has been central to the Second Amendment right"). Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are "'*central*'" considerations when engaging in an analogical inquiry. *McDonald*, 561 U. S., at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (quoting *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637).[7]

[*30] To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." *Drummond* v. *Robinson*, 9 F. 4th 217, 226 (CA3 2021). On the other hand, analogical reasoning requires only that the government identify **[****37]** a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Although the historical record yields relatively few 18th- and 19th-century "sensitive places" where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. See D. Kopel & J. Greenlee, The "Sensitive Places" Doctrine, 13 Charleston L. Rev. 205, 229-236, 244-247 (2018); see also Brief for Independent Institute as *Amicus Curiae* 11-17. We therefore can assume it settled that these locations were "sensitive places" where arms

[7] This does not mean that courts may engage in independent means-end scrutiny under the guise of an analogical inquiry. Again, the Second Amendment is the "product of an interest balancing *by the people*," not the evolving product of federal judges. *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis altered). Analogical reasoning requires judges to apply faithfully the balance struck by the founding generation to modern circumstances, and contrary to the dissent's assertion, there is nothing "[i]roni[c]" about that undertaking. *Post*, at 30. It is not an invitation to revise that balance through means-end scrutiny.

carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.

Although we have no occasion to comprehensively **[****38]** define "sensitive places" in this case, we do think respondents err in their attempt to **[***414]** characterize New York's proper-cause requirement as a "sensitive-place" law. In their view, "sensitive places" where the government may lawfully disarm law-abiding citizens include all "places where people typically **[*31]** congregate and where law-enforcement and other public-safety professionals are presumptively available." Brief for Respondents 34. It is true that people sometimes congregate in "sensitive places," and it is likewise true **[**2134]** that law enforcement professionals are usually presumptively available in those locations. But expanding the category of "sensitive places" simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" far too broadly. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. See Part III-B, *infra*. Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" simply because it is crowded and protected generally by the New York **[****39]** City Police Department.

Like *Heller*, we "do not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment." 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. And we acknowledge that "applying constitutional principles to novel modern conditions can be difficult and leave close questions at the margins." *Heller* v. *District of Columbia*, 670 F. 3d 1244, 1275, 399 U.S. App. D.C. 314 (CADC 2011) (Kavanaugh, J., dissenting). "But that is hardly unique to the Second Amendment. It is an essential component of judicial decisionmaking under our enduring Constitution." *Ibid.* We see no reason why judges frequently tasked with answering these kinds of historical, analogical questions cannot do the same for Second Amendment claims.

III

Having made the constitutional standard endorsed in *Heller* more explicit, we now apply that standard to New York's proper-cause requirement.

A

It is undisputed that petitioners Koch and Nash—two ordinary, law-abiding, adult citizens—are part of "the people" **[*32]** whom the Second Amendment protects. See *Heller*, 554 U. S., at 580, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Nor does any party dispute that handguns are weapons "in

common use" today for self-defense. See *id*., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also *Caetano*, 577 U. S., at 411-412, 136 S. Ct. 1027, 194 L. Ed. 2d 99. We therefore turn to whether the plain text of the Second Amendment protects Koch's and Nash's proposed course of conduct—carrying handguns publicly for self-defense.

We have little difficulty concluding that it does. Respondents do not dispute this. See Brief **[****40]** for Respondents 19. Nor could they. Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms. As we explained in *Heller*, the "textual elements" of the Second Amendment's operative clause— "the right of the people to keep and bear Arms, shall not be infringed"—"guarantee the individual right to possess and carry weapons in case of confrontation." 554 U. S., at 592, **[***415]** 128 S. Ct. 2783, 171 L. Ed. 2d 637. *Heller* further confirmed that the right to "bear arms" refers to the right to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id*., at 584, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quoting *Muscarello* v. *United States*, 524 U. S. 125, 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998) (Ginsburg, J., dissenting); internal quotation marks omitted).

This definition of "bear" naturally encompasses public carry. Most gun owners do not wear a holstered pistol at their hip in their bedroom or while sitting at the dinner table. Although individuals often "keep" firearms in their home, at the ready for self-defense, most do not "bear" (*i.e.*, carry) them in the home beyond moments of actual confrontation. To confine **[**2135]** the right to "bear" arms to the home would nullify half of the Second Amendment's operative protections.

Moreover, confining the right **[****41]** to "bear" arms to the home would make little sense given that self-defense is "the *central component* of the [Second Amendment] right itself." **[*33]** *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also *McDonald*, 561 U. S., at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894. After all, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation," *Heller*, 554 U. S., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and confrontation can surely take place outside the home.

Although we remarked in *Heller* that the need for armed self-defense is perhaps "most acute" in the home, *id*., at 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637, we did not suggest that the need was insignificant elsewhere. Many Americans hazard greater danger outside the home than in it. See *Moore* v. *Madigan*, 702 F. 3d 933, 937 (CA7 2012) ("[A] Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower"). The text of the Second Amendment reflects that reality.

The Second Amendment's plain text thus presumptively guarantees petitioners Koch and Nash a

right to "bear" arms in public for self-defense.

B

Conceding that the Second Amendment guarantees a general right to public carry, contra, *Young*, 992 F. 3d, at 813, respondents instead claim that the Amendment "permits a State to condition handgun carrying in areas 'frequented by the general public' on a showing of a non-speculative need for armed self-defense in those areas," Brief for Respondents 19 (citation omitted).[8] To support **[****42]** that claim, the burden **[*34]** falls on respondents to show that New York's proper-cause requirement is consistent with this **[***416]** Nation's historical tradition of firearm regulation. Only if respondents carry that burden can they show that the pre-existing right codified in the Second Amendment, and made applicable to the States through the Fourteenth, does not protect petitioners' proposed course of conduct.

Respondents appeal to a variety of historical sources from the late 1200s to the early 1900s. We categorize these periods as follows: (1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; **[**2136]** (4) Reconstruction; and (5) the late-19th and early-20th centuries.

We categorize these historical sources because, when it comes to interpreting the Constitution, not all history is created equal. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Heller*, 554 U. S., at 634-635, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis added). The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years. It is one thing for **[****43]** courts to "reac[h] back to the 14th century" for English practices that "prevailed up to the 'period immediately before and after the framing of the Constitution.'" *Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 311, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008) (ROBERTS, C. J., dissenting). It is quite **[*35]** another to rely on an "ancient" practice

[8] The dissent claims that we cannot answer the question presented without giving respondents the opportunity to develop an evidentiary record fleshing out "how New York's law is administered in practice, how much discretion licensing officers in New York possess, or whether the proper cause standard differs across counties." *Post*, at 20. We disagree. The dissent does not dispute that any applicant for an unrestricted concealed-carry license in New York can satisfy the proper-cause standard only if he has "' "a special need for self-protection distinguishable from that of the general community." '" *Post*, at 13 (quoting *Kachalsky* v. *County of Westchester*, 701 F. 3d 81, 86 (CA2 2012)). And in light of the text of the Second Amendment, along with the Nation's history of firearm regulation, we conclude below that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense. See *infra*, at 62. That conclusion does not depend upon any of the factual questions raised by the dissent. Nash and Koch allege that they were denied unrestricted licenses because they had not "demonstrate[d] a special need for self-defense that distinguished [them] from the general public." App. 123, 125. If those allegations are proven true, then it simply does not matter whether licensing officers have applied the proper-cause standard differently to other concealed-carry license applicants; Nash's and Koch's constitutional rights to bear arms in public for self-defense were still violated.

that had become "obsolete in England at the time of the adoption of the Constitution" and never "was acted upon or accepted in the colonies." *Dimick* v. *Schiedt*, 293 U. S. 474, 477, 55 S. Ct. 296, 79 L. Ed. 603 (1935).

As with historical evidence generally, courts must be careful when assessing evidence concerning English common-law rights. The common law, of course, developed over time. *Associated Gen. Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 533, n. 28, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983); see also *Rogers* v. *Tennessee*, 532 U. S. 451, 461, 121 S. Ct. 1693, 149 L. Ed. 2d 697 (2001). And English common-law practices and understandings at any given time in history cannot be indiscriminately attributed to the Framers of our own Constitution. Even "the words of *Magna Charta*"—foundational as they were to the rights of America's forefathers—"stood for very different things at the time of the separation of the American Colonies from what they represented originally" in 1215. *Hurtado* v. *California*, 110 U. S. 516, 529, 4 S. Ct. 111, 28 L. Ed. 232 (1884). Sometimes, in interpreting our own Constitution, "it [is] better not to go too far back into antiquity for the best **[***417]** securities of our liberties," *Funk* v. *United States*, 290 U. S. 371, 382, 54 S. Ct. 212, 78 L. Ed. 369 (1933), unless evidence shows that medieval law survived to become our Founders' law. A **[****44]** long, unbroken line of common-law precedent stretching from Bracton to Blackstone is far more likely to be part of our law than a short-lived, 14th-century English practice.

Similarly, we must also guard against giving postenactment history more weight than it can rightly bear. It is true that in *Heller* we reiterated that evidence of "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century" represented a "critical tool of constitutional interpretation." 554 U. S., at 605, 128 S. Ct. 2783, 171 L. Ed. 2d 637. We therefore examined "a variety of legal and other sources to determine *the public understanding* of [the Second Amendment] after its . . . ratification." *Ibid.* And, in other contexts, we have explained that "'a regular course of practice' can 'liquidate & settle the meaning of ' disputed **[*36]** or indeterminate 'terms & phrases'" in the Constitution. *Chiafalo* v. *Washington*, 591 U. S. ___, ___, 140 S. Ct. 2316, 2326, 207 L. Ed. 2d 761 (2020) (quoting Letter from J. Madison to S. Roane (Sept. 2, 1819), in 8 Writings of James Madison 450 (G. Hunt ed. 1908)); see also, *e.g.*, *Houston Community College System* v. *Wilson*, 595 U. S. ___, ___, 142 S. Ct. 1253, 212 L. Ed. 2d 303 (2022) (slip op., at 5) (same); The Federalist No. 37, p. 229 (C. Rossiter ed. 1961) (J. Madison); see generally C. Nelson, *Stare Decisis* and Demonstrably Erroneous **[**2137]** Precedents, 87 Va. L. Rev. 1, 10-21 (2001); W. Baude, Constitutional Liquidation, 71 Stan. L. Rev. 1 (2019). In other **[****45]** words, we recognize that "where a governmental practice has been open, widespread, and unchallenged since the early days of the Republic, the practice should guide our interpretation of an ambiguous constitutional provision." *NLRB* v. *Noel Canning*, 573 U. S. 513, 572, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014) (Scalia, J.,

concurring in judgment); see also *Myers* v. *United States*, 272 U. S. 52, 174, 47 S. Ct. 21, 71 L. Ed. 160 (1926); *Printz* v. *United States*, 521 U. S. 898, 905, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997).

But to the extent later history contradicts what the text says, the text controls. "'[L]iquidating' indeterminacies in written laws is far removed from expanding or altering them." *Gamble* v. *United States*, 587 U. S. ___, ___, 139 S. Ct. 1960, 1987, 204 L. Ed. 2d 322 (2019) (THOMAS, J., concurring); see also Letter from J. Madison to N. Trist (Dec. 1831), in 9 Writings of James Madison 477 (G. Hunt ed. 1910). Thus, "postratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Heller*, 670 F. 3d, at 1274, n. 6 (Kavanaugh, J., dissenting); see also *Espinoza* v. *Montana Dept. of Revenue*, 591 U. S. ___, ___, 140 S. Ct. 2246, 207 L. Ed. 2d 679 (2020) (slip op., at 15).

As we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms "took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources." 554 U. S., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637; cf. *Sprint Communications Co.*, 554 U. S., at 312, 128 S. Ct. 2531, **[***418]** 171 L. Ed. 2d 424 (ROBERTS, C. J., dissenting) ("The belated innovations of the mid- to late-19th-century **[*37]** courts come too late **[****46]** to provide insight into the meaning of [the Constitution in 1787]"). And we made clear in *Gamble* that *Heller*'s interest in mid- to late-19th-century commentary was secondary. *Heller* considered this evidence "only after surveying what it regarded as a wealth of authority for its reading—including the text of the Second Amendment and state constitutions." *Gamble*, 587 U. S., at ___, 139 S. Ct. 1960, 1976, 204 L. Ed. 2d 322 (majority opinion) (slip op., at 23). In other words, this 19th-century evidence was "treated as mere confirmation of what the Court thought had already been established." *Ibid.*

A final word on historical method: Strictly speaking, New York is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second. See, *e.g.*, *Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 32 U.S. 243, 7 Pet. 243, 250-251, 8 L. Ed. 672 (1833) (Bill of Rights applies only to the Federal Government). Nonetheless, we have made clear that individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government. See, *e.g.*, *Ramos* v. *Louisiana*, 590 U. S. ___, ___, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020) (slip op., at 7); *Timbs* v. *Indiana*, 586 U. S. ___, ___-___, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019) (slip op., at 2-3); *Malloy* v. *Hogan*, 378 U. S. 1, 10-11, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964). And we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791. See, *e.g.*, *Crawford* v. *Washington*, 541 U. S. 36, 42-50, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)

(Sixth Amendment); *Virginia* v. *Moore*, 553 U. S. 164, 168-169, 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008) (Fourth Amendment); *Nevada Comm'n on Ethics* **[**2138]** v. *Carrigan*, 564 U. S. 117, 122-125, 131 S. Ct. 2343, 180 L. Ed. 2d 150 (2011) (First Amendment).

We also acknowledge that there is an ongoing **[****47]** scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government). See, *e.g.*, A. Amar, The Bill of **[*38]** Rights: Creation and Reconstruction xiv, 223, 243 (1998); K. Lash, Re-Speaking the Bill of Rights: A New Doctrine of Incorporation, 97 Ind. L.J. 1439, 1441 (2002) ("When the people adopted the Fourteenth Amendment into existence, they readopted the original Bill of Rights, and did so in a manner that invested those original 1791 texts with new 1868 meanings"). We need not address this issue today because, as we explain below, the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.

***

With these principles in mind, we turn to respondents' historical evidence. Throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally **[***419]** been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under **[****48]** which one could not carry arms. But apart from a handful of late-19th-century jurisdictions, the historical record compiled by respondents does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense. Nor is there any such historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense.[9] We conclude that respondents have failed to meet their burden to identify an American **[*39]** tradition justifying New York's proper-cause requirement. Under *Heller*'s text-and-history standard, the proper-cause requirement is therefore unconstitutional.

---

[9] To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue" licensing regimes, under which "a general desire for self-defense is sufficient to obtain a [permit]." *Drake* v. *Filko*, 724 F. 3d 426, 442 (CA3 2013) (Hardiman, J., dissenting). Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent "law-abiding, responsible citizens" from exercising their Second Amendment right to public carry. *District of Columbia* v. *Heller*, 554 U. S. 570, 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens." *Ibid.* And they likewise appear to contain only "narrow, objective, and definite standards" guiding licensing officials, *Shuttlesworth* v. *Birmingham*, 394 U. S. 147, 151, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969), rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion," *Cantwell* v. *Connecticut*, 310 U. S. 296, 305, 60 S. Ct. 900, 84 L. Ed. 1213 (1940)—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.

1

Respondents' substantial reliance on English history and custom before the founding makes some sense given our statement in *Heller* that the Second Amendment **[**2139]** "codified a right 'inherited from our English ancestors.'" 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quoting *Robertson* v. *Baldwin*, 165 U. S. 275, 281, 17 S. Ct. 326, 41 L. Ed. 715 (1897)); see also *Smith* v. *Alabama*, 124 U. S. 465, 478, 8 S. Ct. 564, 31 L. Ed. 508 (1888). But this Court has long cautioned that the English common law "is not to be taken in all respects to be that of America." *Van Ness* v. *Pacard*, 27 U.S. 137, 2 Pet. 137, 144, 7 L. Ed. 374 (1829) (Story, J., for the Court); see also *Wheaton* v. *Peters*, 33 U.S. 591, 8 Pet. 591, 659, 8 L. Ed. 1055 (1834); *Funk*, 290 U. S., at 384, 54 S. Ct. 212, 78 L. Ed. 369. Thus, "[t]he language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions *as they were when the instrument* ***[****49]*** *was framed and adopted*," not as they existed in the Middle Ages. *Ex parte Grossman*, 267 U. S. 87, 108-109, 45 S. Ct. 332, 69 L. Ed. 527 (1925) (emphasis added); see also *United States* v. *Reid*, 53 U.S. 361, 12 How. 361, 363, 13 L. Ed. 1023 (1852).

We interpret the English history that respondents and the United States muster in light of these interpretive principles. We find that history ambiguous at best and see little reason to think that the Framers would have thought it applicable **[*40]** in **[***420]** the New World. It is not sufficiently probative to defend New York's proper-cause requirement.

To begin, respondents and their *amici* point to several medieval English regulations from as early as 1285 that they say indicate a longstanding tradition of restricting the public carry of firearms. See 13 Edw. 1, 102. The most prominent is the 1328 Statute of Northampton (or Statute), passed shortly after Edward II was deposed by force of arms and his son, Edward III, took the throne of a kingdom where "tendency to turmoil and rebellion was everywhere apparent throughout the realm." N. Trenholme, The Risings in the English Monastic Towns in 1327, 6 Am. Hist. Rev. 650, 651 (1901). At the time, "[b]ands of malefactors, knights as well as those of lesser degree, harried the country, committing assaults and murders," prompted by a more general "spirit of insubordination" that led to a "decay **[****50]** in English national life." K. Vickers, England in the Later Middle Ages 107 (1926).

The Statute of Northampton was, in part, "a product of . . . the acute disorder that still plagued England." A. Verduyn, The Politics of Law and Order During the Early Years of Edward III, 108 Eng. Hist. Rev. 842, 850 (1993). It provided that, with some exceptions, Englishmen could not "come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure."

2 Edw. 3 c. 3 (1328).

Respondents argue that the prohibition on "rid[ing]" or "go[ing] . . . armed" was a sweeping restriction on public carry of self-defense weapons that would ultimately be adopted in Colonial America and justify onerous public-carry **[*41]** regulations. Notwithstanding the ink the parties spill over this provision, the Statute of Northampton—at least as it was understood during the Middle Ages—has little bearing on the Second Amendment adopted in 1791. The Statute of Northampton **[****51]** was enacted nearly 20 years before the Black Death, more than 200 years before the birth of Shakespeare, more than 350 years before the Salem Witch Trials, more than 450 years before the ratification of the Constitution, and nearly 550 years before the adoption of the Fourteenth Amendment.

[2140]** The Statute's prohibition on going or riding "armed" obviously did not contemplate handguns, given they did not appear in Europe until about the mid-1500s. See K. Chase, Firearms: A Global History to 1700, p. 61 (2003). Rather, it appears to have been centrally concerned with the wearing of armor. See, *e.g.*, Calendar of the Close Rolls, Edward III, 1330-1333, p. 131 (Apr. 3, 1330) (H. Maxwell-Lyte ed. 1898); *id*., at 243 (May 28, 1331); *id*., Edward III, 1327-1330, at 314 (Aug. 29, 1328) (1896). If it did apply beyond armor, it applied to such weapons as the "launcegay," a 10- to 12-foot-long lightweight lance. See 7 Rich. 2 c. 13 (1383); 20 Rich. 2 c. 1 (1396).

The Statute's apparent focus on armor and, perhaps, weapons like launcegays makes sense given that **[***421]** armor and lances were generally worn or carried only when one intended to engage in lawful combat or—as most early violations of the Statute show—to breach the peace. **[****52]** See, *e.g.*, Calendar of the Close Rolls, Edward III, 1327-1330, at 402 (July 7, 1328); *id*., Edward III, 1333-1337, at 695 (Aug. 18, 1336) (1898). Contrast these arms with daggers. In the medieval period, "[a]lmost everyone carried a knife or a dagger in his belt." H. Peterson, Daggers and Fighting Knives of the Western World 12 (2001). While these knives were used by knights in warfare, "[c]ivilians wore them for self-protection," among other things. *Ibid.* Respondents point **[*42]** to no evidence suggesting the Statute applied to the smaller medieval weapons that strike us as most analogous to modern handguns.

When handguns were introduced in England during the Tudor and early Stuart eras, they did prompt royal efforts at suppression. For example, Henry VIII issued several proclamations decrying the proliferation of handguns, and Parliament passed several statutes restricting their possession. See, *e.g.*, 6 Hen. 8 c. 13, §1 (1514); 25 Hen. 8 c. 17, §1 (1533); 33 Hen. 8 c. 6 (1541); Prohibiting Use of Handguns and Crossbows (Jan. 1537), in 1 Tudor Royal Proclamations 249 (P. Hughes & J. Larkin eds. 1964). But Henry VIII's displeasure with handguns arose not primarily from concerns about their safety but rather their inefficacy. Henry VIII worried **[****53]** that

handguns threatened Englishmen's proficiency with the longbow—a weapon many believed was crucial to English military victories in the 1300s and 1400s, including the legendary English victories at Crécy and Agincourt. See R. Payne-Gallwey, The Crossbow 32, 34 (1903); L. Schwoerer, Gun Culture in Early Modern England 54 (2016) (Schwoerer).

Similarly, James I considered small handguns—called dags—"utterly unserviceable for defence, Militarie practise, or other lawful use." A Proclamation Against Steelets, Pocket Daggers, Pocket Dagges and Pistols (R. Barker printer 1616). But, in any event, James I's proclamation in 1616 "was the last one regarding civilians carrying dags," Schwoerer 63. "After this the question faded without explanation." *Ibid.* So, by the time Englishmen began to arrive in America in the early 1600s, the public carry of handguns was no longer widely proscribed.

When we look to the latter half of the 17th century, respondents' case only weakens. As in *Heller*, we consider this history "[b]etween the [Stuart] Restoration [in 1660] and the Glorious Revolution [in 1688]" to be particularly instructive. 554 U. S., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637. During that time, the Stuart Kings Charles II and James II ramped up efforts **[****54]** to disarm their **[*43]** political opponents, an experience that "caused Englishmen . . . to be jealous of their arms." *Id*., at 593, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

In one notable example, the government charged Sir John Knight, a prominent detractor **[**2141]** of James II, with violating the Statute of Northampton because he allegedly "did walk about the streets armed with guns, and that he went into the church of St. Michael, in Bristol, in the time of divine service, with a gun, to terrify the King's subjects." *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, 76 (K. B. 1686). Chief Justice Herbert explained **[***422]** that the Statute of Northampton had "almost gone in *desuetudinem*," *Rex* v. *Sir John Knight*, 1 Comb. 38, 38-39, 90 Eng. Rep. 330 (K. B. 1686), meaning that the Statute had largely become obsolete through disuse.[10] And the Chief Justice further explained **[*44]** that the

[10] Another medieval firearm restriction—a 1541 statute enacted under Henry VIII that limited the ownership and use of handguns (which could not be shorter than a yard) to those subjects with annual property values of at least £100, see 33 Hen. 8 c. 6, §§1-2—fell into a similar obsolescence. As far as we can discern, the last recorded prosecutions under the 1541 statute occurred in 1693, neither of which appears to have been successful. See *King and Queen* v. *Bullock*, 4 Mod. 147, 87 Eng. Rep. 315 (K. B. 1693); *King* v. *Litten*, 1 Shower, K. B. 367, 89 Eng. Rep. 644 (K. B. 1693). It seems that other prosecutions under the 1541 statute during the late 1600s were similarly unsuccessful. See *King* v. *Silcot*, 3 Mod. 280, 280-281, 87 Eng. Rep. 186 (K. B. 1690); *King* v. *Lewellin*, 1 Shower, K. B. 48, 89 Eng. Rep. 440 (K. B. 1689); cf. *King and Queen* v. *Alsop*, 4 Mod. 49, 50-51, 87 Eng. Rep. 256, 256-257 (K. B. 1691). By the late 1700s, it was widely recognized that the 1541 statute was "obsolete." 2 R. Burn, The Justice of the Peace, and Parish Officer 243, n. (11th ed. 1769); see also, *e.g.*, The Farmer's Lawyer 143 (1774) ("entirely obsolete"); 1 G. Jacob, Game-Laws II, Law-Dictionary (T. Tomlins ed. 1797); 2 R. Burn, The Justice of the Peace, and Parish Officer 409 (18th ed. 1797) (calling the 1541 statute "a matter more of curiosity than use").

In any event, lest one be tempted to put much evidentiary weight on the 1541 statute, it impeded not only public carry, but further made it unlawful for those without sufficient means to "kepe in his or their houses" any "handgun." 33 Hen. 8 c. 6, §1. Of course, this kind of limitation is inconsistent with *Heller*'s historical analysis regarding the Second Amendment's meaning at the founding

act of "go[ing] armed *to terrify* the King's subjects" was "a great offence at the *common law*" and that the Statute of Northampton "is but an affirmance of that law." 3 Mod., at 118, 87 Eng. Rep., at 76 (first emphasis added). Thus, one's conduct "will come within the Act,"—*i.e.*, would terrify the King's subjects—only "where the crime shall appear to be malo animo," 1 Comb., at 39, 90 Eng. Rep., at 330, with evil intent or malice. Knight was ultimately acquitted **[****55]** by the jury.[11]

Just three years later, Parliament responded by writing the "predecessor to our Second Amendment" into the 1689 English Bill of Rights, *Heller*, 554 U. S., at 593, 128 S. Ct. 2783, 171 L. Ed. 2d 637, guaranteeing that "Protestants . . . may have Arms for their Defence **[**2142]** suitable to their Conditions, and as allowed by Law," 1 Wm. & Mary c. 2, §7, in 3 Eng. Stat. at Large 417 (1689). Although this right was initially limited—it was restricted to Protestants and held only against the Crown, but not Parliament—it represented a watershed in **[***423]** English history. Englishmen had "never before claimed . . . the right of the individual **[*45]** to arms." Schwoerer 156.[12] And as that individual right matured, "by the time of the founding," the right to keep and bear arms was "understood to be an individual right protecting against both public and private violence." *Heller*, 554 U. S., at 594, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

To be sure, the Statute of Northampton survived both *Sir John Knight's Case* and the English Bill of Rights, but it was no obstacle to public carry for self-defense in the decades leading to the founding. Serjeant William Hawkins, in his widely read 1716 treatise, confirmed that "no wearing of Arms is within the meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People." 1 Pleas of the Crown **[****56]** 136. To illustrate that proposition, Hawkins noted as an example that "Persons of Quality" were "in no Danger of Offending against this Statute by wearing common Weapons" because, in those

---

and thereafter. So, even if a severe restriction on keeping firearms in the home may have seemed appropriate in the mid-1500s, it was not incorporated into the Second Amendment's scope. We see little reason why the parts of the 1541 statute that address public carry should not be understood similarly.

We note also that even this otherwise restrictive 1541 statute, which generally prohibited shooting firearms in any city, exempted discharges "for the defence of [one's] p[er]son or house." §4. Apparently, the paramount need for self-defense trumped the Crown's interest in firearm suppression even during the 16th century.

[11] The dissent discounts *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, because it only "arguably" supports the view that an evil-intent requirement attached to the Statute of Northampton by the late 1600s and early 1700s. See *post*, at 37. But again, because the Second Amendment's bare text covers petitioners' public carry, the respondents here shoulder the burden of demonstrating that New York's proper-cause requirement is consistent with the Second Amendment's text and historical scope. See *supra*, at 15. To the extent there are multiple plausible interpretations of *Sir John Knight's Case*, we will favor the one that is more consistent with the Second Amendment's command.

[12] Even Catholics, who fell beyond the protection of the right to have arms, and who were stripped of all "Arms, Weapons, Gunpowder, [and] Ammunition," were at least allowed to keep "such necessary Weapons as shall be allowed . . . by Order of the Justices of the Peace . . . for the Defence of his House or Person." 1 Wm. & Mary c. 15, §4, in 3 Eng. Stat. at Large 399 (1688).

circumstances, it would be clear that they had no "Intention to commit any Act of Violence or Disturbance of the Peace." *Ibid.*; see also T. Barlow, The Justice of Peace 12 (1745). Respondents do not offer any evidence showing that, in the early 18th century or after, the mere public carrying of a handgun would terrify people. In fact, the opposite seems to have been true. As time went on, "domestic gun culture [in England] softened" any "terror" that firearms might once have conveyed. Schwoerer 4. Thus, whatever place handguns had in English society during the Tudor and Stuart reigns, by the time we reach the 18th century—and near the founding—they had gained a fairly secure footing in English culture.

[*46] At the very least, we cannot conclude from this historical record that, by the time of the founding, English law would have justified restricting the right to publicly bear arms suited for self-defense only to those who demonstrate some special need for self-protection.

2

Respondents next point us to **[****57]** the history of the Colonies and early Republic, but there is little evidence of an early American practice of regulating public carry by the general public. This should come as no surprise—English subjects founded the Colonies at about the time England had itself begun to eliminate restrictions on the ownership and use of handguns.

In the colonial era, respondents point to only three restrictions on public carry. For starters, we doubt that *three* colonial regulations could suffice to show a tradition of public-carry regulation. In any event, even looking at these laws on their own terms, we are not convinced that they regulated public carry akin to the New York law before us.

Two of the statutes were substantively identical. Colonial Massachusetts and New Hampshire both authorized justices of the peace to arrest **[***424]** "all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and **[**2143]** such as shall ride or go armed Offensively . . . by Night or by Day, in Fear or Affray of Their Majesties Liege People." 1692 Mass. Acts and Laws no. 6, pp. 11-12; see 1699 N. H. Acts and Laws ch. 1. Respondents and their *amici* contend that being "armed offensively" meant bearing any offensive weapons, including **[****58]** firearms. See Brief for Respondents 33. In particular, respondents' *amici* argue that "'offensive'" arms in the 1600s and 1700s were what Blackstone and others referred to as "'dangerous or unusual weapons,'" Brief for Professors of History and Law as *Amici Curiae* 7 (quoting 4 Blackstone, Commentaries, at 148-149), a category that they say included firearms, see also *post*, at 40-42 (BREYER, J., dissenting).

[*47] Respondents, their *amici*, and the dissent all misunderstand these statutes. Far from banning the carrying of any class of firearms, they merely codified the existing common-law offense of bearing arms to terrorize the people, as had the Statute of Northampton itself. See *supra*, at 34-37. For instance, the Massachusetts statute proscribed "go[ing] armed Offensively . . . in Fear or

Affray" of the people, indicating that these laws were modeled after the Statute of Northampton to the extent that the statute would have been understood to limit public carry *in the late 1600s*. Moreover, it makes very little sense to read these statutes as banning the public carry of all firearms just a few years after Chief Justice Herbert in *Sir John Knight's Case* indicated that the English common law did not do so.

Regardless, **[****59]** even if respondents' reading of these colonial statutes were correct, it would still do little to support restrictions on the public carry of handguns *today*. At most, respondents can show that colonial legislatures sometimes prohibited the carrying of "dangerous and unusual weapons"—a fact we already acknowledged in *Heller*. See 554 U. S., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Drawing from this historical tradition, we explained there that the Second Amendment protects only the carrying of weapons that are those "in common use at the time," as opposed to those that "are highly unusual in society at large." *Ibid.* (internal quotation marks omitted). Whatever the likelihood that handguns were considered "dangerous and unusual" during the colonial period, they are indisputably in "common use" for self-defense today. They are, in fact, "the quintessential self-defense weapon." *Id*., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Thus, even if these colonial laws prohibited the carrying of handguns because they were considered "dangerous and unusual weapons" in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today.

The third statute invoked by respondents was enacted in East New Jersey in 1686. It prohibited the concealed carry **[****60]** **[*48]** of "pocket pistol[s]" or other "unusual or unlawful weapons," and it further prohibited "planter[s]" from carrying all pistols unless in military service or, if "strangers," when traveling through the Province. An Act Against Wearing Swords, &c., ch. 9, in Grants, Concessions, and Original Constitutions of the Province **[***425]** of New Jersey 290 (2d ed. 1881) (Grants and Concessions). These restrictions do not meaningfully support respondents. The law restricted only concealed carry, not all public carry, and its restrictions applied only to certain "unusual or unlawful weapons," including "pocket pistol[s]." *Ibid*. It also did not apply to all pistols, let alone all firearms. "Pocket pistols" had barrel lengths of perhaps 3 or 4 inches, far smaller than the 6-inch to 14-inch barrels found on the other belt and hip pistols that were commonly used for lawful purposes in the 1600s. J. George, English Pistols and Revolvers 16 (1938); see also, *e.g.*, 14 Car. 2 c. 3, §20 **[**2144]** (1662); H. Peterson, Arms and Armor in Colonial America, 1526-1783, p. 208 (1956) (Peterson). Moreover, the law prohibited only the *concealed* carry of pocket pistols; it presumably did not by its terms touch the open carry of larger, presumably more **[****61]** common pistols, except as to "planters."[13] In colonial times,

[13] Even assuming that pocket pistols were, as East Jersey in 1686 deemed them, "unusual or unlawful," it appears that they were commonly used at least by the founding. See, *e.g.*, G. Neumann, The History of Weapons of the American Revolution 150-151 (1967); see also H. Hendrick, P. Paradis, & R. Hornick, Human Factors Issues in Handgun Safety and Forensics 44 (2008).

a "planter" was simply a farmer or plantation owner who settled new territory. R. Lederer, Colonial American English 175 (1985); New Jersey State Archives, J. Klett, Using the Records of the East and West Jersey Proprietors 31 (rev. ed. 2014), https://www.nj.gov/state/archives/pdf/proprietors.pdf. While the reason behind this singular restriction is not entirely clear, planters may have been targeted because colonial-era East New Jersey was riven with "strife and excitement" between planters and **[*49]** the Colony's proprietors "respecting titles to the soil." See W. Whitehead, East Jersey Under the Proprietary Governments 150-151 (rev. 2d ed. 1875); see also T. Gordon, The History of New Jersey 49 (1834).

In any event, we cannot put meaningful weight on this solitary statute. First, although the "planter" restriction may have prohibited the public carry of pistols, it did not prohibit planters from carrying long guns for self-defense—including the popular musket and carbine. See Peterson 41. Second, it does not appear that the statute survived for very long. By 1694, East New Jersey provided that no slave "be permitted to carry **[****62]** any gun or pistol . . . into the woods, or plantations" unless their owner accompanied them. Grants and Concessions 341. If slave-owning planters were prohibited from carrying pistols, it is hard to comprehend why slaves would have been able to carry them in the planter's presence. Moreover, there is no evidence that the 1686 statute survived the 1702 merger of East and West New Jersey. See 1 Nevill, Acts of the General Assembly of the Province of New-Jersey (1752). At most eight years of history in half a Colony roughly a century before the founding sheds little light on how to properly interpret the Second Amendment.

Respondents next direct our attention to three late-18th-century and early-19th-century statutes, but each parallels the colonial statutes already discussed. One 1786 Virginia statute provided that "no man, great nor small, [shall] go nor ride armed by night nor by day, in fairs or markets, **[***426]** or in other places, in terror of the Country." Collection of All Such Acts of the General Assembly of Virginia ch. 21, p. 33 (1794).[14] A Massachusetts statute from 1795 commanded justices of the peace to arrest "all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or **[****63]** go **[*50]** armed offensively, to the fear or terror of the good citizens of this Commonwealth." 1795 Mass. Acts and Laws ch. 2, p. 436, in Laws of the Commonwealth of Massachusetts. And an 1801 Tennessee statute likewise required any person who would "publicly ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person" to post a surety; otherwise, his continued violation of the law would be "punished as for **[**2145]** a breach of the peace, or riot at common law." 1801 Tenn. Acts pp. 260-261.

[14] The Virginia statute all but codified the existing common law in this regard. See G. Webb, The Office and Authority of a Justice of Peace 92 (1736) (explaining how a constable "may take away Arms from such who ride, or go, offensively armed, in Terror of the People").

A by-now-familiar thread runs through these three statutes: They prohibit bearing arms in a way that spreads "fear" or "terror" among the people. As we have already explained, Chief Justice Herbert in *Sir John Knight's Case* interpreted this *in Terrorem Populi* element to require something more than merely carrying a firearm in public. See *supra*, at 34-35. Respondents give us no reason to think that the founding generation held a different view. Thus, all told, in the century leading up to the Second Amendment and in the first decade after its adoption, there is no historical basis for concluding that the pre-existing right enshrined in the Second Amendment permitted broad prohibitions on all forms **[****64]** of public carry.

3

Only after the ratification of the Second Amendment in 1791 did public-carry restrictions proliferate. Respondents rely heavily on these restrictions, which generally fell into three categories: common-law offenses, statutory prohibitions, and "surety" statutes. None of these restrictions imposed a substantial burden on public carry analogous to the burden created by New York's restrictive licensing regime.

Common-Law Offenses. As during the colonial and founding periods, the common-law offenses of "affray" or going armed "to the terror of the people" continued to impose some limits on firearm carry in the antebellum period. But as with the earlier periods, there is no evidence indicating **[*51]** that these common-law limitations impaired the right of the general population to peaceable public carry.

For example, the Tennessee attorney general once charged a defendant with the common-law offense of affray, arguing that the man committed the crime when he "'arm[ed] himself with dangerous and unusual weapons, in such a manner as will naturally cause terror to the people.'" *Simpson* v. *State*, 13 Tenn. 356, 358 (1833). More specifically, the indictment charged that Simpson "with force and arms being arrayed in a warlike manner . . . unlawfully, **[****65]** and to the great terror and disturbance of **[***427]** divers good citizens, did make an affray." *Id*., at 361. The Tennessee Supreme Court quashed the indictment, holding that the Statute of Northampton was never part of Tennessee law. *Id*., at 359. But even assuming that Tennesseans' ancestors brought with them the common law associated with the Statute, the *Simpson* court found that if the Statute had made, as an "independent ground of affray," the mere arming of oneself with firearms, the Tennessee Constitution's Second Amendment analogue had "completely abrogated it." *Id*., at 360. At least in light of that constitutional guarantee, the court did not think that it could attribute to the mere carrying of arms "a necessarily consequent operation as terror to the people." *Ibid.*

Perhaps more telling was the North Carolina Supreme Court's decision in *State* v. *Huntly*, 25 N. C. 418 (1843) (*per curiam*). Unlike the Tennessee Supreme Court in *Simpson*, the *Huntly* court

held that the common-law offense codified by the Statute of Northampton was part of the State's law. See 25 N. C., at 421-422. However, consistent with the Statute's long-settled interpretation, the North Carolina Supreme Court acknowledged "that the carrying of a gun" for a lawful purpose "*per se* constitutes no offence." *Id*., at 422-423. Only carrying for a "wicked purpose" with **[****66]** a "mischievous result . . . constitute[d a] crime." *Id*., at 423; see also J. Haywood, The Duty and Office of Justices of Peace 10 (1800); **[*52]** H. Potter, The Office and Duty **[**2146]** of a Justice of the Peace 39 (1816).[15] Other state courts likewise recognized that the common law did not punish the carrying of deadly weapons *per se*, but only the carrying of such weapons "for the purpose of an affray, and in such manner as to strike terror to the people." *O'Neill* v. *State*, 16 Ala. 65, 67 (1849). Therefore, those who sought to carry firearms publicly and peaceably in antebellum America were generally free to do so.

Statutory Prohibitions. In the early to mid-19th century, some States began enacting laws that proscribed the concealed carry of pistols and other small weapons. As we recognized in *Heller*, "the majority of the 19th-century courts to consider the question held that [these] prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Respondents unsurprisingly cite these statutes[16]—and decisions **[*53]** upholding **[***428]** them[17]—as evidence that States were historically free to ban public carry.

In fact, however, the history reveals a consensus that States could *not* ban public carry altogether. Respondents' cited opinions **[****67]** agreed that concealed-carry prohibitions were

---

[15] The dissent concedes that *Huntly*, 25 N. C. 418, recognized that citizens were "'at perfect liberty' to carry for 'lawful purpose[s].'" *Post*, at 42 (quoting *Huntly*, 25 N. C., at 423). But the dissent disputes that such "lawful purpose[s]" included self-defense, because *Huntly* goes on to speak more specifically of carrying arms for "business or amusement." *Id*., at 422-423. This is an unduly stingy interpretation of *Huntly*. In particular, *Huntly* stated that "the citizen is at perfect liberty to carry his gun" "[f]or *any* lawful purpose," of which "business" and "amusement" were then mentioned. *Ibid.* (emphasis added). *Huntly* then contrasted these "lawful purpose[s]" with the "wicked purpose . . . to terrify and alarm." *Ibid.* Because there is no evidence that *Huntly* considered self-defense a "wicked purpose," we think the best reading of *Huntly* would sanction public carry for self-defense, so long as it was not "in such [a] manner as naturally will terrify and alarm." *Id*., at 423.

[16] Beginning in 1813 with Kentucky, six States (five of which were in the South) enacted laws prohibiting the concealed carry of pistols by 1846. See 1813 Ky. Acts §1, p. 100; 1813 La. Acts p. 172; 1820 Ind. Acts p. 39; Ark. Rev. Stat. §13, p. 280 (1838); 1838 Va. Acts ch. 101, §1, p. 76; 1839 Ala. Acts no. 77, §1. During this period, Georgia enacted a law that appeared to prohibit both concealed and open carry, see 1837 Ga. Acts §§1, 4, p. 90, but the Georgia Supreme Court later held that the prohibition could not extend to open carry consistent with the Second Amendment. See *infra*, at 45-46. Between 1846 and 1859, only one other State, Ohio, joined this group. 1859 Ohio Laws §1, p. 56. Tennessee, meanwhile, enacted in 1821 a broader law that prohibited carrying, among other things, "belt or pocket pistols, either public or private," except while traveling. 1821 Tenn. Acts ch. 13, §1, p. 15. And the Territory of Florida prohibited concealed carry during this same timeframe. See 1835 Terr. of Fla. Laws p. 423.

[17] See *State* v. *Mitchell*, 3 Blackf. 229 (Ind. 1833); *State* v. *Reid*, 1 Ala. 612, 616 (1840); *State* v. *Buzzard*, 4 Ark. 18 (1842); *Nunn* v. *State*, 1 Ga. 243 (1846); *State* v. *Chandler*, 5 La. 489 (1850); *State* v. *Smith*, 11 La. 633 (1856); *State* v. *Jumel*, 13 La. 399 (1858). But see *Bliss* v. *Commonwealth*, 12 Ky. 90 (1822). See generally 2 J. Kent, Commentaries on American Law *340, n. *b*.

constitutional only if they did not similarly prohibit *open* carry. That was true in Alabama. See *State* v. *Reid*, 1 Ala. 612, 616, 619-621 (1840).[18] It was also true in Louisiana. See *State* v. *Chandler*, 5 La. 489, 490 (1850).[19] Kentucky, meanwhile, **[**2147]** went one step further—the State Supreme Court *invalidated* a concealed-carry prohibition. See *Bliss* v. *Commonwealth*, 12 Ky. 90 (1822).[20]

[*54] The Georgia Supreme Court's decision in *Nunn* v. *State*, 1 Ga. 243 (1846), is particularly instructive. Georgia's 1837 statute broadly prohibited "wearing" or "carrying" pistols "as arms of offence or defence," without distinguishing between concealed and open carry. 1837 Ga. Acts 90, §1. To the extent the 1837 Act prohibited "carrying certain weapons *secretly*," the court explained, it was "valid." *Nunn*, 1 Ga., at 251. But to the extent the Act also prohibited "bearing arms *openly*," the court went on, it was "in conflict with the Constitutio[n] and *void*." *Ibid.*; see also *Heller*, 554 U. S., at 612, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The Georgia Supreme Court's treatment of the State's general prohibition on the public carriage of handguns indicates that it was considered beyond the constitutional pale in antebellum America to altogether prohibit public carry.

[*429]** Finally, we agree that Tennessee's prohibition on carrying "publicly or privately" any "belt or pocket pisto[l]," 1821 Tenn. Acts **[****68]** ch. 13, p. 15, was, on its face, uniquely severe, see *Heller*, 554 U. S., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637. That said, when the Tennessee Supreme Court addressed the constitutionality of a substantively identical successor provision, see 1870 Tenn. Acts ch. 13, §1, p. 28, the court read this language to permit the public carry of larger, military-style pistols because any categorical prohibition on their carry would "violat[e] the constitutional right to keep arms." *Andrews* v. *State*, 50 Tenn. 165, 187 (1871); see also *Heller*, 554 U. S., at 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (discussing *Andrews*).[21]

---

[18] See *Reid*, 1 Ala., at 619 (holding that "the Legislature cannot inhibit the citizen from bearing arms openly"); *id*., at 621 (noting that there was no evidence "tending to show that the defendant could not have defended himself as successfully, by carrying the pistol openly, as by secreting it about his person").

[19] See, *e.g.*, *Chandler*, 5 La., at 490 (Louisiana concealed-carry prohibition "interfered with no man's right to carry arms (to use its words) 'in full open view,' which places men upon an equality"); *Smith*, 11 La., at 633 (The "arms" described in the Second Amendment "are such as are borne by a people in war, or at least carried openly"); *Jumel*, 13 La., at 399-400 ("The statute in question does not infringe the right of the people to keep or bear arms. It is a measure of police, prohibiting only *a particular mode* of bearing arms which is found dangerous to the peace of society").

[20] With respect to Indiana's concealed-carry prohibition, the Indiana Supreme Court's reasons for upholding it are unknown because the court issued a one-sentence *per curiam* order holding the law "not unconstitutional." *Mitchell*, 3 Blackf., at 229. Similarly, the Arkansas Supreme Court upheld Arkansas' prohibition, but without reaching a majority rationale. See *Buzzard*, 4 Ark. 18. The Arkansas Supreme Court would later adopt Tennessee's approach, which tolerated the prohibition of all public carry of handguns except for military-style revolvers. See, *e.g.*, *Fife* v. *State*, 31 Ark. 455 (1876).

[21] Shortly after *Andrews*, 50 Tenn. 165, Tennessee codified an exception to the State's handgun ban for "an[y] army pistol, or such as are commonly carried and used in the United States Army" so long as they were carried "openly in [one's] hands." 1871 Tenn. Pub. Acts ch. 90, §1; see also *State* v. *Wilburn*, 66 Tenn. 57, 61-63 (1872); *Porter* v. *State*, 66 Tenn. 106, 107-108 (1874).

[*55] All told, these antebellum state-court decisions evince a consensus view that States could not altogether prohibit the public carry of "arms" protected by the Second Amendment or state analogues.[22]

[2148]** *Surety Statutes*. In the mid-19th century, many jurisdictions began adopting surety statutes that required certain individuals to post bond before carrying weapons in public. Although respondents seize on these laws to justify the proper-cause restriction, their reliance on them is misplaced. These laws were not *bans* on public carry, and they typically targeted only those threatening to do harm.

As discussed earlier, Massachusetts had prohibited riding or going "armed offensively, to the fear or terror of the good citizens of this Commonwealth" since 1795. 1795 Mass. Acts and Laws ch. 2, at 436, **[****69]** in Laws of the Commonwealth of Massachusetts. In 1836, Massachusetts enacted a new law providing:

> "If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a **[*56]** term not exceeding six months, with the right of appealing as before provided." Mass. Rev. Stat., ch. 134, §16.

In short, the Commonwealth required any person who was reasonably likely to "breach the peace," and who, standing accused, could not prove a special need for self-defense, to post a bond **[***430]** before publicly carrying a firearm. Between 1838 and 1871, nine other jurisdictions adopted variants of the Massachusetts law.[23]

Contrary to respondents' position, these "reasonable-cause laws" in no way represented the "direct precursor" to the proper-cause requirement. Brief for Respondents 27. While New York presumes that individuals have *no* public carry right without a showing of heightened need, the surety statutes *presumed* that individuals had **[****70]** a right to public carry that could be burdened only if

---

[22] The Territory of New Mexico made it a crime in 1860 to carry "any class of pistols whatever" "concealed or otherwise." 1860 Terr. of N. M. Laws §§1-2, p. 94. This extreme restriction is an outlier statute enacted by a territorial government nearly 70 years after the ratification of the Bill of Rights, and its constitutionality was never tested in court. Its value in discerning the original meaning of the Second Amendment is insubstantial. Moreover, like many other stringent carry restrictions that were localized in the Western Territories, New Mexico's prohibition ended when the Territory entered the Union as a State in 1911 and guaranteed in its State Constitution that "[t]he people have the right to bear arms for their security and defense, but nothing herein shall be held to permit the carrying of concealed weapons." N. M. Const., Art. II, §6 (1911); see *infra*, at 61.

[23] See 1838 Terr. of Wis. Stat. §16, p. 381; Me. Rev. Stat., ch. 169, §16 (1840); Mich. Rev. Stat., ch. 162, §16 (1846); 1847 Va. Acts ch. 14, §16; Terr. of Minn. Rev. Stat., ch. 112, §18 (1851); 1854 Ore. Stat. ch. 16, §17, p. 220; D. C. Rev. Code ch. 141, §16 (1857); 1860 Pa. Laws p. 432, §6; W. Va. Code, ch. 153, §8 (1868).

another could make out a specific showing of "reasonable cause to fear an injury, or breach of the peace." Mass. Rev. Stat., ch. 134, §16 (1836).[24] As William Rawle explained in an influential treatise, an individual's carrying of arms was "sufficient cause to require him to give surety of the peace" only when "attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them." A View of the Constitution of the United States of America 126 (2d ed. 1829). Then, even on such a showing, the surety laws did not *prohibit* public carry in locations frequented by the general community. Rather, an accused arms-bearer "could go on carrying without criminal penalty" so long as he "post[ed] money that would be **[*57]** forfeited if he breached the peace or injured others—a requirement from which he was exempt if *he* needed self-defense." *Wrenn*, 864 F. 3d, at 661.

Thus, unlike New York's regime, a showing of special need was required only *after* an individual was reasonably accused of intending to injure another or breach **[**2149]** the peace. And, even then, proving special need simply avoided a fee rather than a ban. All told, therefore, "[u]nder surety laws . . . everyone started **[****71]** out with robust carrying rights" and only those reasonably accused were required to show a special need in order to avoid posting a bond. *Ibid.* These antebellum special-need requirements "did not expand carrying for the responsible; it shrank burdens on carrying by the (allegedly) reckless." *Ibid.*

One Court of Appeals has nonetheless remarked that these surety laws were "a severe constraint on anyone thinking of carrying a weapon in public." *Young*, 992 F. 3d, at 820. That contention has little support in the historical record. Respondents cite no evidence showing the average size of surety postings. And given that surety laws were "intended merely for prevention" and were "not meant as any degree of punishment," 4 Blackstone, Commentaries, at 249, the burden these surety statutes may have had on the right to public carry was likely too insignificant to shed light on New York's proper-cause standard—a violation of which can carry a 4-year prison term or a $5,000 fine. In *Heller*, we noted that founding-era laws punishing unlawful discharge "with a small fine and forfeiture of the weapon . . ., not with significant criminal **[***431]** penalties," likely did not "preven[t] a person in the founding era from using a gun to protect **[****72]** himself or his family from violence, or that if he did so the law would be enforced against him." 554 U. S., at 633-634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Similarly, we have little reason to think that the hypothetical possibility of posting a bond would have prevented anyone from carrying a firearm for self-defense in the 19th century.

[*58] Besides, respondents offer little evidence that authorities ever enforced surety laws. The only recorded case that we know of involved a justice of the peace *declining* to require a surety,

[24] It is true that two of the antebellum surety laws were unusually broad in that they did not expressly require a citizen complaint to trigger the posting of a surety. See 1847 Va. Acts ch. 14, §16; W. Va. Code, ch. 153, §8 (1868).

even when the complainant alleged that the arms-bearer "'did threaten to beat, wou[n]d, mai[m], and kill'" him. Brief for Professor Robert Leider et al. as *Amici Curiae* 31 (quoting *Grover* v. *Bullock*, No. 185 (Worcester Cty., Aug. 13, 1853)); see E. Ruben & S. Cornell, Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context, 125 Yale L. J. Forum 121, 130, n. 53 (2015). And one scholar who canvassed 19th-century newspapers—which routinely reported on local judicial matters—found only a handful of other examples in Massachusetts and the District of Columbia, all involving black defendants who may have been targeted for selective or pretextual enforcement. See R. Leider, Constitutional Liquidation, Surety Laws, and the Right To Bear Arms **[****73]** 15-17, in New Histories of Gun Rights and Regulation (J. Blocher, J. Charles, & D. Miller eds.) (forthcoming); see also Brief for Professor Robert Leider et al. as *Amici Curiae* 31-32. That is surely too slender a reed on which to hang a historical tradition of restricting the right to public carry. [25]

Respondents also argue that surety statutes were severe restrictions on firearms because the "reasonable cause to fear" standard was essentially *pro forma*, given that "merely carrying firearms in populous areas breached the peace" *per se*. Brief for Respondents 27. But that is a counterintuitive reading of the language that the surety **[**2150]** statutes **[*59]** actually used. If the mere carrying of handguns breached the peace, it would be odd to draft a surety statute requiring a complainant to demonstrate "reasonable cause to fear an injury, or breach of the peace," Mass. Rev. Stat., ch. 134, §16, rather than a reasonable likelihood that the arms-bearer carried a covered weapon. After all, if it were the nature of the weapon rather than the manner of carry that was dispositive, then the "reasonable fear" requirement would be redundant.

Moreover, the overlapping scope of surety statutes and criminal statutes suggests that the former **[****74]** were not viewed as substantial restrictions on public carry. For example, when Massachusetts enacted its surety statute in 1836, it reaffirmed its 1794 criminal prohibition on "go[ing] armed offensively, to the terror of the people." Mass. Rev. Stat., ch. 85, §24. And **[***432]** Massachusetts continued to criminalize the carrying of various "dangerous weapons" well after passing the 1836 surety statute. See, *e.g.*, 1850 Mass. Acts ch. 194, §1, p. 401; Mass. Gen. Stat., ch. 164, §10 (1860). Similarly, Virginia had criminalized the concealed carry of pistols since 1838, see 1838 Va. Acts ch. 101, §1, nearly a decade before it enacted its surety statute, see 1847 Va. Acts ch. 14, §16. It is unlikely that these surety statutes constituted a "severe" restraint on public carry, let alone a restriction tantamount to a ban, when they were supplemented by direct criminal prohibitions on specific weapons and methods of carry.

---

[25] The dissent speculates that the absence of recorded cases involving surety laws may simply "show that these laws were normally followed." *Post*, at 45. Perhaps. But again, the burden rests with the government to establish the relevant tradition of regulation, see *supra*, at 15, and, given all of the other features of surety laws that make them poor analogues to New York's proper-cause standard, we consider the barren record of enforcement to be simply one additional reason to discount their relevance.

To summarize: The historical evidence from antebellum America does demonstrate that *the manner* of public carry was subject to reasonable regulation. Under the common law, individuals could not carry deadly weapons in a manner likely to terrorize others. Similarly, although surety statutes did not directly restrict public carry, they did provide financial incentives for responsible arms carrying. Finally, States could lawfully **[****75]** eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly.

[*60] None of these historical limitations on the right to bear arms approach New York's proper-cause requirement because none operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose.

4

Evidence from around the adoption of the Fourteenth Amendment also fails to support respondents' position. For the most part, respondents and the United States ignore the "outpouring of discussion of the [right to keep and bear arms] in Congress and in public discourse, as people debated whether and how to secure constitutional rights for newly free slaves" after the Civil War. *Heller*, 554 U. S., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Of course, we are not obliged to sift the historical materials for evidence to sustain New York's statute. That is respondents' burden. Nevertheless, we think a short review of the public discourse surrounding Reconstruction is useful in demonstrating how public carry for self-defense remained a central component of the protection that the Fourteenth Amendment secured for all citizens.

A short prologue is in order. Even before the Civil War commenced in 1861, this Court indirectly affirmed the importance of **[****76]** the right to keep and bear arms in public. Writing for the Court in *Dred Scott* v. *Sandford*, 60 U.S. 393, 19 How. 393, 15 L. Ed. 691 (1857), Chief Justice Taney offered what he thought was a parade of horribles that would result from recognizing that free blacks were citizens of the United States. If blacks were citizens, Taney fretted, they would be entitled to the privileges and immunities of citizens, including the right **[**2151]** "to keep and carry arms *wherever they went*." *Id*., at 417, 19 How. 393, 15 L. Ed. 691 (emphasis added). Thus, even Chief Justice Taney recognized (albeit unenthusiastically in the case of blacks) that public carry was a component of the right to keep and bear arms—a right free blacks were often denied in antebellum America.

After the Civil War, of course, the exercise of this fundamental right by freed slaves was systematically thwarted. **[*61]** This Court has already recounted **[***433]** some of the Southern abuses violating blacks' right to keep and bear arms. See *McDonald*, 561 U. S., at 771, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (noting the "systematic efforts" made to disarm blacks); *id*., at 845-847, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (THOMAS, J., concurring in part and concurring in judgment); see also S. Exec. Doc. No. 43, 39th Cong., 1st Sess., 8 (1866) ("Pistols, old muskets, and shotguns

were taken away from [freed slaves] as such weapons would be wrested from the hands of lunatics").

In the years **[****77]** before the 39th Congress proposed the Fourteenth Amendment, the Freedmen's Bureau regularly kept it abreast of the dangers to blacks and Union men in the postbellum South. The reports described how blacks used publicly carried weapons to defend themselves and their communities. For example, the Bureau reported that a teacher from a Freedmen's school in Maryland had written to say that, because of attacks on the school, "[b]oth the mayor and sheriff have warned the colored people to go armed to school, (which they do,)" and that "[t]he superintendent of schools came down and brought [the teacher] a revolver" for his protection. Cong. Globe, 39th Cong., 1st Sess., 658 (1866); see also H. R. Exec. Doc. No. 68, 39th Cong., 2d Sess., 91 (1867) (noting how, during the New Orleans riots, blacks under attack "defended themselves . . . with such pistols as they had").

Witnesses before the Joint Committee on Reconstruction also described the depredations visited on Southern blacks, and the efforts they made to defend themselves. One Virginia music professor related that when "[t]wo Union men were attacked . . . they drew their revolvers and held their assailants at bay." H. R. Rep. No. 30, 39th Cong., 1st Sess., **[****78]** pt. 2, p. 110 (1866). An assistant commissioner to the Bureau from Alabama similarly reported that men were "robbing and disarming negroes upon the highway," H. R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 297 (1866), indicating that blacks indeed carried arms publicly for their self-protection, even if not always with success. See also H. R. Exec. Doc. **[*62]** No. 329, 40th Cong., 2d Sess., 41 (1868) (describing a Ku Klux Klan outfit that rode "through the country . . . robbing every one they come across of money, pistols, papers, &c."); *id*., at 36 (noting how a black man in Tennessee had been murdered on his way to get book subscriptions, with the murderer taking, among other things, the man's pistol).

Blacks had "procured great numbers of old army muskets and revolvers, particularly in Texas," and "employed them to protect themselves" with "vigor and audacity." S. Exec. Doc. No. 43, 39th Cong., 1st Sess., at 8. Seeing that government was inadequately protecting them, "there [was] the strongest desire on the part of the freedmen to secure arms, revolvers particularly." H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 3, at 102.

On July 6, 1868, Congress extended the 1866 Freedmen's Bureau Act, **[****79]** see 15 Stat. 83, and reaffirmed that freedmen were entitled to the "full and equal benefit of all laws and proceedings concerning personal liberty [and] personal security . . . *including the constitutional right to bear arms*." §14, 14 Stat. 176 (1866) (emphasis added). That same day, a Bureau **[**2152]** official reported that freedmen in Kentucky and Tennessee were still constantly under threat: "No Union man **[***434]** or negro who attempts to take any active part in politics,

or the improvement of his race, is safe a single day; and nearly all sleep upon their arms at night, and carry concealed weapons during the day." H. R. Exec. Doc. No. 329, 40th Cong., 2d Sess., at 40.

Of course, even during Reconstruction the right to keep and bear arms had limits. But those limits were consistent with a right of the public to peaceably carry handguns for self-defense. For instance, when General D. E. Sickles issued a decree in 1866 pre-empting South Carolina's Black Codes—which prohibited firearm possession by blacks—he stated: "The constitutional rights of all loyal and well-disposed inhabitants to bear arms will not be infringed; nevertheless this shall not be construed to sanction the unlawful **[*63]** practice of carrying concealed weapons. . **[****80]** . . And no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms." Cong. Globe, 39th Cong., 1st Sess., at 908-909; see also *McDonald*, 561 U. S., at 847-848, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (opinion of THOMAS, J.).[26] Around the same time, the editors of The Loyal Georgian, a prominent black-owned newspaper, were asked by "A Colored Citizen" whether "colored persons [have] a right to own and carry fire arms." The editors responded that blacks had "the *same* right to own and carry fire arms that *other* citizens have." The Loyal Georgian, Feb. 3, 1866, p. 3, col. 4. And, borrowing language from a Freedmen's Bureau circular, the editors maintained that "[a]ny person, white or black, may be disarmed if convicted of making an improper or dangerous use of weapons," even though "no military or civil officer has the right or authority to disarm any class of people, thereby placing them at the mercy of others." *Ibid.* (quoting Circular No. 5, Freedmen's Bureau, Dec. 22, 1865); see also *McDonald*, 561 U. S., at 848-849, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (opinion of THOMAS, J.).[27]

[*64] As for Reconstruction-era state regulations, there was little innovation over the kinds of public-carry restrictions that had been commonplace in the early 19th century. For instance, South Carolina in 1870 authorized **[****81]** the arrest of "all who go armed offensively, to the terror of the people," 1870 S. C. Acts p. 403, no. 288, §4, **[***435]** parroting earlier statutes that codified

---

[26] Respondents invoke General Orders No. 10, which covered the Second Military District (North and South Carolina), and provided that "[t]he practice of carrying deadly weapons, except by officers and soldiers in the military service of the United States, is prohibited." Headquarters Second Military Dist., Gen. Orders No. 10 (Charleston, S. C., Apr. 11, 1867), in S. Exec. Doc. No. 14, 40th Cong., 1st Sess., 64 (1867). We put little weight on this categorical restriction given that the order also specified that a violation of this prohibition would "render the offender amenable to trial and punishment by military commission," *ibid.*, rather than a jury otherwise guaranteed by the Constitution. There is thus little indication that these military dictates were designed to align with the Constitution's usual application during times of peace.

[27] That said, Southern prohibitions on concealed carry were not always applied equally, even when under federal scrutiny. One lieutenant posted in Saint Augustine, Florida, remarked how local enforcement of concealed-carry laws discriminated against blacks: "To sentence a negro to several dollars' fine for carrying a revolver concealed upon his person, is in accordance with an ordinance of the town; but still the question naturally arises in my mind, 'Why is this poor fellow fined for an offence which is committed hourly by every other white man I meet in the streets?'" H. R. Exec. Doc. No. 57, 40th Cong., 2d Sess., 83 (1867); see also H. R. Rep. No. 16, 39th Cong., 2d Sess., 427 (1867).

the common-law offense. That same year, after it cleaved from Virginia, West Virginia enacted a surety statute nearly identical to **[**2153]** the one it inherited from Virginia. See W. Va. Code, ch. 153, §8. Also in 1870, Tennessee essentially reenacted its 1821 prohibition on the public carry of handguns but, as explained above, Tennessee courts interpreted that statute to exempt large pistols suitable for military use. See *supra*, at 46.

Respondents and the United States, however, direct our attention primarily to two late-19th-century cases in Texas. In 1871, Texas law forbade anyone from "carrying on or about his person . . . any pistol . . . unless he has reasonable grounds for fearing an unlawful attack on his person." 1871 Tex. Gen. Laws §1. The Texas Supreme Court upheld that restriction in *English* v. *State*, 35 Tex. 473 (1871). The Court reasoned that the Second Amendment, and the State's constitutional analogue, protected only those arms "as are useful and proper to an armed militia," including holster pistols, but not other kinds of handguns. *Id*., at 474-475. Beyond that constitutional holding, the *English* court further opined that the law was not "contrary to public policy," *id*., at 479, given that **[****82]** it "ma[de] all necessary exceptions" allowing deadly weapons to "be carried as means of self-defense," and therefore "fully cover[ed] all the wants of society," *id*., at 477.

Four years later, in *State* v. *Duke*, 42 Tex. 455 (1875), the Texas Supreme Court modified its analysis. The court re **[*65]** interpreted Texas' State Constitution to protect not only military-style weapons but rather all arms "as are commonly kept, according to the customs of the people, and are appropriate for open and manly use in self-defense." *Id*., at 458. On that understanding, the court recognized that, in addition to "holster pistol[s]," the right to bear arms covered the carry of "such pistols at least as are not adapted to being carried concealed." *Id*., at 458-459. Nonetheless, after expanding the scope of firearms that warranted state constitutional protection, *Duke* held that requiring any pistol-bearer to have "'reasonable grounds for fearing an unlawful attack on [one's] person'" was a "legitimate and highly proper" regulation of handgun carriage. *Id*., at 456, 459-460. *Duke* thus concluded that the 1871 statute "appear[ed] to have respected the right to carry a pistol openly when needed for self-defense." *Id*., at 459.

We acknowledge that the Texas cases support New York's proper-cause requirement, which one can analogize to Texas' **[****83]** "reasonable grounds" standard. But the Texas statute, and the rationales set forth in *English* and *Duke*, are outliers. In fact, only one other State, West Virginia, adopted a similar public-carry statute before 1900. See W. Va. Code, ch. 148, §7 (1887). The West Virginia Supreme Court upheld that prohibition, reasoning that *no* handguns of any kind were protected by the Second Amendment, a rationale endorsed by no other court during this period. See *State* v. *Workman*, 35 W. Va. 367, 371-374, 14 S. E. 9, 11 (1891). The Texas decisions therefore provide little insight into how postbellum courts viewed the right to carry protected arms in public.

In the end, while we recognize the support that postbellum Texas provides **[***436]** for respondents' view, we will not give disproportionate weight to a single state statute and a pair of state-court decisions. As in *Heller*, we will not "stake our interpretation of the Second Amendment upon a single law, **[*66]** in effect in a single [State], that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms for defense" in public. 554 U. S., at 632, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

5

Finally, respondents point to the slight uptick in gun regulation during the late-19th century—principally **[**2154]** in the Western Territories. As we suggested in *Heller*, however, late-19th-century evidence cannot provide much insight into the meaning **[****84]** of the Second Amendment when it contradicts earlier evidence. See *id*., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637; *supra*, at 28.[28] Here, moreover, respondents' reliance on late-19th-century laws has several serious flaws even beyond their temporal distance from the founding.

The vast majority of the statutes that respondents invoke come from the Western Territories. Two Territories prohibited the carry of pistols in towns, cities, and villages, but seemingly permitted the carry of rifles and other long guns everywhere. See 1889 Ariz. Terr. Sess. Laws no. 13, §1, p. 16; 1869 N. M. Laws ch. 32, §§1-2, p. 72.[29] Two others prohibited the carry of *all* firearms in towns, cities, and villages, including long guns. See 1875 Wyo. Terr. Sess. Laws ch. 52, §1; 1889 Idaho Terr. Gen. Laws §1, p. 23. And one Territory completely prohibited public carry of pistols *everywhere*, but allowed the carry of "shot-guns or rifles" for certain **[*67]** purposes. See 1890 Okla. Terr. Stats., Art. 47, §§1-2, 5, p. 495.

These territorial restrictions fail to justify New York's proper-cause requirement for several reasons. First, the bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry. For starters, "[t]he very transitional and temporary character of the American [territorial] **[****85]** system" often "permitted legislative improvisations which might not have been tolerated in a permanent setup." E. Pomeroy, The Territories and the United States 1861-1890, p. 4 (1947). These territorial "legislative improvisations," which conflict with the Nation's earlier approach to firearm regulation, are most unlikely to reflect "the origins and continuing significance of the [Second]

---

[28] We will not address any of the 20th-century historical evidence brought to bear by respondents or their *amici*. As with their late-19th-century evidence, the 20th-century evidence presented by respondents and their *amici* does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.

[29] The New Mexico restriction allowed an exception for individuals carrying for "the lawful defence of themselves, their families or their property, and the same being then and there threatened with danger." 1869 Terr. of N. M. Laws ch. 32, §1, p. 72. The Arizona law similarly exempted those who have "reasonable ground for fearing an unlawful attack upon his person." 1889 Ariz. Terr. Sess. Laws no. 13, §2, p. 17.

Amendment" and we do not consider them "instructive." *Heller*, 554 U. S., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

The exceptional nature of these western restrictions is all the more apparent when one considers the miniscule **[***437]** territorial populations who would have lived under them. To put that point into perspective, one need not look further than the 1890 census. Roughly 62 million people lived in the United States at that time. Arizona, Idaho, New Mexico, Oklahoma, and Wyoming combined to account for only 420,000 of those inhabitants—about two-thirds of 1% of the population. See Dept. of Interior, Compendium of the Eleventh Census: 1890, Part I.-Population 2 (1892). Put simply, these western restrictions were irrelevant to more than 99% of the American population. We have already explained that we will not stake our interpretation of the Second Amendment upon a law in effect in a single **[****86]** State, or a single city, "that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms" in public for self-defense. *Heller*, 554 U. S., at 632, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see **[**2155]** *supra*, at 57-58. Similarly, we will not stake our interpretation on a handful of temporary territorial laws that were enacted **[*68]** nearly a century after the Second Amendment's adoption, governed less than 1% of the American population, and also "contradic[t] the overwhelming weight" of other, more contemporaneous historical evidence. *Heller*, 554 U. S., at 632, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

Second, because these territorial laws were rarely subject to judicial scrutiny, we do not know the basis of their perceived legality. When States generally prohibited both open and concealed carry of handguns in the late-19th century, state courts usually upheld the restrictions when they exempted army revolvers, or read the laws to exempt at least that category of weapons. See, *e.g.*, *Haile* v. *State*, 38 Ark. 564, 567 (1882); *Wilson* v. *State*, 33 Ark. 557, 560 (1878); *Fife* v. *State*, 31 Ark. 455, 461 (1876); *State* v. *Wilburn*, 66 Tenn. 57, 60 (1872); *Andrews*, 50 Tenn., at 187.[30] Those state courts that upheld broader prohibitions without qualification generally operated under a fundamental misunderstanding of the right to bear arms, as expressed in *Heller*. For example, the Kansas Supreme Court upheld a complete ban on public carry enacted by the city of Salina in 1901 based on the rationale that the Second Amendment protects **[****87]** only "the right to bear arms as a member of the state militia, or some other military organization provided for by law." *Salina* v. *Blaksley*, 72 Kan. 230, 232, 83 P. 619, 620 (1905). That was clearly erroneous. See *Heller*, 554 U. S., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

---

[30] Many other state courts during this period continued the antebellum tradition of upholding concealed carry regimes that seemingly provided for open carry. See, *e.g.*, *State* v. *Speller*, 86 N. C. 697 (1882); *Chatteaux* v. *State*, 52 Ala. 388 (1875); *Eslava* v. *State*, 49 Ala. 355 (1873); *State* v. *Shelby*, 90 Mo. 302, 2 S. W. 468 (1886); *Carroll* v. *State*, 28 Ark. 99 (1872); cf. *Robertson* v. *Baldwin*, 165 U. S. 275, 281-282, 17 S. Ct. 326, 41 L. Ed. 715 (1897) (remarking in dicta that "the right of the people to keep and bear arms . . . is not infringed by laws prohibiting the carrying of concealed weapons").

Absent any evidence explaining *why* these unprecedented prohibitions on *all* public carry were understood to comport with the Second Amendment, we fail to see how they inform "the origins and continuing significance of the Amendment." *Id*., at 614, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also The Federalist No. 37, at 229 (explaining **[*69]** that the meaning of **[***438]** ambiguous constitutional provisions can be "liquidated and ascertained *by a series of particular discussions and adjudications*" (emphasis added)).

Finally, these territorial restrictions deserve little weight because they were—consistent with the transitory nature of territorial government—short lived. Some were held unconstitutional shortly after passage. See *In re Brickey*, 8 Idaho 597, 70 P. 609 (1902). Others did not survive a Territory's admission to the Union as a State. See Wyo. Rev. Stat., ch. 3, §5051 (1899) (1890 law enacted upon statehood prohibiting public carry only when combined with "intent, or avowed purpose, of injuring [one's] fellow-man"). Thus, they appear more as passing regulatory efforts by not-yet-mature jurisdictions on the way to statehood, rather than part of an enduring American tradition **[****88]** of state regulation.

Beyond these Territories, respondents identify one Western State—Kansas—that instructed cities with more than 15,000 inhabitants to pass ordinances prohibiting the public carry of firearms. See 1881 Kan. Sess. Laws §§1, 23, pp. 79, 92.[31] By 1890, **[**2156]** the only cities meeting the population threshold were Kansas City, Topeka, and Wichita. See Compendium of the Eleventh Census: 1890, at 442-452. Even if each of these three cities enacted prohibitions by 1890, their combined population (93,000) accounted for only 6.5% of Kansas' total population. *Ibid.* Although other Kansas cities may also have restricted public carry unilaterally,[32] the lone late-19th-century state law respondents identify does not prove **[*70]** that Kansas meaningfully restricted public carry, let alone demonstrate a broad tradition of States doing so.

***

At the end of this long journey through the Anglo-American history of public carry, we conclude that respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement. The Second Amendment guaranteed to "all Americans" the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. *Heller*, 554 U. S., at 581, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Those restrictions, for example, **[****89]** limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional

[31] In 1875, Arkansas prohibited the public carry of all pistols. See 1875 Ark. Acts p. 156, §1. But this categorical prohibition was also short lived. About six years later, Arkansas exempted "pistols as are used in the army or navy of the United States," so long as they were carried "uncovered, and in [the] hand." 1881 Ark. Acts p. 191, no. 96, §§1, 2.

[32] In 1879, Salina, Kansas, prohibited the carry of pistols but broadly exempted "cases when any person carrying [a pistol] is engaged in the pursuit of any lawful business, calling or employment" and the circumstances were "such as to justify a prudent man in carrying such weapon, for the defense of his person, property or family." Salina, Kan., Rev. Ordinance No. 268, §2.

circumstances under which one could not carry arms, such as before justices of the peace and other government officials. Apart from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor, subject to a few late-in-time outliers, have American governments required law-abiding, responsible citizens to "demonstrate a **[***439]** special need for self-protection distinguishable from that of the general community" in order to carry arms in public. *Klenosky*, 75 App. Div., at 793, 428 N. Y. S. 2d, at 257.

IV

The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald*, 561 U. S., at 780, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses **[*71]** against him. And it is **[****90]** not how the Second Amendment works when it comes to public carry for self-defense.

New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Concur by: ALITO; KAVANAUGH; BARRETT

Concur

JUSTICE ALITO, concurring.

I join the opinion of the Court in full but add the following comments in response to the dissent.

[2157]** I

Much of the dissent seems designed to obscure the specific question that the Court has decided, and therefore it may be helpful to provide a succinct summary of what we have actually held. In *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), the Court

concluded that the Second Amendment protects the right to keep a handgun in the home for self-defense. *Heller* found that the Amendment codified a preexisting right and that this right was regarded at the time of the Amendment's adoption as rooted in "'the natural right of resistance and self-preservation.'" *Id*., at 594, 128 S. Ct. 2783, 171 L. Ed. 2d 637. "[T]he inherent right of self-defense," *Heller* explained, is "central to the Second Amendment right." *Id*., at 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

Although *Heller* concerned the possession of a handgun in the home, the key point that we decided **[****91]** was that "the people," not just members of the "militia," have the right to use a firearm to defend themselves. And because many people face a serious risk of lethal violence when they venture outside their homes, the Second Amendment was understood at the time of adoption to apply under those circumstances. The Court's exhaustive historical survey establishes that point very clearly, and today's decision therefore holds that **[*72]** a State may not enforce a law, like New York's Sullivan Law, that effectively prevents its law-abiding residents from carrying a gun for this purpose.

That is all we decide. Our holding decides nothing about who may lawfully **[***440]** possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in *Heller* or *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), about restrictions that may be imposed on the possession or carrying of guns.

In light of what we have actually held, it is hard to see what legitimate purpose can possibly be served by most of the dissent's lengthy introductory section. See *post*, at 1-8 (opinion of BREYER, J.). Why, for example, does the dissent think it is relevant to recount the mass shootings **[****92]** that have occurred in recent years? *Post*, at 4-5. Does the dissent think that laws like New York's prevent or deter such atrocities? Will a person bent on carrying out a mass shooting be stopped if he knows that it is illegal to carry a handgun outside the home? And how does the dissent account for the fact that one of the mass shootings near the top of its list took place in Buffalo? The New York law at issue in this case obviously did not stop that perpetrator.

What is the relevance of statistics about the use of guns to commit suicide? See *post*, at 5-6. Does the dissent think that a lot of people who possess guns in their homes will be stopped or deterred from shooting themselves if they cannot lawfully take them outside?

The dissent cites statistics about the use of guns in domestic disputes, see *post*, at 5, but it does not explain why these statistics are relevant to the question presented in this case. How many of the cases involving the use of a gun in a domestic dispute occur outside the home, and how many are prevented by laws like New York's?

The dissent cites statistics on children and adolescents killed by guns, see *post*, at 1, 4, but what does this have **[*73]** to do with the question **[****93]** whether an adult who is licensed to possess a handgun may be prohibited from carrying it outside the home? Our decision, as noted, does not expand the categories of people who may lawfully possess a gun, and federal law **[**2158]** generally forbids the possession of a handgun by a person who is under the age of 18, 18 U. S. C. §§922(x)(2)-(5), and bars the sale of a handgun to anyone under the age of 21, §§922(b)(1), (c)(1).[1]

The dissent cites the large number **[***441]** of guns in private hands—nearly 400 million—but it does not explain what this statistic has to do with the question whether a person who already has the right to keep a gun in the home for self-defense is likely to be deterred from acquiring a gun by the knowledge that the gun cannot be carried outside the home. See *post*, at 3. And while the dissent seemingly thinks that the ubiquity of guns and our country's high level of gun violence provide reasons for sustaining the New York law, **[*74]** the dissent appears not to understand that it is these very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense.

No one apparently knows how many of the 400 million privately held guns are in the hands of criminals, but **[****94]** there can be little doubt that many muggers and rapists are armed and are undeterred by the Sullivan Law. Each year, the New York City Police Department (NYPD) confiscates thousands of guns,[2] and it is fair to assume that the number of guns seized is a fraction of the total number held unlawfully. The police cannot disarm every person who acquires a gun for use in criminal activity; nor can they provide bodyguard protection for the State's nearly 20 million residents or the 8.8 million people who live in New York City. Some of these people live in high-crime neighborhoods. Some must traverse dark and dangerous streets in order to reach

---

[1] The dissent makes no effort to explain the relevance of most of the incidents and statistics cited in its introductory section (*post*, at 1-8) (opinion of BREYER, J.). Instead, it points to studies (summarized later in its opinion) regarding the effects of "shall issue" licensing regimes on rates of homicide and other violent crimes. I note only that the dissent's presentation of such studies is one-sided. See RAND Corporation, Effects of Concealed-Carry Laws on Violent Crime (Apr. 22, 2020), https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime-html; see also Brief for William English et al. as *Amici Curiae* 3 ("The overwhelming weight of statistical analysis of the effects of [right-to-carry] laws on violent crime concludes that RTC laws do not result in any statistically significant increase in violent crime rates"); Brief for Arizona et al. as *Amici Curiae* 12 ("[P]opulation-level data on licensed carry is extensive, and the weight of the evidence confirms that objective, non-discriminatory licensed-carry laws have two results: (1) statistically significant reductions in some types of violent crime, or (2) no statistically significant effect on overall violent crime"); Brief for Law Enforcement Groups et al. as *Amici Curiae* 12 ("[O]ver the period 1991-2019 the inventory of firearms more than doubled; the number of concealed carry permits increased by at least sevenfold," but "murder rates fell by almost half, from 9.8 per 100,000 people in 1991 to 5.0 per 100,000 in 2019" and "[v]iolent crimes plummeted by over half").

[2] NYPD statistics show approximately 6,000 illegal guns were seized in 2021. A. Southall, This Police Captain's Plan To Stop Gun Violence Uses More Than Handcuffs, N. Y. Times, Feb. 4, 2022. According to recent remarks by New York City Mayor Eric Adams, the NYPD has confiscated 3,000 firearms in 2022 so far. City of New York, Transcript: Mayor Eric Adams Makes Announcement About NYPD Gun Violence Suppression Division (June 6, 2022), https://www1.nyc.gov/office-of-the-mayor/news/369-22/transcript-mayor-eric-adams-makes-announcement-about-nypd-gun-violence-suppression-division.

their homes after work or other evening activities. Some are members of groups whose members feel especially vulnerable. And some of these people reasonably believe that unless they can brandish or, if necessary, use a handgun in the case of attack, they may be murdered, raped, or suffer some other serious injury.

Ordinary citizens frequently use firearms to protect themselves from criminal **[**2159]** attack. According to survey data, defensive firearm use occurs up to 2.5 million times per year. Brief for Law Enforcement Groups et al. as *Amici Curiae* 5. A Centers **[****95]** for Disease Control and Prevention report commissioned by former President Barack Obama reviewed the literature surrounding firearms use and noted that "[s]tudies **[*75]** that directly assessed the effect of actual defensive uses of guns . . . have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies." Institute of Medicine and National Research Council, Priorities for Research To Reduce the Threat of Firearm-Related Violence 15-16 (2013) (referenced in Brief for Independent Women's Law Center as *Amicus Curiae* 19-20).

Many of the *amicus* briefs filed in this case tell the story of such people. **[***442]** Some recount incidents in which a potential victim escaped death or serious injury only because carrying a gun for self-defense was allowed in the jurisdiction where the incident occurred. Here are two examples. One night in 1987, Austin Fulk, a gay man from Arkansas, "was chatting with another man in a parking lot when four gay bashers charged them with baseball bats and tire irons. Fulk's companion drew his pistol from under the seat of his car, brandished it at the attackers, and fired a single shot over their heads, causing **[****96]** them to flee and saving the would-be victims from serious harm." Brief for DC Project Foundation et al. as *Amici Curiae* 31 (footnote omitted).

On July 7, 2020, a woman was brutally assaulted in the parking lot of a fast food restaurant in Jefferson City, Tennessee. Her assailant slammed her to the ground and began to drag her around while strangling her. She was saved when a bystander who was lawfully carrying a pistol pointed his gun at the assailant, who then stopped the assault and the assailant was arrested. *Ibid.* (citing C. Wethington, Jefferson City Police: Legally Armed Good Samaritan Stops Assault, ABC News 6, WATE.com (July 9, 2020), https://www.wate.com/news/local-news/jefferson-city-police-legally-armed-good-samaritan-stops-assault/).

In other incidents, a law-abiding person was driven to violate the Sullivan Law because of fear of victimization and as a result was arrested, prosecuted, and incarcerated. See Brief for Black Attorneys of Legal Aid et al. as *Amici Curiae* 22-25.

[*76] Some briefs were filed by members of groups whose members feel that they have special reasons to fear attacks. See Brief for Asian Pacific American Gun Owners Association as *Amicus*

Curiae; Brief for DC **[****97]** Project Foundation et al. as *Amici Curiae*; Brief for Black Guns Matter et al. as *Amici Curiae*; Brief for Independent Women's Law Center as *Amicus Curiae*; Brief for National African American Gun Association, Inc., as *Amicus Curiae*.

I reiterate: All that we decide in this case is that the Second Amendment protects the right of law-abiding people to carry a gun outside the home for self-defense and that the Sullivan Law, which makes that virtually impossible for most New Yorkers, is unconstitutional.

II

This brings me to Part II-B of the dissent, *post*, at 11-21, which chastises the Court for deciding this case without a trial and factual findings about just how hard it is for a law-abiding New Yorker to get a carry permit. The record before us, however, tells us everything we need on this score. At argument, New York's solicitor general was asked about an ordinary person who works at night and must walk through dark and crime-infested streets to get home. Tr. of Oral Arg. 66-67. The solicitor general was asked whether such a **[**2160]** person would be issued a carry permit if she pleaded: "[T]here have been a lot of muggings in this area, and I am scared to death." *Id*., at 67. The solicitor general's candid answer **[****98]** was "in general," no. *Ibid.* To get a permit, the applicant would have to show more—for example, that she had been singled out for attack. *Id*., at 65; see also *id*., at 58. A law that dictates that answer violates the Second Amendment.

[*443]** III

My final point concerns the dissent's complaint that the Court relies too heavily on history and should instead approve the sort of "means-end" analysis employed in this case **[*77]** by the Second Circuit. Under that approach, a court, in most cases, assesses a law's burden on the Second Amendment right and the strength of the State's interest in imposing the challenged restriction. See *post*, at 20. This mode of analysis places no firm limits on the ability of judges to sustain any law restricting the possession or use of a gun. Two examples illustrate the point.

The first is the Second Circuit's decision in a case the Court decided two Terms ago, *New York State Rifle & Pistol Assn., Inc.* v. *City of New York*, 590 U. S. ___, 140 S. Ct. 1525, 206 L. Ed. 2d 798 (2020) (*per curiam*). The law in that case affected New York City residents who had been issued permits to keep a gun in the home for self-defense. The city recommended that these permit holders practice at a range to ensure that they are able to handle their guns safely, but the law prohibited them from taking their guns to any range other than the seven that were spread **[****99]** around the city's five boroughs. Even if such a person unloaded the gun, locked it in the trunk of a car, and drove to the nearest range, that person would violate the law if the nearest range happened to be outside city limits. The Second Circuit held that the law was

constitutional, concluding, among other things, that the restriction was substantially related to the city's interests in public safety and crime prevention. See *New York State Rifle & Pistol Assn., Inc.* v. *New York*, 883 F. 3d 45, 62-64 (2018). But after we agreed to review that decision, the city repealed the law and admitted that it did not actually have any beneficial effect on public safety. See N. Y. Penal Law Ann. §400.00(6) (West Cum. Supp. 2022); Suggestion of Mootness in *New York State Rifle & Pistol Assn., Inc.* v. *City of New York*, O. T. 2019, No. 18-280, pp. 5-7.

Exhibit two is the dissent filed in *Heller* by JUSTICE BREYER, the author of today's dissent. At issue in *Heller* was an ordinance that made it impossible for any District of Columbia resident to keep a handgun in the home for self-defense. See 554 U. S., at 574-575, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Even the respondent, **[*78]** who carried a gun on the job while protecting federal facilities, did not qualify. *Id*., at 575-576. The District of Columbia law was an extreme outlier; only a few other jurisdictions in the entire country had similar laws. Nevertheless, JUSTICE BREYER's dissent, **[****100]** while accepting for the sake of argument that the Second Amendment protects the right to keep a handgun in the home, concluded, based on essentially the same test that today's dissent defends, that the District's complete ban was constitutional. See *id*., at 689, 722, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (under "an interest-balancing inquiry. . ." the dissent would "conclude that the District's measure is a proportionate, not a disproportionate, response to the compelling concerns that led the District to adopt it").

Like that dissent in *Heller*, the real thrust of today's dissent is that guns are bad and that States and local **[***444]** jurisdictions should be free to restrict them essentially **[**2161]** as they see fit.[3] That argument was rejected in *Heller*, and while the dissent protests that it is not rearguing *Heller*, it proceeds to do just that. See *post*, at 25-28.

Heller correctly recognized that the Second Amendment codifies the right of ordinary law-abiding Americans to protect themselves from lethal violence by possessing and, if necessary, using a gun. In 1791, when the Second Amendment was adopted, there were no police departments, and many families lived alone on isolated farms or on the frontiers. If these people were attacked, they were on their own. It is hard to imagine the furor that **[****101]** would have erupted if the Federal Government and the States had tried to take away the guns that these people needed for protection.

[*79] Today, unfortunately, many Americans have good reason to fear that they will be victimized if they are unable to protect themselves. And today, no less than in 1791, the Second Amendment guarantees their right to do so.

---

[3] If we put together the dissent in this case and JUSTICE BREYER's *Heller* dissent, States and local governments would essentially be free to ban the possession of all handguns, and it is unclear whether its approach would impose any significant restrictions on laws regulating long guns. The dissent would extend a very large measure of deference to legislation implicating Second Amendment rights, but it does not claim that such deference is appropriate when any other constitutional right is at issue.

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE joins, concurring.

The Court employs and elaborates on the text, history, and tradition test that *Heller* and *McDonald* require for evaluating whether a government regulation infringes on the Second Amendment right to possess and carry guns for self-defense. See *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). Applying that test, the Court correctly holds that New York's outlier "may-issue" licensing regime for carrying handguns for self-defense violates the Second Amendment.

I join the Court's opinion, and I write separately to underscore two important points about the limits of the Court's decision.

First, the Court's decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense. In particular, the Court's decision does not affect the existing licensing regimes—known as "shall-issue" regimes—that are employed in 43 States.

The Court's decision addresses **[****102]** only the unusual discretionary licensing regimes, known as "may-issue" regimes, that are employed by 6 States including New York. As the Court explains, New York's outlier may-issue regime is constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense. Those features of New York's regime—the unchanneled discretion for licensing officials and the special-need requirement—in effect deny the right to carry handguns for self-defense to many "ordinary, law-abiding citizens." *Ante*, at 1; **[***445]** see also *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The **[*80]** Court has held that "individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald*, 561 U. S., at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (quoting *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637). New York's law is inconsistent with the Second Amendment right to possess and carry handguns for self-defense.

[2162]** By contrast, 43 States employ objective shall-issue licensing regimes. Those shall-issue regimes may require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements. Brief for Arizona et al. as *Amici Curiae* 7. Unlike **[****103]** New York's may-issue regime, those shall-issue regimes do not grant open-ended discretion to licensing officials and do not require a showing of some special need apart from self-defense. As petitioners acknowledge, shall-issue licensing regimes are constitutionally permissible, subject of course to an as-applied challenge if a shall-issue licensing regime does not operate in that manner in practice. Tr. of Oral Arg. 50-51.

Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for

carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall-issue States.

Second, as *Heller* and *McDonald* established and the Court today again explains, the Second Amendment "is neither a regulatory straightjacket nor a regulatory blank check." *Ante*, at 21. Properly interpreted, the Second Amendment allows a "variety" of gun regulations. *Heller*, 554 U. S., at 636, 128 S. Ct. 2783, 171 L. Ed. 2d 637. As Justice Scalia wrote in his opinion for the Court in *Heller*, and JUSTICE ALITO reiterated in relevant part in the principal opinion in *McDonald* **[****104]** :

> **[*81]** "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [Footnote 26: We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.]
>
> "We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Heller*, 554 U. S., **[***446]** at 626-627, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and n. 26 (citations and quotation marks omitted); see also *McDonald*, 561 U. S., at 786, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (plurality opinion).

***

With those additional comments, I join **[****105]** the opinion of the Court.

JUSTICE BARRETT, concurring.

I join the Court's opinion in full. I write separately to highlight two methodological points that the Court does not resolve. First, the Court does not conclusively determine the manner and circumstances in which postratification practice may bear on the original meaning of the Constitution. **[*82]** See *ante*, at 24-29. Scholars have proposed competing and potentially conflicting frameworks for this analysis, including **[**2163]** liquidation, tradition, and precedent. See, *e.g.*, Nelson, Originalism and Interpretive Conventions, 70 U. Chi. L. Rev. 519 (2003);

McConnell, Time, Institutions, and Interpretation, 95 B. U. L. Rev. 1745 (2015). The limits on the permissible use of history may vary between these frameworks (and between different articulations of each one). To name just a few unsettled questions: How long after ratification may subsequent practice illuminate original public meaning? Cf. *McCulloch* v. *Maryland*, 17 U.S. 316, 4 Wheat. 316, 401, 4 L. Ed. 579 (1819) (citing practice "introduced at a very early period of our history"). What form must practice take to carry weight in constitutional analysis? See *Myers* v. *United States*, 272 U. S. 52, 175, 47 S. Ct. 21, 71 L. Ed. 160 (1926) (citing a "legislative exposition of the Constitution . . . acquiesced in for a long term of years"). And may practice settle the meaning of individual rights as well **[****106]** as structural provisions? See Baude, Constitutional Liquidation, 71 Stan. L. Rev. 1, 49-51 (2019) (canvassing arguments). The historical inquiry presented in this case does not require us to answer such questions, which might make a difference in another case. See *ante*, at 17-19.

Second and relatedly, the Court avoids another "ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868" or when the Bill of Rights was ratified in 1791. *Ante*, at 29. Here, the lack of support for New York's law in either period makes it unnecessary to choose between them. But if 1791 is the benchmark, then New York's appeals to Reconstruction-era history would fail for the independent reason that this evidence is simply too late (in addition to too little). Cf. *Espinoza* v. *Montana Dept. of Revenue*, 591 U. S. ___, ___-___ (2020) (slip op., at 15-16) (a practice that "arose in the second half of the 19th century . . . cannot by itself establish an early American tradition" informing our understanding of the First Amendment). **[*83]** So today's decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights. On the contrary, the Court is careful to **[****107]** caution "against giving postenactment history more weight than it can rightly bear." *Ante*, at 26.

Dissent by: BREYER

Dissent

[*447]** JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

In 2020, 45,222 Americans were killed by firearms. See Centers for Disease Control and Prevention, Fast Facts: Firearm Violence Prevention (last updated May 4, 2022) (CDC, Fast Facts), https://www.cdc.gov/violenceprevention/firearms/fastfact.html. Since the start of this year (2022), there have been 277 reported mass shootings—an average of more than one per day. See Gun

Violence Archive (last visited June 20, 2022), https://www.gunviolencearchive.org. Gun violence has now surpassed motor vehicle crashes as the leading cause of death among children and adolescents. J. Goldstick, R. Cunningham, & P. Carter, Current Causes of Death in Children and Adolescents in the United States, 386 New England J. Med. 1955 (May 19, 2022) (Goldstick).

Many States have tried to address some of the dangers of gun violence just described by passing laws that limit, in various ways, who may purchase, carry, or use firearms of different kinds. The Court today severely burdens States' efforts to do so. It invokes the Second Amendment to strike **[****108]** down a New York law regulating the public carriage of concealed handguns. **[**2164]** In my view, that decision rests upon several serious mistakes.

First, the Court decides this case on the basis of the pleadings, without the benefit of discovery or an evidentiary record. As a result, it may well rest its decision on a mistaken understanding of how New York's law operates in practice. Second, the Court wrongly limits its analysis to focus nearly exclusively on history. It refuses to consider the government **[*84]** interests that justify a challenged gun regulation, regardless of how compelling those interests may be. The Constitution contains no such limitation, and neither do our precedents. Third, the Court itself demonstrates the practical problems with its history-only approach. In applying that approach to New York's law, the Court fails to correctly identify and analyze the relevant historical facts. Only by ignoring an abundance of historical evidence supporting regulations restricting the public carriage of firearms can the Court conclude that New York's law is not "consistent with the Nation's historical tradition of firearm regulation." See *ante*, at 15.

In my view, when courts interpret the Second Amendment **[****109]** , it is constitutionally proper, indeed often necessary, for them to consider the serious dangers and consequences of gun violence that lead States to regulate firearms. The Second Circuit has done so and has held that New York's law does not violate the Second Amendment. See *Kachalsky* v. *County of Westchester*, 701 F. 3d 81, 97-99, 101 (2012). I would affirm that holding. At a minimum, I would not strike down the law based only on the pleadings, as the Court does today—without first allowing for the development of an evidentiary record and without considering the State's compelling interest in preventing gun violence. I respectfully dissent.

I

The question before us concerns the extent to which the Second Amendment prevents democratically elected officials from enacting laws to address the serious problem of gun violence. **[***448]** And yet the Court today purports to answer that question without discussing the nature or severity of that problem.

In 2017, there were an estimated 393.3 million civilian-held firearms in the United States, or about

120 firearms per 100 people. A. Karp, Estimating Global Civilian-Held Firearms Numbers, Small Arms Survey 4 (June 2018), https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf. **[*85]** That is more guns per capita than in **[****110]** any other country in the world. *Ibid.* (By comparison, Yemen is second with about 52.8 firearms per 100 people—less than half the per capita rate in the United States—and some countries, like Indonesia and Japan, have fewer than one firearm per 100 people. *Id*., at 3-4.)

Unsurprisingly, the United States also suffers a disproportionately high rate of firearm-related deaths and injuries. Cf. Brief for Educational Fund To Stop Gun Violence et al. as *Amici Curiae* 17-18 (Brief for Educational Fund) (citing studies showing that, within the United States, "states that rank among the highest in gun ownership also rank among the highest in gun deaths" while "states with lower rates of gun ownership have lower rates of gun deaths"). In 2015, approximately 36,000 people were killed by firearms nationwide. M. Siegel et al., Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States, 107 Am. J. Pub. Health 1923 (2017). Of those deaths, 22,018 (or about 61%) were suicides, 13,463 (37%) were homicides, and 489 (1%) were unintentional injuries. *Ibid.* On top of that, firearms caused an average of 85,694 **[**2165]** emergency room visits for nonfatal injuries each year between 2009 **[****111]** and 2017. E. Kaufman et al., Epidemiological Trends in Fatal and Nonfatal Firearm Injuries in the US, 2009-2017, 181 JAMA Internal Medicine 237 (2021) (Kaufman).

Worse yet, gun violence appears to be on the rise. By 2020, the number of firearm-related deaths had risen to 45,222, CDC, Fast Facts, or by about 25% since 2015. That means that, in 2020, an average of about 124 people died from gun violence every day. *Ibid.* As I mentioned above, gun violence has now become the leading cause of death in children and adolescents, surpassing car crashes, which had previously been the leading cause of death in that age group for over 60 years. Goldstick 1955; J. Bates, Guns Became the **[*86]** Leading Cause of Death for American Children and Teens in 2020, Time, Apr. 27, 2022, https://www.time.com/6170864/cause-of-death-children-guns/. And the consequences of gun violence are borne disproportionately by communities of color, and Black communities in particular. See CDC, Age-Adjusted Rates of Firearm-Related Homicide, by Race, Hispanic Origin, and Sex—National Vital Statistics System, United States, 2019, at 1491 (Oct. 22, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7042a6-H.pdf (documenting 34.9 **[****112]** firearm-related homicides per 100,000 population for non-Hispanic Black men in 2019, compared to 7.7 such homicides per 100,000 population for men of all races); S. Kegler et al., CDC, *Vital Signs*: Changes in Firearm Homicide and Suicide Rates—United States, 2019-2020, at 656-658 (May 13, 2022), https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7119e1-H.pdf.

[*449]** The dangers posed by firearms can take many forms. Newspapers report mass shootings occurring at an entertainment district in Philadelphia, Pennsylvania (3 dead and 11 injured); an

elementary school in Uvalde, Texas (21 dead); a supermarket in Buffalo, New York (10 dead and 3 injured); a series of spas in Atlanta, Georgia (8 dead); a busy street in an entertainment district of Dayton, Ohio (9 dead and 17 injured); a nightclub in Orlando, Florida (50 dead and 53 injured); a church in Charleston, South Carolina (9 dead); a movie theater in Aurora, Colorado (12 dead and 50 injured); an elementary school in Newtown, Connecticut (26 dead); and many, many more. See, *e.g.*, R. Todt, 3 Dead, 11 Wounded in Philadelphia Shooting on Busy Street, Washington Post, June 5, 2022; A. Hernández, J. Slater, D. Barrett, & S. Foster-Frau, At Least 19 Children, **[****113]** 2 Teachers Killed at Texas Elementary School, Washington Post, May 25, 2022; A. Joly, J. Slater, D. Barrett, & A. Hernandez, 10 Killed in Racially Motivated Shooting at Buffalo Grocery Store, Washington Post, May 14, 2022; C. McWhirter & V. Bauerlein, **[*87]** Atlanta-Area Shootings at Spas Leave Eight Dead, Wall Street Journal, Mar. 17, 2021; A. Hassan, Dayton Gunman Shot 26 People in 32 Seconds, Police Timeline Reveals, N. Y. Times, Aug. 13, 2019; L. Alvarez & R. Pérez-Peña, Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead, N. Y. Times, June 12, 2016; J. Horowitz, N. Corasaniti, & A. Southall, Nine Killed in Shooting at Black Church in Charleston, N. Y. Times, June 17, 2015; R. Lin, Gunman Kills 12 at 'Dark Knight Rises' Screening in Colorado, L. A. Times, July 20, 2012; J. Barron, Nation Reels After Gunman Massacres 20 Children at School in Connecticut, N. Y. Times, Dec. 14, 2012. Since the start of this year alone (2022), there have already been 277 reported mass shootings—an average of more than one per day. Gun Violence Archive; see also Gun Violence Archive, General Methodology, https://www.gunviolencearchive.org/methodology (defining mass shootings to include incidents **[**2166]** in which **[****114]** at least four victims are shot, not including the shooter).

And mass shootings are just one part of the problem. Easy access to firearms can also make many other aspects of American life more dangerous. Consider, for example, the effect of guns on road rage. In 2021, an average of 44 people each month were shot and either killed or wounded in road rage incidents, double the annual average between 2016 and 2019. S. Burd-Sharps & K. Bistline, Everytown for Gun Safety, Reports of Road Rage Shootings Are on the Rise (Apr. 4, 2022), https://www.everytownresearch.org/reports-of-road-rage-shootings-are-on-the-rise/; see also J. Donohue, A. Aneja, & K. Weber, Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis, 16 J. Empirical Legal Studies 198, 204 (2019). Some of those deaths might have been avoided if there had not been a loaded gun in the car. See *ibid.*; Brief for American Bar Association as *Amicus Curiae* 17-18; Brief for Educational Fund 20-23 (citing **[*88]** studies showing that the presence of a firearm is likely to increase aggression in both the person carrying the gun and others who see it).

The same could be said **[****115]** of protests: A study of 30,000 protests between **[***450]** January 2020 and June 2021 found that armed protests were nearly six times

more likely to become violent or destructive than unarmed protests. Everytown for Gun Safety, Armed Assembly: Guns, Demonstrations, and Political Violence in America (Aug. 23, 2021), https:// www.everytownresearch.org/report/armed-assembly-guns-demonstrations-and-political-violence-in-america/ (finding that 16% of armed protests turned violent, compared to less than 3% of unarmed protests). Or domestic disputes: Another study found that a woman is five times more likely to be killed by an abusive partner if that partner has access to a gun. Brief for Educational Fund 8 (citing A. Zeoli, R. Malinski, & B. Turchan, Risks and Targeted Interventions: Firearms in Intimate Partner Violence, 38 Epidemiologic Revs. 125 (2016); J. Campbell et al., Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study, 93 Am. J. Pub. Health 1089, 1092 (2003)). Or suicides: A study found that men who own handguns are three times as likely to commit suicide than men who do not and women who own handguns are seven times as likely to commit suicide than **[****116]** women who do not. D. Studdert et al., Handgun Ownership and Suicide in California, 382 New England J. Med. 2220, 2224 (June 4, 2020).

Consider, too, interactions with police officers. The presence of a gun in the hands of a civilian poses a risk to both officers and civilians. *Amici* prosecutors and police chiefs tell us that most officers who are killed in the line of duty are killed by firearms; they explain that officers in States with high rates of gun ownership are three times as likely to be killed in the line of duty as officers in States with low rates of gun ownership. Brief for Prosecutors Against Gun Violence as *Amicus Curiae* 23-24; Brief for Former Major **[*89]** City Police Chiefs as *Amici Curiae* 13-14, and n. 21, (citing D. Swedler, M. Simmons, F. Dominici, & D. Hemenway, Firearm Prevalence and Homicides of Law Enforcement Officers in the United States, 105 Am. J. Pub. Health 2042, 2045 (2015)). They also say that States with the highest rates of gun ownership report four times as many fatal shootings of civilians by police officers compared to States with the lowest rates of gun ownership. Brief for Former Major City Police Chiefs as *Amici Curiae* 16 (citing D. Hemenway, D. Azrael, **[****117]** A. Connor, & M. Miller, Variation in Rates of Fatal Police Shootings Across US States: **[**2167]** The Role of Firearm Availability, 96 J. Urb. Health 63, 67 (2018)).

These are just some examples of the dangers that firearms pose. There is, of course, another side to the story. I am not simply saying that "guns are bad." See *ante*, at 8 (ALITO, J., concurring). Some Americans use guns for legitimate purposes, such as sport (*e.g.*, hunting or target shooting), certain types of employment (*e.g.*, as a private security guard), or self-defense. Cf. *ante*, at 4-6 (ALITO, J., concurring). Balancing these lawful uses against the dangers of firearms is primarily the responsibility of elected bodies, such as legislatures. It requires consideration of facts, statistics, expert opinions, predictive judgments, relevant values, and a host of other circumstances, which together make decisions about how, when, and where to **[***451]** regulate guns more appropriately legislative work. That consideration counsels modesty and restraint on the part of judges when they interpret and apply the Second Amendment.

Consider, for one thing, that different types of firearms may pose different risks and serve different purposes. The Court has previously **[****118]** observed that handguns, the type of firearm at issue here, "are the most popular weapon chosen by Americans for self-defense in the home." *District of Columbia* v. *Heller*, 554 U. S. 570, 629, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). But handguns are also the most popular weapon chosen by perpetrators of violent crimes. In 2018, 64.4% of firearm homicides and **[*90]** 91.8% of nonfatal firearm assaults were committed with a handgun. Dept. of Justice, Bureau of Justice Statistics, G. Kena & J. Truman, Trends and Patterns in Firearm Violence, 1993-2018, pp. 5-6 (Apr. 2022). Handguns are also the most commonly stolen type of firearm—63% of burglaries resulting in gun theft between 2005 and 2010 involved the theft of at least one handgun. Dept. of Justice, Bureau of Justice Statistics, L. Langton, Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010, p. 3 (Nov. 2012).

Or consider, for another thing, that the dangers and benefits posed by firearms may differ between urban and rural areas. See generally Brief for City of Chicago et al. as *Amici Curiae* (detailing particular concerns about gun violence in large cities). Firearm-related homicides and assaults are significantly more common in urban areas than rural ones. For example, from 1999 to 2016, 89.8% of the **[****119]** 213,175 firearm-related homicides in the United States occurred in "metropolitan" areas. M. Siegel et al., The Impact of State Firearm Laws on Homicide Rates in Suburban and Rural Areas Compared to Large Cities in the United States, 1991-2016, 36 J. Rural Health 255 (2020); see also Brief for Partnership for New York City as *Amicus Curiae* 10; Kaufman 237 (finding higher rates of fatal assault injuries from firearms in urban areas compared to rural areas); C. Branas, M. Nance, M. Elliott, T. Richmond, & C. Schwab, Urban-Rural Shifts in Intentional Firearm Death: Different Causes, Same Results, 94 Am. J. Pub. Health 1750, 1752 (2004) (finding higher rates of firearm homicide in urban counties compared to rural counties).

JUSTICE ALITO asks why I have begun my opinion by reviewing some of the dangers and challenges posed by gun violence and what relevance that has to today's case. *Ante*, at 2-4 (concurring opinion). All of the above considerations illustrate that the question of firearm regulation presents a complex problem—one that should be solved by legislatures **[*91]** rather than courts. What kinds of firearm regulations should a State adopt? Different States might choose to answer that question **[****120]** differently. They may face different **[**2168]** challenges because of their different geographic and demographic compositions. A State like New York, which must account for the roughly 8.5 million people living in the 303 square miles of New York City, might choose to adopt different (and stricter) firearms regulations than States like Montana or Wyoming, which do not contain any city remotely comparable in terms of population or density. See U. S. Census Bureau, Quick Facts: New York City (last updated July 1, **[***452]** 2021) (Quick Facts: New York City), https://www.census.gov/quickfacts/newyorkcitynewyork/; Brief for City of New York as *Amicus Curiae* 8, 22. For a variety of reasons, States may also be willing

to tolerate different degrees of risk and therefore choose to balance the competing benefits and dangers of firearms differently.

The question presented in this case concerns the extent to which the Second Amendment restricts different States (and the Federal Government) from working out solutions to these problems through democratic processes. The primary difference between the Court's view and mine is that I believe the Amendment allows States to take account of the serious problems posed by gun violence that **[****121]** I have just described. I fear that the Court's interpretation ignores these significant dangers and leaves States without the ability to address them.

II

A

New York State requires individuals to obtain a license in order to carry a concealed handgun in public. N. Y. Penal Law Ann. §400.00(2) (West Cum. Supp. 2022). I address the specifics of that licensing regime in greater detail in Part II-B below. Because, at this stage in the proceedings, the parties have not had an opportunity to develop the evidentiary **[*92]** record, I refer to facts and representations made in petitioners' complaint and in *amicus* briefs filed before us.

Under New York's regime, petitioners Brandon Koch and Robert Nash have obtained restricted licenses that permit them to carry a concealed handgun for certain purposes and at certain times and places. They wish to expand the scope of their licenses so that they can carry a concealed handgun without restriction.

Koch and Nash are residents of Rensselaer County, New York. Koch lives in Troy, a town of about 50,000, located eight miles from New York's capital city of Albany, which has a population of about 98,000. See App. 100; U. S. Census Bureau, Quick Facts: Troy City, New York (last updated July 1, 2021), **[****122]** https://www.census.gov/quickfacts/troycitynewyork; *id*., Albany City, New York, https://www.census.gov/quickfacts/albanycitynewyork. Nash lives in Averill Park, a small town 12.5 miles from Albany. App. 100.

Koch and Nash each applied for a license to carry a concealed handgun. Both were issued restricted licenses that allowed them to carry handguns only for purposes of hunting and target shooting. *Id*., at 104, 106. But they wanted "unrestricted" licenses that would allow them to carry concealed handguns "for personal protection and all lawful purposes." *Id*., at 112; see also *id*., at 40. They wrote to the licensing officer in Rensselaer County—Justice Richard McNally, a justice of the New York Supreme Court—requesting that the hunting and target shooting restrictions on their licenses be removed. *Id*., at 40, 111-113. After holding individual hearings for each petitioner, Justice McNally denied their requests. *Id*., at 31, 41, 105, 107, 114. He clarified that, in addition to hunting and target shooting, Koch and Nash could "carry concealed for **[**2169]** purposes of

off road back country, outdoor activities similar to hunting, for example fishing, hiking & camping." *Id*., at 41, 114. He also permitted **[****123]** Koch, who was **[***453]** employed by the New York Court System's Division of Technology, to "carry to and from work." *Id*., at 111, 114. **[*93]** But he reaffirmed that Nash was prohibited from carrying a concealed handgun in locations "typically open to and frequented by the general public." *Id*., at 41. Neither Koch nor Nash alleges that he appealed Justice McNally's decision. Brief for Respondents 13; see App. 122-126.

Instead, petitioners Koch and Nash, along with the New York State Rifle & Pistol Association, Inc., brought this lawsuit in federal court against Justice McNally and other State representatives responsible for enforcing New York's firearms laws. Petitioners claimed that the State's refusal to modify Koch's and Nash's licenses violated the Second Amendment. The District Court dismissed their complaint. It followed Second Circuit precedent holding that New York's licensing regime was constitutional. See *Kachalsky*, 701 F. 3d, at 101. The Court of Appeals for the Second Circuit affirmed. We granted certiorari to review the constitutionality of "New York's denial of petitioners' license applications." *Ante*, at 8 (majority opinion).

B

As the Court recognizes, New York's licensing regime traces its origins to 1911, when New York enacted the **[****124]** "Sullivan Law," which prohibited public carriage of handguns without a license. See 1911 N. Y. Laws ch. 195, §1, p. 443. Two years later in 1913, New York amended the law to establish substantive standards for the issuance of a license. See 1913 N. Y. Laws ch. 608, §1, pp. 1627-1629. Those standards have remained the foundation of New York's licensing regime ever since—a regime that the Court now, more than a century later, strikes down as unconstitutional.

As it did over 100 years ago, New York's law today continues to require individuals to obtain a license before carrying a concealed handgun in public. N. Y. Penal Law Ann. §400.00(2); *Kachalsky*, 701 F. 3d, at 85-86. Because the State does not allow the open carriage of handguns at all, a concealed-carry license is the only way to legally carry a **[*94]** handgun in public. *Id*., at 86. This licensing requirement applies only to handguns (*i.e.*, "pistols and revolvers") and short-barreled rifles and shotguns, not to all types of firearms. *Id*., at 85. For instance, the State does not require a license to carry a long gun (*i.e.*, a rifle or a shotgun over a certain length) in public. *Ibid.*; §265.00(3) (West 2022).

To obtain a concealed-carry license for a handgun, an applicant must satisfy certain eligibility criteria. Among other things, he must generally be at least 21 years old and of **[****125]** "good moral character." §400.00(1). And he cannot have been convicted of a felony, dishonorably discharged from the military, or involuntarily committed to a mental hygiene facility. *Ibid.* If these

and other eligibility criteria are satisfied, New York law provides that a concealed-carry license "shall be issued" to individuals working in certain professions, such as judges, corrections officers, or messengers of a "banking institution or express company." §400.00(2). Individuals who satisfy the eligibility criteria but do not work in one of these professions may still obtain a concealed-carry license, but they **[***454]** must additionally show that "proper cause exists for the issuance thereof." §400.00(2)(f).

The words "proper cause" may appear on their face to be broad, but there is "a substantial body of law instructing licensing officials on the application of this standard." **[**2170]** *Id*., at 86. New York courts have interpreted proper cause "to include carrying a handgun for target practice, hunting, or self-defense." *Ibid.* When an applicant seeks a license for target practice or hunting, he must show "'a sincere desire to participate in target shooting and hunting.'" *Ibid.* (quoting *In re O'Connor*, 154 Misc. 2d 694, 697, 585 N. Y. S. 2d 1000, 1003 (Westchester Cty. 1992)). When an applicant seeks a license for self-defense, he **[****126]** must show "'a special need for self-protection distinguishable from that of the general community.'" 701 F. 3d, at 86 (quoting *In re Klenosky*, 75 App. Div. 2d 793, 793, 428 N. Y. S. 2d 256, 257 (1980)). Whether an applicant meets these proper cause standards is determined **[*95]** in the first instance by a "licensing officer in the city or county . . . where the applicant resides." §400.00(3). In most counties, the licensing officer is a local judge. *Kachalsky*, 701 F. 3d, at 87, n. 6. For example, in Rensselaer County, the licensing officer who denied petitioners' requests to remove the restrictions on their licenses was a justice of the New York Supreme Court. App. 31. If the officer denies an application, the applicant can obtain judicial review under Article 78 of New York's Civil Practice Law and Rules. *Kachalsky*, 701 F. 3d, at 87. New York courts will then review whether the denial was arbitrary and capricious. *Ibid.*

In describing New York's law, the Court recites the above facts but adds its own gloss. It suggests that New York's licensing regime gives licensing officers too much discretion and provides too "limited" judicial review of their decisions, *ante*, at 4; that the proper cause standard is too "demanding," *ante*, at 3; and that these features make New York an outlier compared to the "vast majority of States," *ante*, at 4. But on what evidence does the Court base these characterizations? **[****127]** Recall that this case comes to us at the pleading stage. The parties have not had an opportunity to conduct discovery, and no evidentiary hearings have been held to develop the record. See App. 15-26. Thus, at this point, there is no record to support the Court's negative characterizations, as we know very little about how the law has actually been applied on the ground.

Consider each of the Court's criticisms in turn. First, the Court says that New York gives licensing officers too much discretion and "leaves applicants little recourse if their local licensing officer denies a permit." *Ante*, at 4. But there is nothing unusual about broad statutory language that can

be given more specific content by judicial interpretation. Nor is there anything unusual or inadequate about subjecting licensing officers' decisions to arbitrary-and-capricious review. Judges routinely apply that standard, for example, to determine **[*96]** whether an agency action is lawful under both New York law and the Administrative Procedure Act. See, *e.g.*, N. Y. Civ. Prac. Law Ann. §7803(3) (2021); 5 U. S. C. §706(2)(A). The arbitrary-and-capricious standard has thus been **[***455]** used to review important policies concerning health, safety, and immigration, to name just a few examples. **[****128]** See, *e.g.*, *Biden* v. *Missouri*, 595 U. S. ___, ___ (2022) (*per curiam*) (slip op., at 8); *Department of Homeland Security* v. *Regents of Univ. of Cal.*, 591 U. S. ___, ___, ___ (2020) (slip op., at 9, 17); *Department of Commerce* v. *New York*, 588 U. S. ___, ___ (2019) (slip op., at 16); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U. S. 29, 41, 46, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983).

Without an evidentiary record, there is no reason to assume that New York courts applying this standard fail to provide license applicants with meaningful review. **[**2171]** And there is no evidentiary record to support the Court's assumption here. Based on the pleadings alone, we cannot know how often New York courts find the denial of a concealed-carry license to be arbitrary and capricious or on what basis. We do not even know how a court would have reviewed the licensing officer's decisions in Koch's and Nash's cases because they do not appear to have sought judicial review at all. See Brief for Respondents 13; App. 122-126.

Second, the Court characterizes New York's proper cause standard as substantively "demanding." *Ante*, at 3. But, again, the Court has before it no evidentiary record to demonstrate how the standard has actually been applied. How "demanding" is the proper cause standard in practice? Does that answer differ from county to county? How many license applications are granted and denied each year? At the pleading stage, we do not know the answers to these and other important questions, so the **[****129]** Court's characterization of New York's law may very well be wrong.

In support of its assertion that the law is "demanding," the Court cites only to cases originating in New York City. *Ibid.* (citing *In re Martinek*, 294 App. Div. 2d 221, 743 N. Y. S. **[*97]** 2d 80 (2002) (New York County, *i.e.*, Manhattan); *In re Kaplan*, 249 App. Div. 2d 199, 673 N. Y. S. 2d 66 (1998) (same); *In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256 (same); *In re Bernstein*, 85 App. Div. 2d 574, 445 N. Y. S. 2d 716 (1981) (Bronx County)). But cases from New York City may not accurately represent how the proper cause standard is applied in other parts of the State, including in Rensselaer County where petitioners reside.

To the contrary, *amici* tell us that New York's licensing regime is purposefully flexible: It allows counties and cities to respond to the particular needs and challenges of each area. See Brief for American Bar Association as *Amicus Curiae* 12; Brief for City of New York as *Amicus Curiae* 20-29. *Amici* suggest that some areas may interpret words such as "proper cause" or "special need"

more or less strictly, depending upon each area's unique circumstances. See *ibid.* New York City, for example, reports that it "has applied the [proper cause] requirement relatively rigorously" because its densely populated urban areas pose a heightened risk of gun violence. Brief for City of New York as *Amicus Curiae* 20. In comparison, other (perhaps more rural) **[****130]** counties "have tailored the requirement to their own circumstances, often issuing concealed-carry licenses more freely than the City." *Ibid.*; see also *In re O'Connor*, 154 Misc. 2d, at 698, 585 **[***456]** N. Y. S. 2d, at 1004 ("The circumstances which exist in New York City are significantly different than those which exist in Oswego or Putnam Counties. . . . The licensing officers in each county are in the best position to determine whether any interest of the population of their county is furthered by the use of restrictions on pistol licenses"); Brief for Citizens Crime Commission of New York City as *Amicus Curiae* 18-19. Given the geographic variation across the State, it is too sweeping for the Court to suggest, without an evidentiary record, that the proper cause standard is "demanding" in Rensselaer County merely because it may be so in New York City.

[*98] Finally, the Court compares New York's licensing regime to that of other States. *Ante*, at 4-6. It says that New York's law is a "may issue" licensing regime, which the Court describes as a law that provides licensing officers greater discretion to grant or deny licenses than a "shall issue" licensing regime. *Ante*, at 4-5. Because the Court counts 43 "shall issue" jurisdictions and only 7 "may issue" jurisdictions, **[****131]** it suggests that New **[**2172]** York's law is an outlier. *Ibid.*; see also *ante*, at 1-2 (KAVANAUGH, J., concurring). Implicitly, the Court appears to ask, if so many other States have adopted the more generous "shall issue" approach, why can New York not be required to do the same?

But the Court's tabulation, and its implicit question, overlook important context. In drawing a line between "may issue" and "shall issue" licensing regimes, the Court ignores the degree of variation within and across these categories. Not all "may issue" regimes are necessarily alike, nor are all "shall issue" regimes. Conversely, not all "may issue" regimes are as different from the "shall issue" regimes as the Court assumes. For instance, the Court recognizes in a footnote that three States (Connecticut, Delaware, and Rhode Island) have statutes with discretionary criteria, like so-called "may issue" regimes do. *Ante*, at 5, n. 1. But the Court nonetheless counts them among the 43 "shall issue" jurisdictions because, it says, these three States' laws operate in practice more like "shall issue" regimes. *Ibid.*; see also Brief for American Bar Association as *Amicus Curiae* 10 (recognizing, conversely, that some "shall **[****132]** issue" States, *e.g.*, Alabama, Colorado, Georgia, Oregon, and Virginia, still grant some degree of discretion to licensing authorities).

As these three States demonstrate, the line between "may issue" and "shall issue" regimes is not as clear cut as the Court suggests, and that line depends at least in part on how statutory discretion is applied in practice. Here, because the Court strikes down New York's law without affording the State an opportunity to develop an evidentiary record, **[*99]** we do not know how much discretion

licensing officers in New York have in practice or how that discretion is exercised, let alone how the licensing regimes in the other six "may issue" jurisdictions operate.

Even accepting the Court's line between "may issue" and "shall issue" regimes and assuming that its tally (7 "may issue" and 43 "shall issue" jurisdictions) is correct, that count does not support the Court's implicit suggestion that the seven "may issue" **[***457]** jurisdictions are somehow outliers or anomalies. The Court's count captures only a snapshot in time. It forgets that "shall issue" licensing regimes are a relatively recent development. Until the 1980s, "may issue" regimes predominated. See *id*., at **[****133]** 9; R. Grossman & S. Lee, May Issue Versus Shall Issue: Explaining the Pattern of Concealed-Carry Handgun Laws, 1960-2001, 26 Contemp. Econ. Pol'y 198, 200 (2008) (Grossman). As of 1987, 16 States and the District of Columbia prohibited concealed carriage outright, 26 States had "may issue" licensing regimes, 7 States had "shall issue" regimes, and 1 State (Vermont) allowed concealed carriage without a permit. Congressional Research Service, Gun Control: Concealed Carry Legislation in the 115th Congress 1 (Jan. 30, 2018). Thus, it has only been in the last few decades that States have shifted toward "shall issue" licensing laws. Prior to that, most States operated "may issue" licensing regimes without legal or practical problem.

Moreover, even considering, as the Court does, only the present state of play, its tally provides an incomplete picture because it accounts for only the number of States with "may issue" regimes, not the number of people governed by those regimes. By the Court's count, the seven "may issue" jurisdictions are New York, California, Hawaii, Maryland, Massachusetts, New Jersey, and the District of Columbia. *Ante*, at 5-6. Together, these seven jurisdictions comprise **[****134]** about 84.4 million people and account for over a **[**2173]** quarter of the country's population. U. S. Census Bureau, 2020 Population and **[*100]** Housing State Data (Aug. 12, 2021) (2020 Population), https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html. Thus, "may issue" laws can hardly be described as a marginal or outdated regime.

And there are good reasons why these seven jurisdictions may have chosen not to follow other States in shifting toward "shall issue" regimes. The seven remaining "may issue" jurisdictions are among the most densely populated in the United States: the District of Columbia (with an average of 11,280.0 people/square mile in 2020), New Jersey (1,263.0), Massachusetts (901.2), Maryland (636.1), New York (428.7), California (253.7), and Hawaii (226.6). U. S. Census Bureau, Historical Population Density (1910-2020) (Apr. 26, 2001), https://www.census.gov/data/tables/time-series/dec/density-data-text.html. In comparison, the average population density of the United States as a whole is 93.8 people/square mile, and some States have population densities as low as 1.3 (Alaska), 5.9 (Wyoming), and 7.4 (Montana) people/square mile. *Ibid.* ***[****135]*** These numbers reflect in part the fact that these "may issue"

jurisdictions contain some of the country's densest and most populous urban areas, *e.g.*, New York City, Los Angeles, San Francisco, the District of Columbia, Honolulu, and Boston. U. S. Census Bureau, Urban Area Facts (Oct. 8, 2021), https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/ua-facts.html. New York City, for example, has a population of about 8.5 million people, making it more populous than 38 States, and it squeezes that population into just over 300 square miles. Quick Facts: **[***458]** New York City; 2020 Population; Brief for City of New York as *Amicus Curiae* 8, 22.

As I explained above, *supra*, at 8-9, densely populated urban areas face different kinds and degrees of dangers from gun violence than rural areas. It is thus easy to see why the seven "may issue" jurisdictions might choose to regulate firearm carriage more strictly than other States. See **[*101]** Grossman 199 ("We find strong evidence that more urban states are less likely to shift to 'shall issue' than rural states").

New York and its *amici* present substantial data justifying the State's decision to retain a "may issue" licensing regime. **[****136]** The data show that stricter gun regulations are associated with lower rates of firearm-related death and injury. See, *e.g.*, Brief for Citizens Crime Commission of New York City as *Amicus Curiae* 9-11; Brief for Former Major City Police Chiefs as *Amici Curiae* 9-12; Brief for Educational Fund 25-28; Brief for Social Scientists et al. as *Amici Curiae* 9-19. In particular, studies have shown that "may issue" licensing regimes, like New York's, are associated with lower homicide rates and lower violent crime rates than "shall issue" licensing regimes. For example, one study compared homicide rates across all 50 States during the 25-year period from 1991 to 2015 and found that "shall issue" laws were associated with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates. Siegel, 107 Am. J. Pub. Health, at 1924-1925, 1927. Another study longitudinally followed 33 States that had adopted "shall-issue" laws between 1981 and 2007 and found that the adoption of those laws was associated with a 13%-15% increase in rates of violent crime after 10 years. Donohue, 16 J. Empirical Legal Studies, at 200, 240. Numerous other studies show similar results. See, *e.g.*, Siegel, 36 J. Rural Health, at 261 (finding that "may issue" laws are associated with 17% lower firearm homicide rates **[****137]** in large cities); **[**2174]** C. Crifasi et al., Association Between Firearm Laws and Homicide in Urban Counties, 95 J. Urb. Health 383, 387 (2018) (finding that "shall issue" laws are associated with a 4% increase in firearm homicide rates in urban counties); M. Doucette, C. Crifasi, & S. Frattaroli, Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992-2017), 109 Am. J. Pub. Health 1747, 1751 (Dec. 2019) (finding that States with "shall issue" laws between 1992 and **[*102]** 2017 experienced 29% higher rates of firearm-related workplace homicides); Brief for Social Scientists et al. as *Amici Curiae* 15-16, and nn. 17-20 (citing "thirteen . . . empirical papers from just the last few years linking ["shall issue"] laws to higher violent crime").

JUSTICE ALITO points to competing empirical evidence that arrives at a different conclusion. *Ante*, at 3, n. 1 (concurring opinion). But these types of disagreements are exactly the sort that are better addressed by legislatures than courts. The Court today restricts the ability of legislatures to fulfill that role. It does so without knowing how New York's law is administered in practice, how much discretion licensing officers in New York possess, or whether the proper **[****138]** cause standard differs across counties. And it does so without giving the State an opportunity **[***459]** to develop the evidentiary record to answer those questions. Yet it strikes down New York's licensing regime as a violation of the Second Amendment.

III

A

How does the Court justify striking down New York's law without first considering how it actually works on the ground and what purposes it serves? The Court does so by purporting to rely nearly exclusively on history. It requires "the government [to] affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of 'the right to keep and bear arms.'" *Ante*, at 10. Beyond this historical inquiry, the Court refuses to employ what it calls "means-end scrutiny." *Ibid.* That is, it refuses to consider whether New York has a compelling interest in regulating the concealed carriage of handguns or whether New York's law is narrowly tailored to achieve that interest. Although I agree that history can often be a useful tool in determining the meaning and scope of constitutional **[*103]** provisions, I believe the Court's near-exclusive reliance on that single tool today goes much too far.

The Court concedes that no Court of Appeals **[****139]** has adopted its rigid history-only approach. See *ante*, at 8. To the contrary, every Court of Appeals to have addressed the question has agreed on a two-step framework for evaluating whether a firearm regulation is consistent with the Second Amendment. *Ibid.*; *ante*, at 10, n. 4 (majority opinion) (listing cases from the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, and D. C. Circuits). At the first step, the Courts of Appeals use text and history to determine "whether the regulated activity falls within the scope of the Second Amendment." *Ezell* v. *Chicago*, 846 F. 3d 888, 892 (CA7 2017). If it does, they go on to the second step and consider "'the strength of the government's justification for restricting or regulating'" the Second Amendment right. *Ibid.* In doing so, they apply a level of "means-ends" scrutiny "that is proportionate to the severity of the burden that the law imposes on the right": strict scrutiny if the burden is severe, and intermediate scrutiny if it is not. *National Rifle Assn. of Am., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F. 3d 185, 195, 198, 205 (CA5 2012).

[2175]** The Court today replaces the Courts of Appeals' consensus framework with its own history-only approach. That is unusual. We do not normally disrupt settled consensus among the

Courts of Appeals, especially not when that consensus approach has been applied without issue for **[****140]** over a decade. See Brief for Second Amendment Law Professors as *Amici Curiae* 4, 13-15; see also this Court's Rule 10. The Court attempts to justify its deviation from our normal practice by claiming that the Courts of Appeals' approach is inconsistent with *Heller*. See *ante*, at 10. In doing so, the Court implies that all 11 Courts of Appeals that have considered this question misread *Heller*.

[*104] To the contrary, it is this Court that misreads *Heller*. The opinion in *Heller* did focus primarily on "constitutional text and history," *ante*, at 13 **[***460]** (majority opinion), but it did *not* "rejec[t] . . . means-end scrutiny," as the Court claims, *ante*, at 15. Consider what the *Heller* Court actually said. True, the Court spent many pages in *Heller* discussing the text and historical context of the Second Amendment. 554 U. S., at 579-619, 128 S. Ct. 2783, 171 L. Ed. 2d 637. But that is not surprising because the *Heller* Court was asked to answer the preliminary question whether the Second Amendment right to "bear Arms" encompasses an individual right to possess a firearm in the home for self-defense. *Id*., at 577, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The *Heller* Court concluded that the Second Amendment's text and history were sufficiently clear to resolve that question: The Second Amendment, it said, does include such an individual right. *Id*., at 579-619, 128 S. Ct. 2783, 171 L. Ed. 2d 637. There was thus no need for the Court to go further—to look beyond text and history, or to suggest what analysis **[****141]** would be appropriate in other cases where the text and history are not clear.

But the *Heller* Court did not end its opinion with that preliminary question. After concluding that the Second Amendment protects an individual right to possess a firearm for self-defense, the *Heller* Court added that that right is "not unlimited." *Id*., at 626. It thus had to determine whether the District of Columbia's law, which banned handgun possession in the home, was a permissible regulation of the right. *Id*., at 628-630, 128 S. Ct. 2783, 171 L. Ed. 2d 637. In answering that second question, it said: "Under *any of the standards of scrutiny that we have applied to enumerated constitutional rights*, banning from the home 'the most preferred firearm in the nation to "keep" and use for protection of one's home and family' would fail constitutional muster." *Id*., at 628-629, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis added; footnote and citation omitted). That language makes clear that the *Heller* Court understood some form of means-end scrutiny to apply. It did not need to specify whether that scrutiny should be intermediate or strict because, in its **[*105]** view, the District's handgun ban was so "severe" that it would have failed either level of scrutiny. *Id*., at 628-629, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also *id*., at 628, n. 27, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (clarifying that rational-basis review was not the proper level of scrutiny).

Despite *Heller*'s express **[****142]** invocation of means-end scrutiny, the Court today claims that the majority in *Heller* rejected means-end scrutiny because it rejected my dissent in that case. But

that argument misreads both my dissent and the majority opinion. My dissent in *Heller* proposed directly weighing "the interests protected by the Second Amendment on one side and the governmental public-safety concerns on the other." *Id*., at 689, 128 S. Ct. 2783, 171 L. Ed. 2d 637. I would have asked "whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important **[**2176]** governmental interests." *Id.,* at 689-690, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The majority rejected my dissent, not because I proposed using means-end scrutiny, but because, in its view, I had done the opposite. In its own words, the majority faulted my dissent for proposing "a *freestanding* 'interest-balancing' approach" **[***461]** that accorded with "*none of the traditionally expressed levels* [of scrutiny] (strict scrutiny, intermediate scrutiny, rational basis)." *Id*., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis added).

The majority further made clear that its rejection of freestanding interest balancing did *not* extend to traditional forms of means-end scrutiny. It said: "We know of no other enumerated constitutional right **[****143]** whose core protection has been subjected to a freestanding 'interest-balancing' approach." *Ibid.* To illustrate this point, it cited as an example the First Amendment right to free speech. *Id*., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Judges, of course, regularly use means-end scrutiny, including both strict and intermediate scrutiny, when they interpret or apply the First Amendment. See, *e.g.*, *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000) (applying strict scrutiny); *Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180, 186, 189-190, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997) **[*106]** (applying intermediate scrutiny). The majority therefore cannot have intended its opinion, consistent with our First Amendment jurisprudence, to be read as rejecting all traditional forms of means-end scrutiny.

As *Heller*'s First Amendment example illustrates, the Court today is wrong when it says that its rejection of means-end scrutiny and near-exclusive focus on history "accords with how we protect other constitutional rights." *Ante*, at 15. As the Court points out, we do look to history in the First Amendment context to determine "whether the expressive conduct falls outside of the category of protected speech." *Ibid.* But, if conduct falls within a category of protected speech, we then use means-end scrutiny to determine whether a challenged regulation unconstitutionally burdens that speech. And the degree of scrutiny we apply often depends on the type of speech burdened and the severity **[****144]** of the burden. See, *e.g.*, *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U. S. 721, 734, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011) (applying strict scrutiny to laws that burden political speech); *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989) (applying intermediate scrutiny to time, place, and manner restrictions); *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 564-566, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980) (applying intermediate scrutiny to laws that

burden commercial speech).

Additionally, beyond the right to freedom of speech, we regularly use means-end scrutiny in cases involving other constitutional provisions. See, *e.g.*, *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 546, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993) (applying strict scrutiny under the First Amendment to laws that restrict free exercise of religion in a way that is not neutral and generally applicable); *Adarand Constructors v. Pena*, 515 U.S. 200, 227, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995) (applying strict scrutiny under the Equal Protection Clause to race-based classifications); *Clark* v. *Jeter*, 486 U. S. 456, 461, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988) (applying intermediate scrutiny under the Equal Protection Clause to **[*107]** sex-based classifications); see also *Virginia* v. *Moore*, 553 U. S. 164, 171, **[***462]** 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008) ("When history has not provided a conclusive answer, we have analyzed a search or seizure in light of traditional standards of reasonableness").

[2177]** The upshot is that applying means-end scrutiny to laws that regulate the Second Amendment right to bear arms would not create a constitutional anomaly. Rather, it is the Court's rejection of means-end scrutiny and adoption of a rigid history-only approach that is anomalous.

B

The Court's near-exclusive reliance on history is not only unnecessary, it is deeply impractical. It imposes **[****145]** a task on the lower courts that judges cannot easily accomplish. Judges understand well how to weigh a law's objectives (its "ends") against the methods used to achieve those objectives (its "means"). Judges are far less accustomed to resolving difficult historical questions. Courts are, after all, staffed by lawyers, not historians. Legal experts typically have little experience answering contested historical questions or applying those answers to resolve contemporary problems.

The Court's insistence that judges and lawyers rely nearly exclusively on history to interpret the Second Amendment thus raises a host of troubling questions. Consider, for example, the following. Do lower courts have the research resources necessary to conduct exhaustive historical analyses in every Second Amendment case? What historical regulations and decisions qualify as representative analogues to modern laws? How will judges determine which historians have the better view of close historical questions? Will the meaning of the Second Amendment change if or when new historical evidence becomes available? And, most importantly, will the Court's approach permit judges to reach the outcomes they prefer and then cloak those outcomes in the language of history? **[****146]** See S. Cornell, *Heller*, New Originalism, and Law Office History: "Meet the New Boss, Same as **[*108]** the Old Boss," 56 UCLA L. Rev. 1095, 1098 (2009) (describing "law office history" as "a results oriented methodology in which evidence is selectively gathered and interpreted to produce a preordained conclusion").

Consider *Heller* itself. That case, fraught with difficult historical questions, illustrates the practical problems with expecting courts to decide important constitutional questions based solely on history. The majority in *Heller* undertook 40 pages of textual and historical analysis and concluded that the Second Amendment's protection of the right to "keep and bear Arms" historically encompassed an "individual right to possess and carry weapons in case of confrontation"—that is, for self-defense. 554 U. S., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637; see also *id*., at 579-619, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Justice Stevens' dissent conducted an equally searching textual and historical inquiry and concluded, to the contrary, that the term "bear Arms" was an idiom that protected only the right "to use and possess arms in conjunction with service in a well-regulated militia." *Id*., at 651, 128 S. Ct. 2783, 171 L. Ed. 2d 637. I do not intend to relitigate *Heller* here. I accept its holding as a matter of *stare decisis*. I refer to its historical analysis only to show the difficulties inherent in answering **[***463]** **[****147]** historical questions and to suggest that judges do not have the expertise needed to answer those questions accurately.

For example, the *Heller* majority relied heavily on its interpretation of the English Bill of Rights. Citing Blackstone, the majority claimed that the English Bill of Rights protected a "'right of having and using arms for self-preservation and defence.'" *Id*., at 594, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quoting 1 Commentaries on the Laws of England 140 (1765)). The majority interpreted that language to mean a private right to bear arms for self-defense, "having nothing whatever to do with service in a militia." **[**2178]** 554 U. S., at 593, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Two years later, however, 21 English and early American historians (including experts at top universities) told us in *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), that the *Heller* Court had gotten the history wrong: The English Bill of Rights "did not . . . protect an individual's right to possess, **[*109]** own, or use arms for private purposes such as to defend a home against burglars." Brief for English/Early American Historians as *Amici Curiae* in *McDonald* v. *Chicago*, O. T. 2009, No. 08-1521, p. 2. Rather, these *amici* historians explained, the English right to "have arms" ensured that the Crown could not deny Parliament (which represented the people) the power to arm the landed gentry and raise a militia—or **[****148]** the right of the people to possess arms to take part in that militia—"should the sovereign usurp the laws, liberties, estates, and Protestant religion of the nation." *Id*., at 2-3. Thus, the English right did protect a right of "self-preservation and defence," as Blackstone said, but that right "was to be exercised not by individuals acting privately or independently, but as a militia organized by their elected representatives," *i.e.*, Parliament. *Id*., at 7-8. The Court, not an expert in history, had misread Blackstone and other sources explaining the English Bill of Rights.

And that was not the *Heller* Court's only questionable judgment. The majority rejected Justice Stevens' argument that the Second Amendment's use of the words "bear Arms" drew on an idiomatic meaning that, at the time of the founding, commonly referred to military service. 554 U.

S., at 586, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Linguistics experts now tell us that the majority was wrong to do so. See, *e.g.*, Brief for Corpus Linguistics Professors and Experts as *Amici Curiae* (Brief for Linguistics Professors); Brief for Neal Goldfarb as *Amicus Curiae*; Brief for Americans Against Gun Violence as *Amicus Curiae* 13-15. Since *Heller* was decided, experts have searched over 120,000 founding-era texts from between 1760 and 1799, as **[****149]** well as 40,000 texts from sources dating as far back as 1475, for historical uses of the phrase "bear arms," and they concluded that the phrase was overwhelmingly used to refer to "'war, soldiering, or other forms of armed action by a group rather than an individual.'" Brief for Linguistics Professors 11, 14; see also D. Baron, Corpus Evidence Illuminates the Meaning of Bear Arms, 46 Hastings Const. L. Q. 509, 510 **[*110]** (2019) (" Non-military uses of *bear arms* in reference to hunting or personal self-defense are not just rare, they are almost nonexistent"); *id*., at 510-511 (reporting 900 instances in which "bear arms" was used to refer to military **[***464]** or collective use of firearms and only 7 instances that were either ambiguous or without a military connotation).

These are just two examples. Other scholars have continued to write books and articles arguing that the Court's decision in *Heller* misread the text and history of the Second Amendment. See generally, *e.g.*, M. Waldman, The Second Amendment (2014); S. Cornell, The Changing Meaning of the Right To Keep and Bear Arms: 1688-1788, in Guns in Law 20-27 (A. Sarat, L. Douglas, & M. Umphrey eds. 2019); P. Finkelman, The Living Constitution and the Second Amendment: Poor History, False Originalism, and a Very Confused Court, 37 Cardozo L. Rev. 623 (2015); D. Walker, **[****150]** Necessary to the Security of Free States: The Second Amendment as the Auxiliary Right of Federalism, 56 Am. J. Legal Hist. 365 (2016); W. Merkel, *Heller* as Hubris, and How *McDonald* v. *City of Chicago* May Well Change the Constitutional World as We Know It, 50 Santa Clara L. Rev. 1221 (2010).

[2179]** I repeat that I do not cite these arguments in order to relitigate *Heller*. I wish only to illustrate the difficulties that may befall lawyers and judges when they attempt to rely *solely* on history to interpret the Constitution. In *Heller*, we attempted to determine the scope of the Second Amendment right to bear arms by conducting a historical analysis, and some of us arrived at very different conclusions based on the same historical sources. Many experts now tell us that the Court got it wrong in a number of ways. That is understandable given the difficulty of the inquiry that the Court attempted to undertake. The Court's past experience with historical analysis should serve as a warning against relying exclusively, or nearly exclusively, on this mode of analysis in the future.

[*111] Failing to heed that warning, the Court today does just that. Its near-exclusive reliance on history will pose a number of practical problems. First, the difficulties attendant to extensive historical analysis will be especially acute in the lower **[****151]** courts. The Court's historical analysis in this case is over 30 pages long and reviews numerous original sources from over 600

years of English and American history. *Ante*, at 30-62. Lower courts—especially district courts—typically have fewer research resources, less assistance from *amici* historians, and higher caseloads than we do. They are therefore ill equipped to conduct the type of searching historical surveys that the Court's approach requires. Tellingly, even the Courts of Appeals that have addressed the question presented here (namely, the constitutionality of public carriage restrictions like New York's) "have, in large part, avoided extensive historical analysis." *Young* v. *Hawaii*, 992 F. 3d 765, 784-785 (CA9 2021) (collecting cases). In contrast, lawyers and courts are well equipped to administer means-end scrutiny, which is regularly applied in a variety of constitutional contexts, see *supra*, at 24-25.

Second, the Court's opinion today compounds these problems, for it gives the lower courts precious little guidance regarding how to resolve modern constitutional questions based almost solely on history. See, *e.g.*, *ante*, at 1 (BARRETT, J., concurring) ("highlight[ing] two methodological points that the Court does not resolve"). **[****152]** The **[***465]** Court declines to "provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment." *Ante*, at 20. Other than noting that its history-only analysis is "neither a . . . straightjacket nor a . . . blank check," the Court offers little explanation of how stringently its test should be applied. *Ante*, at 21. Ironically, the only two "relevan[t]" metrics that the Court does identify are "how and why" a gun control regulation "burden[s the] right to armed self-defense." *Ante*, at 20. In other words, the Court believes that the most relevant metrics **[*112]** of comparison are a regulation's means (how) and ends (why)—even as it rejects the utility of means-end scrutiny.

What the Court offers instead is a laundry list of reasons to discount seemingly relevant historical evidence. The Court believes that some historical laws and decisions cannot justify upholding modern regulations because, it says, they were outliers. It explains that just two court decisions or three colonial laws are not enough to satisfy its test. *Ante*, at 37, 57. But the Court does not say how many cases or laws would suffice "to show a tradition of public-carry regulation." *Ante*, at 37. Other **[****153]** laws are irrelevant, the Court claims, because they are too dissimilar from New York's concealed-carry licensing regime. See, *e.g.*, *ante*, at 48-49. But the Court does not say what "representative historical analogue," **[**2180]** short of a "twin" or a "dead ringer," would suffice. See *ante*, at 21 (emphasis deleted). Indeed, the Court offers many and varied reasons to reject potential representative analogues, but very few reasons to accept them. At best, the numerous justifications that the Court finds for rejecting historical evidence give judges ample tools to pick their friends out of history's crowd. At worst, they create a one-way ratchet that will disqualify virtually any "representative historical analogue" and make it nearly impossible to sustain common-sense regulations necessary to our Nation's safety and security.

Third, even under ideal conditions, historical evidence will often fail to provide clear answers to difficult questions. As an initial matter, many aspects of the history of firearms and their regulation

are ambiguous, contradictory, or disputed. Unsurprisingly, the extent to which colonial statutes enacted over 200 years ago were actually enforced, the basis for an acquittal **[****154]** in a 17th-century decision, and the interpretation of English laws from the Middle Ages (to name just a few examples) are often less than clear. And even historical experts may reach conflicting conclusions based on the same sources. Compare, *e.g.*, P. Charles, The Faces of the Second **[*113]** Amendment Outside the Home: History Versus Ahistorical Standards of Review, 60 Clev. St. L. Rev. 1, 14 (2012), with J. Malcolm, To Keep and Bear Arms: The Origins of an Anglo-American Right 104 (1994). As a result, history, as much as any other interpretive method, leaves ample discretion to "loo[k] over the heads of the [crowd] for one's friends." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 377 (2012).

Fourth, I fear that history will be an especially inadequate tool when it **[***466]** comes to modern cases presenting modern problems. Consider the Court's apparent preference for founding-era regulation. See *ante*, at 25-28. Our country confronted profoundly different problems during that time period than it does today. Society at the founding was "predominantly rural." C. McKirdy, Misreading the Past: The Faulty Historical Basis Behind the Supreme Court's Decision in District of Columbia v. Heller, 45 Capital U. L. Rev. 107, 151 (2017). In 1790, most of America's **[****155]** relatively small population of just four million people lived on farms or in small towns. *Ibid.* Even New York City, the largest American city then, as it is now, had a population of just 33,000 people. *Ibid.* Small founding-era towns are unlikely to have faced the same degrees and types of risks from gun violence as major metropolitan areas do today, so the types of regulations they adopted are unlikely to address modern needs. *Id*., at 152 ("For the most part, a population living on farms and in very small towns did not create conditions in which firearms created a significant danger to the public welfare"); see also *supra*, at 8-9.

This problem is all the more acute when it comes to "modern-day circumstances that [the Framers] could not have anticipated." *Heller*, 554 U. S., at 721-722, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (BREYER, J., dissenting). How can we expect laws and cases that are over a century old to dictate the legality of regulations targeting "ghost guns" constructed with the aid of a three-dimensional printer? See, *e.g.*, White House Briefing **[*114]** Room, FACT SHEET: The Biden Administration Cracks Down on Ghost Guns, Ensures That ATF Has the Leadership It Needs To Enforce Our Gun Laws (Apr. 11, 2022), https://whitehouse.gov/briefing-room/statements-releases/2022/ **[****156]** 04/11 /fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/. Or modern laws requiring all gun shops to offer smart guns, which can only **[**2181]** be fired by authorized users? See, *e.g.*, N. J. Stat. Ann. §2C:58-2.10(a) (West Cum. Supp. 2022). Or laws imposing additional criminal penalties for the use of bullets capable of piercing body armor? See, *e.g.*, 18 U. S. C. §§921(a)(17)(B), 929(a).

The Court's answer is that judges will simply have to employ "analogical reasoning." *Ante*, at 19-20. But, as I explained above, the Court does not provide clear guidance on how to apply such reasoning. Even seemingly straightforward historical restrictions on firearm use may prove surprisingly difficult to apply to modern circumstances. The Court affirms *Heller*'s recognition that States may forbid public carriage in "sensitive places." *Ante*, at 21-22. But what, in 21st-century New York City, may properly be considered a sensitive place? Presumably "legislative assemblies, polling places, and courthouses," which the Court tells us were among the "relatively few" places "where weapons were altogether prohibited" in the 18th and 19th centuries. *Ante*, at 21. On the other hand, the Court also tells us that **[****157]** "expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines th[at] category . . . far too **[***467]** broadly." *Ante*, at 22. So where does that leave the many locations in a modern city with no obvious 18th- or 19th-century analogue? What about subways, nightclubs, movie theaters, and sports stadiums? The Court does not say.

Although I hope—fervently—that future courts will be able to identify historical analogues supporting the validity of regulations that address new technologies, I fear that it will often prove difficult to identify analogous technological **[*115]** and social problems from Medieval England, the founding era, or the time period in which the Fourteenth Amendment was ratified. Laws addressing repeating crossbows, launcegays, dirks, dagges, skeines, stilladers, and other ancient weapons will be of little help to courts confronting modern problems. And as technological progress pushes our society ever further beyond the bounds of the Framers' imaginations, attempts at "analogical reasoning" will become increasingly tortured. In short, a standard that relies solely on history is unjustifiable and unworkable.

IV

Indeed, the Court's **[****158]** application of its history-only test in this case demonstrates the very pitfalls described above. The historical evidence reveals a 700-year Anglo-American tradition of regulating the public carriage of firearms in general, and concealed or concealable firearms in particular. The Court spends more than half of its opinion trying to discredit this tradition. But, in my view, the robust evidence of such a tradition cannot be so easily explained away. Laws regulating the public carriage of weapons existed in England as early as the 13th century and on this Continent since before the founding. Similar laws remained on the books through the ratifications of the Second and Fourteenth Amendments through to the present day. Many of those historical regulations imposed significantly stricter restrictions on public carriage than New York's licensing requirements do today. Thus, even applying the Court's history-only analysis, New York's law must be upheld because "historical precedent from before, during, and . . . after the founding evinces a comparable tradition of regulation." *Ante*, at 18 (majority opinion) (internal quotation marks omitted).

A. England.

The right codified by the Second Amendment was "'inherited from our English ancestors.'" **[****159]** *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quoting *Robertson* v. *Baldwin*, **[**2182]** 165 U. S. 275, 281, 17 S. Ct. 326, 41 L. Ed. 715 (1897)); see **[*116]** also *ante*, at 30 (majority opinion). And some of England's earliest laws regulating the public carriage of weapons were precursors of similar American laws enacted roughly contemporaneously with the ratification of the Second Amendment. See *infra*, at 40-42. I therefore begin, as the Court does, *ante*, at 30-31, with the English ancestors of New York's laws regulating public carriage of firearms.

The relevant English history begins in the late-13th and early-14th centuries, when Edward I and Edward II issued a series of orders to local sheriffs that prohibited any person from "going armed." See 4 Calendar of the Close Rolls, Edward I, 1296-1302, p. 318 (Sept. 15, 1299) (1906); *id*., at 588 (July 16, 1302); 5 *id*., Edward I, 1302-1307, at 210 (June 10, 1304) (1908); *id*., Edward II, 1307-1313, at 52 (Feb. 9, 1308) (1892); *id*., at 257 (Apr. 9, 1310); *id*., at 553 (Oct. 12, 1312); *id*., Edward II, 1323-1327, at 560 (Apr. 28, 1326) (1898); 1 Calendar of Plea and Memoranda Rolls of the City of London, 1323-1364, p. 15 (Nov. 1326) (A. Thomas ed. 1926). Violators were subject to punishment, including "forfeiture of life and limb." See, *e.g.*, 4 Calendar of the **[***468]** Close Rolls, Edward I, 1296-1302, at **[****160]** 318 (Sept. 15, 1299) (1906). Many of these royal edicts contained exemptions for persons who had obtained "the king's special licence." See *ibid.*; 5 *id*., Edward I, 1302-1307, at 210 (June 10, 1304); *id*., Edward II, 1307-1313, at 553 (Oct. 12, 1312); *id*., Edward II, 1323-1327, at 560 (Apr. 28, 1326). Like New York's law, these early edicts prohibited public carriage absent special governmental permission and enforced that prohibition on pain of punishment.

The Court seems to suggest that these early regulations are irrelevant because they were enacted during a time of "turmoil" when "malefactors . . . harried the country, committing assaults and murders." *Ante*, at 31 (internal quotation marks omitted). But it would seem to me that what the Court characterizes as a "right of armed self-defense" would be more, rather than less, necessary during a time of **[*117]** "turmoil." *Ante*, at 20. The Court also suggests that laws that were enacted before firearms arrived in England, like these early edicts and the subsequent Statute of Northampton, are irrelevant. *Ante*, at 32. But why should that be? Pregun regulations prohibiting "going armed" in public illustrate an entrenched tradition of restricting **[****161]** public carriage of weapons. That tradition seems as likely to apply to firearms as to any other lethal weapons—particularly if we follow the Court's instruction to use analogical reasoning. See *ante*, at 19-20. And indeed, as we shall shortly see, the most significant prefirearm regulation of public carriage—the Statute of Northampton—was in fact applied to guns once they appeared in England. See *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep. 75, 76 (K. B. 1686)

The Statute of Northampton was enacted in 1328. 2 Edw. 3, 258, c. 3. By its terms, the statute made it a criminal offense to carry arms without the King's authorization. It provided that, without such authorization, "no Man great nor small, of what Condition soever he be," could "go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure." *Ibid.* For more than a century following its enactment, England's sheriffs were routinely reminded to strictly enforce the Statute of Northampton against those going armed without the King's permission. See Calendar of the Close Rolls, Edward III, 1330-1333, at 131 (Apr. 3, 1330) (1898); **[****162]** 1 Calendar **[**2183]** of the Close Rolls, Richard II, 1377-1381, at 34 (Dec. 1, 1377) (1914); 2 *id*., Richard II, 1381-1385, at 3 (Aug. 7, 1381) (1920); 3 *id*., Richard II, 1385-1389, at 128 (Feb. 6, 1386) (1921); *id*, at 399-400 (May 16, 1388); 4 *id*., Henry VI, 1441-1447, **[***469]** at 224 (May 12, 1444) (1937); see also 11 Tudor Royal Proclamations, The Later Tudors: 1553-1587, pp. 442-445 (Proclamation 641, 21 Elizabeth I, July 26, 1579) (P. Hughes & J. Larkin eds. 1969).

[*118] The Court thinks that the Statute of Northampton "has little bearing on the Second Amendment," in part because it was "enacted . . . more than 450 years before the ratification of the Constitution." *Ante*, at 32. The statute, however, remained in force for hundreds of years, well into the 18th century. See 4 W. Blackstone, Commentaries 148-149 (1769) ("The offence of *riding* or *going armed*, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; *and is particularly prohibited by the Statute of Northampton*" (first emphasis in original, second emphasis added)). It was discussed in the writings of Blackstone, Coke, and others. See *ibid.*; W. Hawkins, 1 Pleas of the Crown 135 (1716) (Hawkins); E. Coke, **[****163]** The Third Part of the Institutes of the Laws of England 160 (1797). And several American Colonies and States enacted restrictions modeled on the statute. See *infra*, at 40-42. There is thus every reason to believe that the Framers of the Second Amendment would have considered the Statute of Northampton a significant chapter in the Anglo-American tradition of firearms regulation.

The Court also believes that, by the end of the 17th century, the Statute of Northampton was understood to contain an extratextual intent element: the intent to cause terror in others. *Ante*, at 34-38, 41. The Court relies on two sources that arguably suggest that view: a 1686 decision, *Sir John Knight's Case*, and a 1716 treatise written by Serjeant William Hawkins. *Ante*, at 34-37. But other sources suggest that carrying arms in public was prohibited *because* it naturally tended to terrify the people. See, *e.g.*, M. Dalton, The Country Justice 282-283 (1690) ("[T]o wear Armor, or Weapons not usually worn, . . . seems also be a breach, or means of breach of the Peace . . . ; *for* they strike a fear and terror in the People" (emphasis added)). According to these sources, terror was the natural consequence—not an additional element—of the crime.

[*119] I find this **[****164]** view more persuasive in large part because it is not entirely clear that the two sources the Court relies on actually support the existence of an intent-to-terrify requirement. Start with *Sir John Knight's Case*, which, according to the Court, considered Knight's arrest for walking "'about the streets'" and into a church "'armed with guns.'" *Ante*, at 34 (quoting *Sir John Knight's Case*, 3 Mod. 117, 87 Eng. Rep., at 76). The Court thinks that Knight's acquittal by a jury demonstrates that the Statute of Northampton only prohibited public carriage of firearms with an intent to terrify. *Ante*, at 34-35. But by now the legal significance of Knight's acquittal is impossible to reconstruct. Brief for Patrick J. Charles as *Amicus Curiae* 23, n. 9. The primary source describing the case (the English Reports) was notoriously incomplete at the time *Sir John Knight's Case* was decided. *Id*., at 24-25. And the facts that historians can reconstruct do not uniformly support **[***470]** the Court's interpretation. The King's Bench required Knight to pay a surety to guarantee his future good behavior, so it may be more accurate to think of the case as having ended in "a conditional pardon" than acquittal. *Young*, 992 F. 3d, at 791; see also *Rex* v. *Sir John Knight*, 1 Comb. 40, 90 Eng. Rep. 331 (K. **[**2184]** B. 1686). And, notably, it appears that Knight based his defense on his loyalty to the Crown, not a lack **[****165]** of intent to terrify. 3 The Entring Book of Roger Morrice 1677-1691: The Reign of James II, 1685-1687, pp. 307-308 (T. Harris ed. 2007).

Similarly, the passage from the Hawkins treatise on which the Court relies states that the Statute of Northampton's prohibition on the public carriage of weapons did not apply to the "wearing of Arms . . . unless it be accompanied with such Circumstances as are apt to terrify the People." Hawkins 136. But Hawkins goes on to enumerate relatively narrow circumstances where this exception applied: when "Persons of Quality . . . wea[r] common Weapons, or hav[e] **[*120]** their usual Number of Attendants with them, for their Ornament or Defence, in such Places, and upon such Occasions, in which it is the common Fashion to make use of them," or to persons merely wearing "privy Coats of Mail." *Ibid.* It would make little sense if a narrow exception for nobility, see Oxford English Dictionary (3d ed., Dec. 2012), https://www.oed.com/view/Entry/155878 (defining "quality," A.I.5.a), and "privy coats of mail" were allowed to swallow the broad rule that Hawkins (and other commentators of his time) described elsewhere. That rule provided that "there may be an Affray where **[****166]** there is no actual Violence; as where a Man arms himself with dangerous and unusual Weapons, in such a Manner as will naturally cause a Terror to the People, which is . . . strictly prohibited by [the Statute of Northampton]." Hawkins 135. And it provided no exception for those who attempted to "excuse the wearing such Armour in Publick, by alleging that . . . he wears it for the Safety of his Person from . . . Assault." *Id*., at 136. In my view, that rule announces the better reading of the Statute of Northampton—as a broad prohibition on the public carriage of firearms and other weapons, without an intent-to-terrify requirement or exception for self-defense.

Although the Statute of Northampton is particularly significant because of its breadth, longevity, and impact on American law, it was far from the only English restriction on firearms or their carriage. See, *e.g.*, 6 Hen. 8 c. 13, §1 (1514) (restricting the use and ownership of handguns); 25 Hen. 8 c. 17, §1 (1533) (same); 33 Hen. 8 c. 6, §§1-2 (1541) (same); 25 Edw. 3, st. 5, c. 2 (1350) (making it a "Felony or Trespass" to "ride armed covertly or secretly with Men of Arms against any other, to slay him, or rob him, or take him, or retain him till he hath made Fine or Ransom for to have **[****167]** his Deliverance") (brackets and footnote omitted). Whatever right to bear arms we inherited from our English forebears, it was qualified by a robust tradition of public carriage regulations.

[*121] As I have made clear, I am not a historian. But if the foregoing facts, which historians and other scholars have presented to us, are even roughly correct, it is difficult to see how the Court can believe that English **[***471]** history fails to support legal restrictions on the public carriage of firearms.

B. The Colonies.

The American Colonies continued the English tradition of regulating public carriage on this side of the Atlantic. In 1686, the colony of East New Jersey passed a law providing that "no person or persons . . . shall presume privately to wear any pocket pistol, skeines, stilladers, daggers or dirks, or other unusual or unlawful weapons within this Province." An Act Against Wearing Swords, &c., ch. 9, in Grants, Concessions, and Original Constitutions of the Province of New Jersey 290 (2d ed. 1881). East New Jersey also specifically prohibited "planter[s]" from "rid[ing] **[**2185]** or go[ing] armed with sword, pistol, or dagger." *Ibid.* Massachusetts Bay and New Hampshire followed suit in 1692 and 1771, **[****168]** respectively, enacting laws that, like the Statute of Northampton, provided that those who went "armed Offensively" could be punished. An Act for the Punishing Criminal Offenders, 1692 Mass. Acts and Laws no. 6, pp. 11-12; An Act for the Punishing of Criminal Offenders, 1771 N. H. Acts and Laws ch. 11, §5, p. 17.

It is true, as the Court points out, that these laws were only enacted in three colonies. *Ante*, at 37. But that does not mean that they may be dismissed as outliers. They were successors to several centuries of comparable laws in England, see *supra*, at 34-40, and predecessors to numerous similar (in some cases, materially identical) laws enacted by the States after the founding, see *infra*, at 41-42. And while it may be true that these laws applied only to "dangerous and unusual weapons," see *ante*, at 38 (majority opinion), that category almost certainly included guns, see Charles, 60 Clev. St. L. Rev., at 34, n. 181 (listing 18th century sources **[*122]** defining "'offensive weapons'" to include "'Fire Arms'" and "'Guns'"); *State* v. *Huntly*, 25 N. C. 418, 422 (1843) (*per curiam*) ("A gun is an 'unusual weapon,' wherewith to be armed and clad"). Finally, the Court points out that New Jersey's ban on public carriage applied only to certain people or to

the concealed **[****169]** carriage of certain smaller firearms. *Ante*, at 39-40. But the Court's refusal to credit the relevance of East New Jersey's law on this basis raises a serious question about what, short of a "twin" or a "dead ringer," qualifies as a relevant historical analogue. See *ante*, at 21 (majority opinion) (emphasis deleted).

C. The Founding Era.

The tradition of regulations restricting public carriage of firearms, inherited from England and adopted by the Colonies, continued into the founding era. Virginia, for example, enacted a law in 1786 that, like the Statute of Northampton, prohibited any person from "go[ing] nor rid[ing] armed by night nor by day, in fairs or markets, or in other places, in terror of the Country." 1786 Va. Acts, ch. 21. And, as the Court acknowledges, "public-carry restrictions proliferate[d]" after the Second Amendment's ratification five years later in 1791. *Ante*, at 42. Just a year after that, North Carolina enacted a law whose language was lifted from the Statute of Northampton **[***472]** virtually verbatim (vestigial references to the King included). Collection of Statutes, pp. 60-61, ch. 3 (F. Martin ed. 1792). Other States passed similar laws in the late-18th and 19th centuries. See, *e.g.*, 1795 Mass. Acts and Laws ch. 2, p. 436 **[****170]** ; 1801 Tenn. Acts pp. 260-261; 1821 Me. Laws p. 285; see also Charles, 60 Clev. St. L. Rev., at 40, n. 213 (collecting sources).

The Court discounts these laws primarily because they were modeled on the Statute of Northampton, which it believes prohibited only public carriage with the intent to terrify. *Ante*, at 41. I have previously explained why I believe that preventing public terror was one *reason* that the **[*123]** Statute of Northampton prohibited public carriage, but not an *element* of the crime. See *supra*, at 37-39. And, consistent with that understanding, American regulations modeled on the Statute of Northampton appear to have been understood to set forth a broad prohibition on public carriage of firearms without any intent-to-terrify requirement. See Charles, 60 Clev. St. L. Rev., at 35, 37-41; J. Haywood, A Manual of the Laws of North-Carolina, pt. 2, p. 40 (3d ed.1814); J. Ewing, The Office and Duty of a Justice of the Peace 546 (1805).

The Court cites three cases considering common-law offenses, *ante*, at 42-44, **[**2186]** but those cases do not support the view that only public carriage in a manner likely to terrify violated American successors to the Statute of Northampton. If anything, they suggest that public carriage of firearms was not common practice. At least one of **[****171]** the cases the Court cites, *State* v. *Huntly*, wrote that the Statute of Northampton codified a pre-existing common-law offense, which provided that "riding or going armed with dangerous or unusual weapons, is a crime against the public peace, *by* terrifying the good people of the land." 25 N. C., at 420-421 (quoting 4 Blackstone, Commentaries, at 149; emphasis added). *Huntly* added that "[a] gun is an 'unusual weapon'" and that "[n]o man amongst us carries it about with him, as one of his every-day

accoutrements—as a part of his dress—and never, we trust, will the day come when any deadly weapon will be worn or wielded in our peace-loving and law-abiding State, as an appendage of manly equipment." 25 N. C., at 422. True, *Huntly* recognized that citizens were nonetheless "at perfect liberty" to carry for "lawful purpose[s]"—but it specified that those purposes were "business or amusement." *Id*., at 422-423. New York's law similarly recognizes that hunting, target shooting, and certain professional activities are proper causes justifying lawful carriage of a firearm. See *supra*, at 12-13. The other two cases the Court cites for this point similarly offer it only limited support—either **[*124]** because the atextual intent element the Court advocates was irrelevant to **[****172]** the decision's result, see *O'Neill* v. *State*, 16 Ala. 65 (1849), or because the decision adopted an outlier position not reflected in the other cases cited by the Court, see *Simpson* v. *State*, 13 Tenn. 356, 360 (1833); see also *ante*, at 42-43, 57 (majority opinion) (refusing to give "a pair of state-court decisions" "disproportionate weight"). The founding-era regulations—like the colonial and English laws on which they were modeled—thus **[***473]** demonstrate a longstanding tradition of broad restrictions on public carriage of firearms.

D. The 19th Century.

Beginning in the 19th century, States began to innovate on the Statute of Northampton in at least two ways. First, many States and Territories passed bans on concealed carriage or on any carriage, concealed or otherwise, of certain concealable weapons. For example, Georgia made it unlawful to carry, "unless in an open manner and fully exposed to view, any pistol, (except horseman's pistols,) dirk, sword in a cane, spear, bowie-knife, or any other kind of knives, manufactured and sold for the purpose of offence and defence." Ga. Code §4413 (1861). Other States and Territories enacted similar prohibitions. See, *e.g.*, Ala. Code §3274 (1852) (banning, with limited exceptions, concealed carriage of "a pistol, or any other description of fire arms"); see **[****173]** also *ante*, at 44, n. 16 (majority opinion) (collecting sources). And the Territory of New Mexico appears to have banned all carriage whatsoever of "any class of pistols whatever," as well as "bowie kni[ves,] . . . Arkansas toothpick[s], Spanish dagger[s], slung-shot[s], or any other deadly weapon." 1860 Terr. of N. M. Laws §§1-2, p. 94. These 19th-century bans on concealed carriage were stricter than New York's law, for they prohibited concealed carriage with at most limited exceptions, while New York permits concealed carriage with a lawfully obtained license. See *supra*, at 12. Moreover, as *Heller* recognized, and the Court acknowledges, "the majority **[*125]** of the 19th-century courts to consider the question held that [these types of] prohibitions on carrying concealed weapons *were lawful* under the Second Amendment or state analogues." 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis added); see also *ante*, at 44.

[2187]** The Court discounts this history because, it says, courts in four Southern States suggested or held that a ban on concealed carriage was only lawful if open carriage or carriage of

military pistols was allowed. *Ante*, at 44-46. (The Court also cites *Bliss* v. *Commonwealth*, 12 Ky. 90 (1822), which invalidated Kentucky's concealed-carry prohibition as contrary to that State's Second Amendment analogue. *Id*., at 90-93. *Bliss* was later overturned **[****174]** by constitutional amendment and was, as the Court appears to concede, an outlier. See *Peruta* v. *County of San Diego*, 824 F. 3d 919, 935-936 (CA9 2016); *ante*, at 45.) Several of these decisions, however, emphasized States' leeway to regulate firearms carriage as necessary "to protect the orderly and well disposed citizens from the treacherous use of weapons not even designed for any purpose of public defence." *State* v. *Smith*, 11 La. Ann. 633 (1856); see also *Andrews* v. *State*, 50 Tenn. 165, 179-180 (1871) (stating that "the right to *keep*" rifles, shotguns, muskets, and repeaters could not be "*infringed* or *forbidden*," but "[t]heir *use* [may] be subordinated to such regulations and limitations as are or may be authorized by the law of the land, passed to subserve the general good, so as not to infringe the right secured and the necessary incidents to the exercise of such right"); *State* v. *Reid*, 1 Ala. 612, 616 (1840) (recognizing that the constitutional **[***474]** right to bear arms "necessarily . . . leave[s] with the Legislature the authority to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals"). And other courts upheld concealed-carry restrictions without any reference to an exception allowing open carriage, so it is far from clear that the cases the Court cites represent a consensus view. See *State* v. *Mitchell*, 3 Blackf. 229 (Ind. 1833); *State* v. *Buzzard*, 4 Ark. 18 (1842). **[*126]** And, of course, **[****175]** the Court does not say whether the result in this case would be different if New York allowed open carriage by law-abiding citizens as a matter of course.

The second 19th-century innovation, adopted in a number of States, was surety laws. Massachusetts' surety law, which served as a model for laws adopted by many other States, provided that any person who went "armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon," and who lacked "reasonable cause to fear an assualt [*sic*]," could be made to pay a surety upon the "complaint of any person having reasonable cause to fear an injury, or breach of the peace." Mass. Rev. Stat., ch. 134, §16 (1836). Other States and Territories enacted identical or substantially similar laws. See, *e.g.*, Me. Rev. Stat., ch. 169, §16 (1840); Mich. Rev. Stat., ch. 162, §16 (1846); Terr. of Minn. Rev. Stat., ch. 112, §18 (1851); 1854 Ore. Stat., ch. 16, §17; W. Va. Code, ch. 153, §8 (1868); 1862 Pa. Laws p. 250, §6. These laws resemble New York's licensing regime in many, though admittedly not all, relevant respects. Most notably, like New York's proper cause requirement, the surety laws conditioned public carriage in at least some circumstances on a special showing of need. Compare *supra*, at 13, with Mass. Rev. Stat., ch. 134, §16.

The Court believes that the absence of recorded cases involving surety laws means that they were rarely enforced. *Ante*, at 49-50. Of **[****176]** course, this may just as well show that these laws

were normally followed. In any case, scholars cited by the Court tell us that "traditional case law research is not especially probative of the application of these restrictions" because "in many cases those records did not survive the passage of time" or "are not well indexed or digitally searchable." E. Ruben & S. Cornell, Firearm Regionalism and Public Carry: Placing Southern **[**2188]** Antebellum Case Law in Context, 125 Yale L. J. Forum 121, 130-131, n. 53 (2015). On the contrary, "the fact that restrictions on public carry were **[*127]** well accepted in places like Massachusetts and were included in the relevant manuals for justices of the peace" suggests "that violations were enforced at the justice of peace level, but did not result in expensive appeals that would have produced searchable case law." *Id.*, at 131, n. 53 (citation omitted). The surety laws and broader bans on concealed carriage enacted in the 19th century demonstrate that even relatively stringent restrictions on public carriage have long been understood to be consistent with the Second Amendment and its state equivalents.

E. Postbellum Regulation.

After the Civil War, public carriage of firearms remained subject to extensive regulation. See, *e.g.*, Cong. Globe, **[****177]** 39th Cong., 1st Sess., 908 (1866) ("The constitutional rights of all loyal **[***475]** and well-disposed inhabitants to bear arms will not be infringed; nevertheless this shall not be construed to sanction the unlawful practice of carrying concealed weapons"). Of course, during this period, Congress provided (and commentators recognized) that firearm regulations could not be designed or enforced in a discriminatory manner. See *ibid.*; Act of July 16, 1866, §14, 14 Stat. 176-177 (ensuring that all citizens were entitled to the "full and equal benefit of all laws . . . including the constitutional right to bear arms . . . without respect to race or color, or previous condition of slavery"); see also The Loyal Georgian, Feb. 3, 1866, p. 3, col. 4. But that by-now uncontroversial proposition says little about the validity of nondiscriminatory restrictions on public carriage, like New York's.

What is more relevant for our purposes is the fact that, in the postbellum period, States continued to enact generally applicable restrictions on public carriage, many of which were even more restrictive than their predecessors. See S. Cornell & J. Florence, The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation? **[****178]** 50 Santa Clara L. Rev. 1043, 1066 (2010). Most notably, **[*128]** many States and Western Territories enacted stringent regulations that prohibited *any* public carriage of firearms, with only limited exceptions. For example, Texas made it a misdemeanor to carry in public "any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purpose of offense or defense" absent "reasonable grounds for fearing an [immediate and pressing] unlawful attack." 1871 Tex. Gen. Laws ch. 34, §1. Similarly, New Mexico made it "unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory." 1869 Terr. of N. M. Laws ch. 32, §1. New

Mexico's prohibition contained only narrow exceptions for carriage on a person's own property, for self-defense in the face of immediate danger, or with official authorization. *Ibid.* Other States and Territories adopted similar laws. See, *e.g.*, 1875 Wyo. Terr. Sess. Laws ch. 52, §1; 1889 Idaho Terr. Gen. Laws §1, p. 23; 1881 Kan. Sess. Laws §23, p. 92; 1889 Ariz. Terr. Sess. Laws no. 13, §1, p. 16.

When they were challenged, these laws were generally upheld. P. Charles, The Faces of the Second Amendment Outside the Home, Take Two: How We Got Here and Why It Matters, 64 Clev. St. L. Rev. 373, 414 (2016); see also *ante*, at 56-57 (majority opinion) (recognizing that postbellum **[****179]** Texas law and court decisions support the validity of New York's licensing regime); *Andrews*, 50 Tenn., at 182 **[**2189]** (recognizing that "a man may well be prohibited from carrying his arms to church, or other public assemblage," and that the carriage of arms other than rifles, shot guns, muskets, and repeaters "may be prohibited if the Legislature deems proper, absolutely, at all times, and under all circumstances").

The Court's principal answer to these broad prohibitions on public carriage is to discount gun control laws passed in the American West. *Ante*, at 58-61. It notes that laws enacted in the Western Territories were "rarely subject to **[*129]** judicial scrutiny." *Ante*, at 60. But, of **[***476]** course, that may well mean that "[w]e . . . can assume it settled that these" regulations were "consistent with the Second Amendment." See *ante*, at 21 (majority opinion). The Court also reasons that laws enacted in the Western Territories applied to a relatively small portion of the population and were comparatively short lived. See *ante*, 59-61. But even assuming that is true, it does not mean that these laws were historical aberrations. To the contrary, bans on public carriage in the American West and elsewhere constitute just one chapter of the centuries-old **[****180]** tradition of comparable firearms regulations described above.

F. The 20th Century.

The Court disregards "20th-century historical evidence." *Ante*, at 58, n. 28. But it is worth noting that the law the Court strikes down today is well over 100 years old, having been enacted in 1911 and amended to substantially its present form in 1913. See *supra*, at 12. That alone gives it a longer historical pedigree than at least three of the four types of firearms regulations that *Heller* identified as "presumptively lawful." 554 U. S., at 626-627, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and n. 26; see C. Larson, Four Exceptions in Search of a Theory: *District of Columbia* v. *Heller* and Judicial *Ipse Dixit*, 60 Hastings L. J. 1371, 1374-1379 (2009) (concluding that "'prohibitions on the possession of firearms by felons and the mentally ill [and] laws imposing conditions and qualifications on the commercial sale of arms'" have their origins in the 20th century); *Kanter* v. *Barr*, 919 F. 3d 437, 451 (CA7 2019) (Barrett, J., dissenting) ("Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons"). Like JUSTICE

KAVANAUGH, I understand the Court's opinion today to cast no doubt on that aspect of *Heller*'s holding. *Ante,* at 3 (concurring opinion). But unlike JUSTICE KAVANAUGH, I find the disconnect between *Heller*'s **[*130]** treatment of laws prohibiting, **[****181]** for example, firearms possession by felons or the mentally ill, and the Court's treatment of New York's licensing regime, hard to square. The inconsistency suggests that the Court today takes either an unnecessarily cramped view of the relevant historical record or a needlessly rigid approach to analogical reasoning.

***

The historical examples of regulations similar to New York's licensing regime are legion. Closely analogous English laws were enacted beginning in the 13th century, and similar American regulations were passed during the colonial period, the founding era, the 19th century, and the 20th century. Not all of these laws were identical to New York's, but that is inevitable in an analysis that demands examination of seven centuries of history. At a minimum, the laws I have recounted *resembled* New York's law, similarly restricting the right to publicly carry weapons and serving roughly similar purposes. That is all that the Court's test, which allows and even encourages "analogical reasoning," purports to require. See *ante*, at 21 (disclaiming the necessity of a "historical *twin*").

[2190]** In each instance, the Court finds a reason to discount the historical evidence's **[***477]** persuasive force. **[****182]** Some of the laws New York has identified are too old. But others are too recent. Still others did not last long enough. Some applied to too few people. Some were enacted for the wrong reasons. Some may have been based on a constitutional rationale that is now impossible to identify. Some arose in historically unique circumstances. And some are not sufficiently analogous to the licensing regime at issue here. But if the examples discussed above, taken together, do not show a tradition and history of regulation that supports the validity of New York's law, what could? Sadly, I do not know the answer to that question. What is worse, the Court appears to have no answer either.

[*131] V

We are bound by *Heller* insofar as *Heller* interpreted the Second Amendment to protect an individual right to possess a firearm for self-defense. But *Heller* recognized that that right was not without limits and could appropriately be subject to government regulation. 554 U. S., at 626-627, 128 S. Ct. 2783, 171 L. Ed. 2d 637. *Heller* therefore does not require holding that New York's law violates the Second Amendment. In so holding, the Court goes beyond *Heller*.

It bases its decision to strike down New York's law almost exclusively on its application of what

it calls historical "analogical reasoning." *Ante*, at 19-20. As I have admitted **[****183]** above, I am not a historian, and neither is the Court. But the history, as it appears to me, seems to establish a robust tradition of regulations restricting the public carriage of concealed firearms. To the extent that any uncertainty remains between the Court's view of the history and mine, that uncertainty counsels against relying on history alone. In my view, it is appropriate in such circumstances to look beyond the history and engage in what the Court calls means-end scrutiny. Courts must be permitted to consider the State's interest in preventing gun violence, the effectiveness of the contested law in achieving that interest, the degree to which the law burdens the Second Amendment right, and, if appropriate, any less restrictive alternatives.

The Second Circuit has previously done just that, and it held that New York's law does not violate the Second Amendment. See *Kachalsky*, 701 F. 3d, at 101. It first evaluated the degree to which the law burdens the Second Amendment right to bear arms. *Id*., at 93-94. It concluded that the law "places substantial limits on the ability of law-abiding citizens to possess firearms for self-defense in public," but does not burden the right to possess a firearm in the home, where *Heller* said "'the need for defense of self, family, and property **[****184]** is most acute.'" *Kachalsky*, 701 F. 3d, at 93-94 (quoting *Heller*, 554 U. S., at 628). The Second Circuit **[*132]** therefore determined that the law should be subject to heightened scrutiny, but not to strict scrutiny and its attendant presumption of unconstitutionality. 701 F. 3d, at 93-94. In applying such heightened scrutiny, the Second Circuit recognized that "New York has substantial, indeed compelling, governmental interests in public safety and crime prevention." *Id*., at 97. I agree. As I have demonstrated above, see *supra*, at 3-9, firearms in public present a number of dangers, ranging **[***478]** from mass shootings to road rage killings, and are responsible for many deaths and injuries in the United States. The Second Circuit then evaluated New York's law and concluded that it is "substantially related" to New York's compelling interests. *Kachalsky*, 701 F. 3d, at 98-99. To support that conclusion, the Second Circuit pointed to "studies and data demonstrating that **[**2191]** widespread access to handguns in public increases the likelihood that felonies will result in death and fundamentally alters the safety and character of public spaces." *Id*., at 99. We have before us additional studies confirming that conclusion. See, *e.g.*, *supra* at 19-20 (summarizing studies finding that "may issue" licensing regimes are associated with lower **[****185]** rates of violent crime than "shall issue" regimes). And we have been made aware of no less restrictive, but equally effective, alternative. After considering all of these factors, the Second Circuit held that New York's law does not unconstitutionally burden the right to bear arms under the Second Amendment. I would affirm that holding.

New York's Legislature considered the empirical evidence about gun violence and adopted a reasonable licensing law to regulate the concealed carriage of handguns in order to keep the people of New York safe. The Court today strikes down that law based only on the pleadings. It gives the

State no opportunity to present evidence justifying its reasons for adopting the law or showing how the law actually operates in practice, and it does not so much as acknowledge these important considerations. Because I cannot agree with the **[*133]** Court's decision to strike New York's law down without allowing for discovery or the development of any evidentiary record, without considering the State's compelling interest in preventing gun violence and protecting the safety of its citizens, and without considering the potentially deadly consequences of its decision, I respectfully dissent.

End of Document

APPENDIX

United States v. Rahimi, 144 S. Ct. 1889 (2024)

United States v. Rahimi

Supreme Court of the United States

November 7, 2023, Argued; June 21, 2024, Decided

No. 22-915.

Reporter
144 S. Ct. 1889 *; 219 L. Ed. 2d 351 **; 2024 U.S. LEXIS 2714 ***; 30 Fla. L. Weekly Fed. S 359

UNITED STATES, PETITIONER v. ZACKEY RAHIMI

Notice: The pagination of this document is subject to change pending release of the final published version.

Subsequent History: As Revised June 25, 2024.

Prior History: **[***1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rahimi, 61 F.4th 443, 2023 U.S. App. LEXIS 5114 (5th Cir. Tex., Mar. 2, 2023)

Disposition: 61 F. 4th 443, reversed and remanded.

Syllabus

[*1891] **[**356]** Respondent Zackey Rahimi was indicted under 18 U. S. C. §922(g)(8), a federal statute that prohibits individuals subject to a domestic violence restraining order from possessing a firearm. A prosecution under Section 922(g)(8) may proceed only if the restraining order meets certain statutory criteria. In particular, the order must either contain a finding that the defendant "represents a credible threat to the physical safety" of his **[**357]** intimate partner or his or his partner's child, §922(g)(8)(C)(i), or "by its terms explicitly prohibit[ ] the use," attempted use, or threatened use of "physical force" against those individuals, §922(g)(8)(C)(ii). Rahimi concedes here that the restraining order against him satisfies the statutory criteria, but argues that on its face Section 922(g)(8) violates the Second Amendment. The District Court denied Rahimi's motion to dismiss **[*1892]** the indictment on Second Amendment grounds. While Rahimi's case

was on appeal, the Supreme Court decided *New York State Rifle & Pistol Assn., Inc*. v. *Bruen*, 597 U. S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). In light of *Bruen*, the Fifth Circuit reversed, concluding that the Government had not shown that Section 922(g)(8) "fits within our Nation's historical tradition of firearm regulation." 61 F. 4th 443, 460 (CA5 2023).

Held: When an individual has been found by a court to pose a credible **[***2]** threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment. Pp. 5-17.

(a) Since the Founding, the Nation's firearm laws have included regulations to stop individuals who threaten physical harm to others from misusing firearms. As applied to the facts here, Section 922(g)(8) fits within this tradition.

The right to keep and bear arms is among the "fundamental rights necessary to our system of ordered liberty." *McDonald* v. *Chicago*, 561 U. S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894. That right, however, "is not unlimited," *District of Columbia* v. *Heller*, 554 U. S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The reach of the Second Amendment is not limited only to those arms that were in existence at the Founding. *Heller*, 554 U. S., at 582, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Rather, it "extends, prima facie, to all instruments that constitute bearable arms, even those that were not [yet] in existence." *Ibid.* By that same logic, the Second Amendment permits more than just regulations identical to those existing in 1791.

Under our precedent, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin the Nation's regulatory tradition. *Bruen*, 597 U. S., at 26-31, 142 S. Ct. 2111, 213 L. Ed. 2d 387. When firearm regulation is challenged under the Second Amendment, the Government must show that the restriction "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U. S., at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387. A court must ascertain whether **[***3]** the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id*., at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387, and n. 7. Why and how the regulation burdens the right are central to this inquiry. As *Bruen* explained, a challenged regulation that does not precisely match its historical precursors "still may be analogous enough to pass constitutional muster." *Id.*, at 30. Pp. 5-8.

(b) Section 922(g)(8) survives Rahimi's challenge. Pp. 8-17.

(1) Rahimi's facial challenge to Section 922(g)(8) **[**358]** requires him to "establish that no set of circumstances exists under which the Act would be valid." *United States* v. *Salerno*, 481 U. S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697. Here, Section 922(g)(8) is constitutional as applied to the facts of Rahimi's own case. Rahimi has been found by a court to pose a credible threat to

the physical safety of others, see §922(g)(8)(C)(i), and the Government offers ample evidence that the Second Amendment permits such individuals to be disarmed. P. 8.

(2) The Court reviewed the history of American gun laws extensively in *Heller* and *Bruen*. At common law people were barred from misusing weapons to harm or menace others. Such conduct was often addressed through ordinary criminal laws and civil actions, such as prohibitions on fighting or private suits **[***4]** against individuals who threatened others. By the 1700s and early 1800s, though, two distinct legal regimes had developed that specifically addressed **[*1893]** firearms violence: the surety laws and the "going armed" laws. Surety laws were a form of "preventive justice," 4 W. Blackstone, Commentaries on the Laws of England 251 (10th ed. 1787), which authorized magistrates to require individuals suspected of future misbehavior to post a bond. If an individual failed to post a bond, he would be jailed. If the individual did post a bond and then broke the peace, the bond would be forfeit. Surety laws could be invoked to prevent all forms of violence, including spousal abuse, and also targeted the misuse of firearms. These laws often offered the accused significant procedural protections.

The "going armed" laws—a particular subset of the ancient common law prohibition on affrays, or fighting in public—provided a mechanism for punishing those who had menaced others with firearms. Under these laws, individuals were prohibited from "riding or going armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land." 4 Blackstone 149. Those who did so faced forfeiture of their arms **[***5]** and imprisonment. Prohibitions on going armed were incorporated into American jurisprudence through the common law, and some States expressly codified them. Pp. 9-13.

(3) Together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed. Section 922(g)(8) is not identical to these founding-era regimes, but it does not need to be. Like the surety and going armed laws, Section 922(g)(8)(C)(i) applies to individuals found by a court to threaten the physical safety of another. This prohibition is "relevantly similar" to those founding era regimes in both why and how it burdens the Second Amendment right. *Id.*, at 29. Section 922(g)(8) restricts gun use to check demonstrated threats of physical violence, just as the surety and going armed laws do. Unlike the regulation struck down in *Bruen*, Section 922(g)(8) does not broadly restrict arms use by the public generally.

The burden that Section 922(g)(8) imposes on the right to bear arms also fits within the Nation's regulatory tradition. While the Court does not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories **[**359]** of persons thought by a legislature to present a special danger of misuse, see **[***6]** *Heller*, 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637, Section 922(g)(8) applies only once a court has found that the defendant

"represents a credible threat to the physical safety" of another, §922(g)(8)(C)(i), which notably matches the similar judicial determinations required in the surety and going armed laws. Moreover, like surety bonds of limited duration, Section 922(g)(8) only prohibits firearm possession so long as the defendant "is" subject to a restraining order. Finally, the penalty—another relevant aspect of the burden—also fits within the regulatory tradition. The going armed laws provided for imprisonment, and if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.

The Court's decisions in *Heller* and *Bruen* do not help Rahimi. While Section 922(g)(8) bars individuals subject to restraining orders from possessing guns in the home, *Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. Indeed, *Heller* stated that many such prohibitions, like those on the possession of firearms by "felons and the mentally ill," are "presumptively lawful." *Heller*, 554 U. S., at 626, 627, n. 26, 128 S. Ct. 2783, 171 L. Ed. 2d 637. **[*1894]** And the Court's conclusion in *Bruen* that **[***7]** regulations like the surety laws are not a proper historical analogue for a broad gun licensing regime does not mean that they cannot be an appropriate analogue for a narrow one. Pp. 13-15.

(4) The Fifth Circuit erred in reading *Bruen* to require a "historical twin" rather than a "historical analogue." 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The panel also misapplied the Court's precedents when evaluating Rahimi's facial challenge. Rather than consider the circumstances in which Section 922(g)(8) was most likely to be constitutional, the panel instead focused on hypothetical scenarios where the provision might raise constitutional concerns. P. 16.

(5) Finally, the Court rejects the Government's contention that Rahimi may be disarmed simply because he is not "responsible." The Court used this term in *Heller* and *Bruen* to describe the class of citizens who undoubtedly enjoy the Second Amendment right. Those decisions, however, did not define the term and said nothing about the status of citizens who were not "responsible." P. 17.

61 F. 4th 443, reversed and remanded.

Counsel: Elizabeth B. Prelogar argued for petitioner.

J. Matthew Wright argued for respondent.

Judges: ROBERTS, C. J., delivered the opinion for the Court, in which ALITO, SOTOMAYOR, KAGAN, GORSUCH, KAVANAUGH, BARRETT, and JACKSON, JJ., joined. SOTOMAYOR, J., filed a

concurring opinion, in which KAGAN, J., joined. **[***8]** GORSUCH, J., KAVANAUGH, J., BARRETT, J., and JACKSON, J., filed concurring opinions. THOMAS, J., filed a dissenting opinion.

Opinion by: ROBERTS

Opinion

[360]** CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A federal statute prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he "represents a credible threat to the physical safety of [an] intimate partner," or a child of the partner or individual. 18 U. S. C. §922(g)(8). Respondent Zackey Rahimi is subject to such an order. The question is whether this provision may be enforced against him consistent with the Second Amendment.

I

A

In December 2019, Rahimi met his girlfriend, C. M., for lunch in a parking lot. C. M. is also the mother of Rahimi's young child, A. R. During the meal, Rahimi and C. M. began arguing, and Rahimi became enraged. Brief for United States 2. C. M. **[*1895]** attempted to leave, but Rahimi grabbed her by the wrist, dragged her back to his car, and shoved her in, causing her to strike her head against the dashboard. When he realized that a bystander was watching the altercation, Rahimi paused to retrieve a gun from under the passenger seat. C. M. took advantage of the opportunity to escape. Rahimi **[***9]** fired as she fled, although it is unclear whether he was aiming at C. M. or the witness. Rahimi later called C. M. and warned that he would shoot her if she reported the incident. *Ibid*.

Undeterred by this threat, C. M. went to court to seek a restraining order. In the affidavit accompanying her application, C. M. recounted the parking lot incident as well as other assaults. She also detailed how Rahimi's conduct had endangered A. R. Although Rahimi had an opportunity to contest C. M.'s testimony, he did not do so. On February 5, 2020, a state court in Tarrant County, Texas, issued a restraining order against him. The order, entered with the consent of both parties, included a finding that Rahimi had committed "family violence." App. 2. It also found that this violence was "likely to occur again" and that Rahimi posed "a credible threat" to the "physical safety" of C. M. or A. R. *Id.*, at 2-3. Based on these findings, the order prohibited Rahimi from threatening C. M. or her family for two years or contacting C. M. during that period except to discuss A. R. *Id.*, at 3-7. It also suspended Rahimi's gun license for two years. *Id.*, at 5-6. If Rahimi was imprisoned or confined when the order **[***10]** was set to expire, the order would

instead terminate either one or two years after his release date, depending on the length of his imprisonment. *Id.*, at 6-7.

In May, however, Rahimi violated the order by approaching C. M.'s home at night. He also began contacting her through several social media accounts.

In November, Rahimi threatened a different woman with a gun, resulting in a charge for aggravated assault with a deadly weapon. And while Rahimi was under arrest for that assault, the Texas police identified him as the suspect in a spate of at least five additional shootings.

The first, which occurred in December 2020, arose from Rahimi's dealing in illegal drugs. After one of his customers **[**361]** "started talking trash," Rahimi drove to the man's home and shot into it. Brief for United States 3. While driving the next day, Rahimi collided with another car, exited his vehicle, and proceeded to shoot at the other car. Three days later, he fired his gun in the air while driving through a residential neighborhood. A few weeks after that, Rahimi was speeding on a highway near Arlington, Texas, when a truck flashed its lights at him. Rahimi hit the brakes and cut across traffic to chase the truck. **[***11]** Once off the highway, he fired several times toward the truck and a nearby car before fleeing. Two weeks after that, Rahimi and a friend were dining at a roadside burger restaurant. When the restaurant declined his friend's credit card, Rahimi pulled a gun and shot into the air.

The police obtained a warrant to search Rahimi's residence. There they discovered a pistol, a rifle, ammunition—and a copy of the restraining order.

B

Rahimi was indicted on one count of possessing a firearm while subject to a domestic violence restraining order, in violation of 18 U. S. C. §922(g)(8). At the time, such a violation was punishable by up to 10 years' imprisonment (since amended to 15 years). §924(a)(2); see Bipartisan Safer Communities Act, Pub. L. 117-159, §12004(c)(2), 136 Stat. 1329, 18 U. S. C. §924(a)(8). A prosecution under Section 922(g)(8) may proceed only if three criteria **[*1896]** are met. First, the defendant must have received actual notice and an opportunity to be heard before the order was entered. §922(g)(8)(A). Second, the order must prohibit the defendant from either "harassing, stalking, or threatening" his "intimate partner" or his or his partner's child, or "engaging in other conduct that would place [the] partner in reasonable fear of bodily injury" to the partner or child. §922(g)(8)(B). A defendant's "intimate partner[s]" include his spouse or any former **[***12]** spouse, the parent of his child, and anyone with whom he cohabitates or has cohabitated. §921(a)(32). Third, under Section 922(g)(8)(C), the order must either contain a finding that the defendant "represents a credible threat to the physical safety" of his intimate partner or his or his partner's child, §922(g)(8)(C)(i), or "by its terms explicitly prohibit[ ] the

use," attempted use, or threatened use of "physical force" against those individuals, §922(g)(8)(C)(ii).

Rahimi's restraining order met all three criteria. First, Rahimi had received notice and an opportunity to be heard before the order was entered. App. 2. Second, the order prohibited him from communicating with or threatening C. M. *Id.*, at 3-4. Third, the order met the requirements of Section 922(g)(8)(C)(i), because it included a finding that Rahimi represented "a credible threat to the physical safety" of C. M. or her family. *Id.*, at 2-3. The order also "explicitly prohibit[ed]" Rahimi from "the use, attempted use, or threatened use of physical force" against C. M., satisfying the independent basis for liability in Section 922(g)(8)(C)(ii). *Id.*, at 3.

Rahimi moved to dismiss the indictment, arguing that Section 922(g)(8) violated on its face the Second Amendment right to keep and bear arms. No. 4:21-cr-00083 (ND Tex., May 7, 2021), ECF Doc. 17. Concluding that Circuit precedent foreclosed **[**362]** Rahimi's Second Amendment **[***13]** challenge, the District Court denied his motion. Rahimi then pleaded guilty. On appeal, he again raised his Second Amendment challenge. The appeal was denied, and Rahimi petitioned for rehearing en banc.

While Rahimi's petition was pending, this Court decided *New York State Rifle & Pistol Assn., Inc*. v. *Bruen*, 597 U. S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). In *Bruen*, we explained that when a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction "is consistent with the Nation's historical tradition of firearm regulation." *Id.*, at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

In light of *Bruen*, the panel withdrew the prior opinion and ordered additional briefing. A new panel then heard oral argument and reversed. 61 F. 4th 443, 448 (CA5 2023). Surveying the evidence that the Government had identified, the panel concluded that Section 922(g)(8) does not fit within our tradition of firearm regulation. *Id.*, at 460-461. Judge Ho wrote separately to express his view that the panel's ruling did not conflict with the interest in protecting people from violent individuals. *Id.*, at 461-462 (concurring opinion).

We granted certiorari. 600 U. S. ___, 143 S. Ct. 2688, 216 L. Ed. 2d 1255 (2023)

II

When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect. Since the founding, **[***14]** our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms. As applied to the facts of **[*1897]** this case, Section 922(g)(8) fits comfortably within this tradition.

A

We have held that the right to keep and bear arms is among the "fundamental rights necessary to our system of ordered liberty." *McDonald* v. *Chicago*, 561 U. S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). Derived from English practice and codified in the Second Amendment, the right secures for Americans a means of self-defense. *Bruen*, 597 U. S., at 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The spark that ignited the American Revolution was struck at Lexington and Concord, when the British governor dispatched soldiers to seize the local farmers' arms and powder stores. In the aftermath of the Civil War, Congress's desire to enable the newly freed slaves to defend themselves against former Confederates helped inspire the passage of the Fourteenth Amendment, which secured the right to bear arms against interference by the States. *McDonald*, 561 U. S., at 771-776, 130 S. Ct. 3020, 177 L. Ed. 2d 894. As a leading and early proponent of emancipation observed, "Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty." Cong. Globe, 40th Cong., 2d Sess., 1967 (1868) (statement of Rep. Stevens).

"Like most rights," **[***15]** though, "the right secured by the Second Amendment is not unlimited." *District of Columbia* v. *Heller*, 554 U. S. 570, 626, **[**363]** 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). In *Heller*, this Court held that the right applied to ordinary citizens within the home. Even as we did so, however, we recognized that the right was never thought to sweep indiscriminately. "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Ibid*. At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year's Eve revelers. Act of Mar. 1, 1783, 1783 Mass. Acts and Laws ch.13, pp. 218-219; 5 Colonial Laws of New York ch. 1501, pp. 244-246 (1894). Some jurisdictions banned the carrying of "dangerous and unusual weapons." 554 U. S., at 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (citing 4 W. Blackstone, Commentaries on the Laws of England 148-149 (1769)). Others forbade carrying concealed firearms. 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

In *Heller*, our inquiry into the scope of the right began with "constitutional text and history." *Bruen*, 597 U. S., at 22, 142 S. Ct. 2111, 213 L. Ed. 2d 387. In *Bruen*, we directed courts to examine our "historical tradition of firearm regulation" to help delineate the contours of the right. *Id*., at 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387. We explained that if a challenged regulation fits within that tradition, it is lawful under the Second Amendment. We also clarified that **[***16]** when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to "justify its regulation." *Id.*, at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Nevertheless, some courts have misunderstood the methodology of our recent Second Amendment cases. These precedents were not meant to suggest a law trapped in amber. As we explained in *Heller*, for example, the reach of the Second Amendment is not limited only to those arms that were in existence at the founding. 554 U. S., at 582, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Rather, it "extends, prima facie, to all instruments that constitute bearable arms, even those that were not [yet] in existence." *Ibid.* By that same logic, the Second Amendment permits more than just **[*1898]** those regulations identical to ones that could be found in 1791. Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.

As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. 597 U. S., at 26-31, 142 S. Ct. 2111, 213 L. Ed. 2d 387. A court must ascertain whether the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances." **[***17]** *Id*., at 29, and n. 7, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Discerning and developing the law in this way is "a commonplace task for any lawyer or judge." *Id.*, at 28, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Why and how the regulation burdens the right are central to this inquiry. *Id.*, at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387. For example, if laws at **[**364]** the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster." *Id.*, at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The law must comport with the principles underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin." *Ibid.* (emphasis deleted). [1]

B

Bearing these principles in mind, we conclude that Section 922(g)(8) survives Rahimi's challenge.

1

[1] We also recognized in *Bruen* the "ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government)." 597 U. S., at 37, 142 S. Ct. 2111, 213 L. Ed. 2d 387. We explained that under the circumstances, resolving the dispute was unnecessary to decide the case. *Id.*, at 37-38, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The same is true here.

Rahimi challenges Section 922(g)(8) on its face. This is the "most difficult challenge to mount successfully," because it requires a defendant to "establish that no set of circumstances exists under which **[***18]** the Act would be valid." *United States* v. *Salerno*, 481 U. S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). That means that to prevail, the Government need only demonstrate that Section 922(g)(8) is constitutional in some of its applications. And here the provision is constitutional as applied to the facts of Rahimi's own case.

Recall that Section 922(g)(8) provides two independent bases for liability. Section 922(g)(8)(C)(i) bars an individual from possessing a firearm if his restraining order includes a finding that he poses "a credible threat to the physical safety" of a protected person. Separately, Section 922(g)(8)(C)(ii) bars an individual from possessing a firearm if his restraining order "prohibits the use, attempted use, or threatened use of physical force." Our analysis starts and stops with Section 922(g)(8)(C)(i) because the Government offers ample evidence that the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others. We need not **[*1899]** decide whether regulation under Section 922(g)(8)(C)(ii) is also permissible.

2

This Court reviewed the history of American gun laws extensively in *Heller* and *Bruen*. From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others. The act of "go[ing] armed to terrify the King's subjects" was recognized at common law as a **[***19]** "great offence." *Sir John Knight's Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K. B. 1686). Parliament began codifying prohibitions against such conduct as early as the **[**365]** 1200s and 1300s, most notably in the Statute of Northampton of 1328. *Bruen*, 597 U. S., at 40, 142 S. Ct. 2111, 213 L. Ed. 2d 387. In the aftermath of the Reformation and the English Civil War, Parliament passed further restrictions. The Militia Act of 1662, for example, authorized the King's agents to "seize all Armes in the custody or possession of any person . . . judge[d] dangerous to the Peace of the Kingdome." 14 Car. 2 c. 3, §13 (1662); J. Greenlee, The Historical Justification for Prohibiting Dangerous Persons From Possessing Arms, 20 Wyo. L. Rev. 249, 259 (2020).

The Glorious Revolution cut back on the power of the Crown to disarm its subjects unilaterally. King James II had "caus[ed] several good Subjects being Protestants to be disarmed at the same Time when Papists were . . . armed." 1 Wm. & Mary c. 2, §6, in 3 Eng. Stat. at Large 440 (1689). By way of rebuke, Parliament adopted the English Bill of Rights, which guaranteed "that the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law." §7, *id.*, at 441. But as the document itself memorialized, the principle that arms-bearing was constrained "by Law" remained. *Ibid*.

Through these centuries, English law had disarmed not only brigands and highwaymen but also political opponents and disfavored religious groups. By the time of **[***20]** the founding, however, state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic. See *Heller*, 554 U. S., at 594-595, 600-603, 128 S. Ct. 2783, 171 L. Ed. 2d 637. But regulations targeting individuals who physically threatened others persisted. Such conduct was often addressed through ordinary criminal laws and civil actions, such as prohibitions on fighting or private suits against individuals who threatened others. See 4 W. Blackstone, Commentaries on the Laws of England 145-146, 149-150 (10th ed. 1787) (Blackstone); 3 *id.*, at 120. By the 1700s and early 1800s, however, two distinct legal regimes had developed that specifically addressed firearms violence.

The first were the surety laws. A form of "preventive justice," these laws derived from the ancient practice of frankpledges. 4 *id.*, at 251-253. Reputedly dating to the time of Canute, the frankpledge system involved compelling adult men to organize themselves into ten-man "tithing[s]." A. Lefroy, Anglo-Saxon Period of English Law, Part II, 26 Yale L. J. 388, 391 (1917). The members of each tithing then "mutually pledge[d] for each other's good behaviour." 4 Blackstone 252. Should any of the ten break the law, the remaining nine would be responsible for producing him in court, or else **[***21]** face punishment in his stead. D. Levinson, Collective Sanctions, 56 Stan. L. Rev. 345, 358 (2003).

Eventually, the communal frankpledge system evolved into the individualized surety regime. Under the surety laws, a magistrate could "oblig[e] those persons, [of] whom there is a probable ground to suspect of future misbehaviour, to stipulate with and to give full assurance . . . that **[*1900]** such offence . . . shall not happen[,] by finding pledges or securities." 4 Blackstone 251. In other words, the law authorized magistrates to require individuals suspected of future misbehavior to post a **[**366]** bond. *Ibid*. If an individual failed to post a bond, he would be jailed. See, *e.g.*, Mass. Rev. Stat., ch. 134, §6 (1836). If the individual did post a bond and then broke the peace, the bond would be forfeit. 4 Blackstone 253.

Well entrenched in the common law, the surety laws could be invoked to prevent all forms of violence, including spousal abuse. As Blackstone explained, "[w]ives [could] demand [sureties] against their husbands; or husbands, if necessary, against their wives." *Id.*, at 254. These often took the form of a surety of the peace, meaning that the defendant pledged to "keep the peace." *Id*., at 252-253; see R. Bloch, The American Revolution, Wife Beating, and the Emergent Value **[***22]** of Privacy, 5 Early American Studies 223, 232-233, 234-235 (2007) (Bloch) (discussing peace bonds). Wives also demanded sureties for good behavior, whereby a husband pledged to "demean and behave himself well." 4 Blackstone 253; see Bloch 232-233, 234-235, and n. 34.

While communities sometimes resorted to public shaming or vigilante justice to chastise abusers, sureties provided the public with a more measured solution. B. McConville, The Rise of Rough Music, in Riot and Revelry in Early America 90-100 (W. Pencak, M. Dennis, & S. Newman eds. 2002). In one widely reported incident, Susannah Wyllys Strong, the wife of a Connecticut judge, appeared before Tapping Reeve in 1790 to make a complaint against her husband. K. Ryan, "The Spirit of Contradiction": Wife Abuse in New England, 1780-1820, 13 Early American Studies 586, 602 (2015). Newspapers carried the story in Connecticut, Massachusetts, and New York. *Ibid*. Reeve ultimately ordered the man to post a bond of £1,000. *Id.*, at 603.

Importantly for this case, the surety laws also targeted the misuse of firearms. In 1795, for example, Massachusetts enacted a law authorizing justices of the peace to "arrest" all who "go armed offensively [and] require of the offender to find sureties for **[***23]** his keeping the peace." 1795 Mass. Acts ch. 2, in Acts and Resolves of Massachusetts, 1794-1795, ch. 26, pp. 66-67 (1896). Later, Massachusetts amended its surety laws to be even more specific, authorizing the imposition of bonds from individuals "[who went] armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon." Mass. Rev. Stat., ch. 134, §16; see *ibid.* (marginal note) (referencing the earlier statute). At least nine other jurisdictions did the same. See *Bruen*, 597 U. S., at 56, and n. 23, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

These laws often offered the accused significant procedural protections. Before the accused could be compelled to post a bond for "go[ing] armed," a complaint had to be made to a judge or justice of the peace by "any person having reasonable cause to fear" that the accused would do him harm or breach the peace. Mass. Rev. Stat., ch. 134, §§1, 16. The magistrate would take evidence, and—if he determined that cause existed for the charge—summon the accused, who could respond to the allegations. §§3-4. Bonds could not be required for more than six months at a time, and an individual could obtain an exception if he needed his arms for self-defense or some other legitimate reason. §16.

While the surety laws provided a mechanism for preventing violence **[**367]** before it occurred, a second regime provided a mechanism for punishing those who had menaced others **[***24]** with firearms. These were the "going **[*1901]** armed" laws, a particular subset of the ancient common-law prohibition on affrays.

Derived from the French word "affraier," meaning "to terrify," 4 Blackstone 145, the affray laws traced their origin to the Statute of Northampton, 2 Edw. 3 c. 3 (1328). Although the prototypical affray involved fighting in public, commentators understood affrays to encompass the offense of "arm[ing]" oneself "to the Terror of the People," T. Barlow, The Justice of the Peace: A Treatise 11 (1745). Moreover, the prohibitions—on fighting and going armed—were often codified in the

same statutes. *E.g.*, 2 Edw. 3 c. 3; Acts and Laws of His Majesty's Province of New-Hampshire in New-England 2 (1761).

Whether classified as an affray law or a distinct prohibition, the going armed laws prohibited "riding or going armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land." 4 Blackstone 149 (emphasis deleted). Such conduct disrupted the "public order" and "le[d] almost necessarily to actual violence." *State* v. *Huntly*, 25 N. C. 418, 421-422 (1843) (*per curiam*). Therefore, the law punished these acts with "forfeiture of the arms . . . and imprisonment." 4 Blackstone 149.

In some instances, prohibitions on going armed and affrays were incorporated into American jurisprudence **[***25]** through the common law. See, *e.g.*, *Huntly*, 25 N. C., at 421-422; *O'Neill* v. *State*, 16 Ala. 65, 67 (1849); *Hickman* v. *State*, 193 Md. App. 238, 253-255, 996 A. 2d 974, 983 (2010) (recognizing that common-law prohibition on fighting in public remains even now chargeable in Maryland). Moreover, at least four States—Massachusetts, New Hampshire, North Carolina, and Virginia—expressly codified prohibitions on going armed. 1786 Va. Acts ch. 21; 2 Laws of the Commonwealth of Massachusetts from Nov. 28, 1780 to Feb. 28, 1807, pp. 652-653 (1807); Acts and Laws of His Majesty's Province of New-Hampshire in New-England 2 (1761); Collection of All of the Public Acts of Assembly, of the Province of North-Carolina: Now in Force and Use 131 (1751) (1741 statute).

3

Taken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed. Section 922(g)(8) is by no means identical to these founding era regimes, but it does not need to be. See *Bruen*, 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387, 1786 Va. Acts ch. 21. Its prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition the surety and going armed laws represent.

Like the surety and going armed laws, Section 922(g)(8)(C)(i) applies to individuals found to threaten the physical safety of another. This provision is "relevantly similar" to those founding era regimes in both why and how it burdens the Second Amendment right. *Id.*, at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387, 1786 Va. Acts ch. 21. Section 922(g)(8) restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws do. Unlike the regulation struck down in *Bruen*, Section 922(g)(8) **[**368]** does **[***26]** not broadly restrict arms use by the public generally.

The burden Section 922(g)(8) imposes on the right to bear arms also fits within our regulatory tradition. While we do not suggest that the Second Amendment prohibits the enactment of laws

banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse, see *Heller*, 554 U. S., at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637, we note that Section 922(g)(8) applies only once a court has found that the defendant "represents a credible threat to the physical safety" of **[*1902]** another. §922(g)(8)(C)(i). That matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.

Moreover, like surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant "is" subject to a restraining order. §922(g)(8). In Rahimi's case that is one to two years after his release from prison, according to Tex. Fam. Code Ann. §85.025(c) (West 2019). App. 6-7.

Finally, the penalty—another relevant aspect of the burden—also fits within the regulatory tradition. The going armed laws provided for imprisonment, 4 Blackstone 149, and if imprisonment was permissible to respond to the use of guns to threaten **[***27]** the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible.

Rahimi argues *Heller* requires us to affirm, because Section 922(g)(8) bars individuals subject to restraining orders from possessing guns in the home, and in *Heller* we invalidated an "absolute prohibition of handguns . . . in the home." 554 U. S., at 636, 128 S. Ct. 2783, 171 L. Ed. 2d 637; Brief for Respondent 32. But *Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by "felons and the mentally ill," are "presumptively lawful." 554 U. S., at 626, 627, n. 26, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

Our analysis of the surety laws in *Bruen* also does not help Rahimi. In *Bruen*, we explained that the surety laws were not a proper historical analogue for New York's gun licensing regime. 597 U. S., at 55-60, 142 S. Ct. 2111, 213 L. Ed. 2d 387. What distinguished the regimes, we observed, was that the surety laws "presumed that individuals had a right to . . . carry," whereas New York's law effectively presumed that no citizen had such a right, absent a special need. *Id.*, at 56, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (emphasis deleted). Section 922(g)(8)(C)(i) does not make the same faulty presumption. To the contrary, it presumes, like the surety laws before **[***28]** it, that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others. See *ibid*.

While we also noted that the surety laws applied different penalties than New York's special-need regime, we did so only to emphasize just how severely the State treated the rights **[**369]** of its citizens. *Id.*, at 57, 142 S. Ct. 2111, 213 L. Ed. 2d 387. But as we have explained, our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat

to the physical safety of others from those who have not. The conclusion that focused regulations like the surety laws are not a historical analogue for a broad prohibitory regime like New York's does not mean that they cannot be an appropriate analogue for a narrow one.

4

In short, we have no trouble concluding that Section 922(g)(8) survives Rahimi's facial challenge. Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others. Section 922(g)(8) can be applied lawfully to Rahimi.

The dissent reaches a contrary conclusion, primarily on the ground that the historical analogues for Section 922(g)(8) **[*1903]** are not sufficiently similar to place that provision in our historical tradition. The **[***29]** dissent does, however, acknowledge that Section 922(g)(8) is within that tradition when it comes to the "why" of the appropriate inquiry. The objection is to the "how." See *post*, at 18 (opinion of Thomas, J.). For the reasons we have set forth, however, we conclude that Section 922(g)(8) satisfies that part of the inquiry as well. See *supra*, at 7, 13-15. As we said in *Bruen*, a "historical *twin*" is not required. 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

For its part, the Fifth Circuit made two errors. First, like the dissent, it read *Bruen* to require a "historical twin" rather than a "historical analogue." *Ibid*. (emphasis deleted). Second, it did not correctly apply our precedents governing facial challenges. 61 F. 4th, at 453. As we have said in other contexts, "[w]hen legislation and the Constitution brush up against each other, [a court's] task is to seek harmony, not to manufacture conflict." *United States* v. *Hansen*, 599 U. S. 762, 781, 143 S. Ct. 1932, 216 L. Ed. 2d 692 (2023). Rather than consider the circumstances in which Section 922(g)(8) was most likely to be constitutional, the panel instead focused on hypothetical scenarios where Section 922(g)(8) might raise constitutional concerns. See 61 F. 4th, at 459; *id.*, at 465-467 (Ho, J., concurring). That error left the panel slaying a straw man. [2]

5

Finally, in holding that Section 922(g)(8) is constitutional as applied to Rahimi, we reject the Government's contention that Rahimi **[***30]** may be disarmed simply because he is not **[**370]** "responsible." Brief for United States 6; see Tr. of Oral Arg. 8-11. "Responsible" is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law. In *Heller* and *Bruen*, we used the term "responsible" to describe the class of ordinary citizens

[2] Many of the potential faults that the Fifth Circuit identifies in Section 922(g)(8) appear to sound in due process rather than the Second Amendment. *E.g.*, 61 F. 4th, at 459; *id*., at 465-467 (Ho, J., concurring). As we have explained, unless these hypothetical faults occur in every case, they do not justify invalidating Section 922(g)(8) on its face. See *United States* v. *Salerno*, 481 U. S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) (a facial challenge fails if the law is constitutional in at least some of its applications). In any event, we need not address any due process concern here because this challenge was not litigated as a due process challenge and there is no such claim before us. See this Court's Rule 14.1(a).

who undoubtedly enjoy the Second Amendment right. See, *e.g.*, *Heller*, 554 U. S., at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637; *Bruen*, 597 U. S., at 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387. But those decisions did not define the term and said nothing about the status of citizens who were not "responsible." The question was simply not presented.

***

In *Heller*, *McDonald*, and *Bruen*, this Court did not "undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment." *Bruen*, 597 U. S., at 31, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Nor do we do so today. Rather, we conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.

The judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Concur by: SOTOMAYOR; GORSUCH; KAVANAUGH; BARRETT; JACKSON

Concur

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, concurring.

Today, the Court applies its decision in *New York State Rifle & Pistol Assn., Inc.* **[*1904]** v. *Bruen*, 597 U. S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), for the first time. **[***31]** Although I continue to believe that *Bruen* was wrongly decided, see *id*., at 83-133, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., joined by SOTOMAYOR and KAGAN, JJ., dissenting), I join the Court's opinion applying that precedent to uphold 18 U. S. C. §922(g)(8).

The Court today emphasizes that a challenged regulation "must comport with the principles underlying the Second Amendment," but need not have a precise historical match. *Ante*, at 7-8. I agree. I write separately to highlight why the Court's interpretation of *Bruen*, and not the dissent's, is the right one. In short, the Court's interpretation permits a historical inquiry calibrated to reveal something useful and transferable to the present day, while the dissent would make the historical inquiry so exacting as to be useless, a too-sensitive alarm that sounds whenever a regulation did not exist in an essentially identical form at the founding.

I

Even under *Bruen*, this is an easy case. Section 922(g)(8) prohibits an individual subject to a domestic violence restraining order from possessing a firearm, so long as certain criteria are met. See *ante,* at 3-4. Section 922(g)(8) is wholly consistent with the Nation's history and tradition of firearm regulation.

The Court correctly concludes that "the Second Amendment permits the disarmament of individuals who pose a credible **[***32]** threat to the physical safety of others." *Ante,* at 8. **[**371]** That conclusion finds historical support in both the surety laws, which "provided a mechanism for preventing violence before it occurred" by requiring an individual who posed a credible threat of violence to another to post a surety, and the "going armed" laws, which "provided a mechanism for punishing those who had menaced others with firearms" through forfeiture of the arms or imprisonment. *Ante*, at 12. "Taken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Ante*, at 13. Section 922(g)(8)'s prohibition on gun possession for individuals subject to domestic violence restraining orders is part of that "tradition of firearm regulation allow[ing] the Government to disarm individuals who present a credible threat to the physical safety of others," *ante,* at 16, as are the similar restrictions that have been adopted by 48 States and Territories, see Brief for United States 34-35, and nn. 22-23 (collecting statutes).

The Court's opinion also clarifies an important methodological point that bears repeating: Rather **[***33]** than asking whether a present-day gun regulation has a precise historical analogue, courts applying *Bruen* should "conside[r] whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Ante*, at 7 (emphasis added); see also *ante*, at 7-8 ("The law must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin'" (quoting *Bruen*, 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387)). Here, for example, the Government has not identified a founding-era or Reconstruction-era law that specifically disarmed domestic abusers, see, *e.g.*, Tr. of Oral Arg. 40 (conceding as much), but it did not need to do so. Although §922(g)(8) "is by no means identical" to the surety or going armed laws, *ante,* at 13, it "restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws d[id]," *ante,* at 14. That shared principle is sufficient.

[*1905] II

The dissent reaches a different conclusion by applying the strictest possible interpretation of *Bruen*. It picks off the Government's historical sources one by one, viewing any basis for distinction as fatal. See, *e.g.*, *post*, at 18 (opinion of THOMAS, J.) ("Although surety laws shared a

common justification **[***34]** with §922(g)(8), surety laws imposed a materially different burden"); *post*, at 25-26 (explaining that "[a]ffray laws are wide of the mark" because they "expressly carve out the very conduct §922(g)(8) was designed to prevent (interpersonal violence in the home)"). The dissent urges a close look "at the historical law's justification as articulated during the relevant time period," *post*, at 28, and a "careful parsing of regulatory burdens" to ensure that courts do not "stray too far from [history] by eliding material differences between historical and modern laws," *post*, at 15. The dissent criticizes this Court for adopting **[**372]** a more "piecemeal approach" that distills principles from a variety of historical evidence rather than insisting on a precise historical analogue. *Post*, at 21.

If the dissent's interpretation of *Bruen* were the law, then *Bruen* really would be the "one-way ratchet" that I and the other dissenters in that case feared, "disqualify[ing] virtually any 'representative historical analogue' and mak[ing] it nearly impossible to sustain common-sense regulations necessary to our Nation's safety and security." 597 U. S., at 112, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting). Thankfully, the Court rejects that rigid approach to the historical **[***35]** inquiry. As the Court puts it today, *Bruen* was "not meant to suggest a law trapped in amber." *Ante,* at 7.

This case lays bare the perils of the dissent's approach. Because the dissent concludes that "§922(g)(8) addresses a societal problem—the risk of interpersonal violence—'that has persisted since the 18th century,'" it insists that the means of addressing that problem cannot be "'materially different'" from the means that existed in the 18th century. *Post*, at 7. That is so, it seems, even when the weapons in question have evolved dramatically. See R. Roth, Why Guns Are and Are Not the Problem, in A Right To Bear Arms?: The Contested Role of History in Contemporary Debates on the Second Amendment 117 (J. Tucker, B. Hacker, & M. Vining eds. 2019) (explaining that guns in the 18th century took a long time to load, typically fired only one shot, and often misfired). According to the dissent, the solution cannot be "materially different" even when societal perception of the problem has changed, and even if it is now clear to everyone that the historical means of addressing the problem had been wholly inadequate. Given the fact that the law at the founding was more likely to protect husbands who abused their spouses than offer some measure of accountability, **[***36]** see, *e.g.*, R. Siegel, "The Rule of Love": Wife Beating as Prerogative and Privacy, 105 Yale L. J. 2117, 2154-2170 (1996), it is no surprise that that generation did not have an equivalent to §922(g)(8). Under the dissent's approach, the legislatures of today would be limited not by a distant generation's determination that such a law was unconstitutional, but by a distant generation's failure to consider that such a law might be necessary. History has a role to play in Second Amendment analysis, but a rigid adherence to history, (particularly history predating the inclusion of women and people of color as full members of the polity), impoverishes constitutional interpretation and hamstrings our democracy.

III

The Court today clarifies *Bruen*'s historical inquiry and rejects the dissent's exacting historical test. I welcome that development. **[*1906]** That being said, I remain troubled by *Bruen*'s myopic focus on history and tradition, which fails to give full consideration to the real and present stakes of the problems facing our society today. In my view, the Second Amendment allows legislators "to take account of the serious problems posed by gun violence," *Bruen*, 597 U. S., at 91, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting), not merely by asking what their predecessors at the time of the founding or Reconstruction **[***37]** thought, but by listening to their constituents and crafting new and appropriately **[**373]** tailored solutions. Under the means-end scrutiny that this Court rejected in *Bruen* but "regularly use[s] . . . in cases involving other constitutional provisions," *id.*, at 106, 142 S. Ct. 2111, 213 L. Ed. 2d 387, the constitutionality of §922(g)(8) is even more readily apparent. [*]

To start, the Government has a compelling interest in keeping firearms out of the hands of domestic abusers. A woman who lives in a house with a domestic abuser is five times more likely to be murdered if the abuser has access to a gun. See A. Kivisto & M. Porter, Firearm Use Increases Risk of Multiple Victims in Domestic Homicides, 48 J. Am. Acad. Psychiatry & L. 26 (2020). With over 70 people shot and killed by an intimate partner each month in the United States, the seriousness of the problem can hardly be overstated. See Centers for Disease Control and Prevention, WISQARS Nat. Violent Death Reporting System, Violent Deaths Report 2020, https://wisqars.cdc.gov/nvdrs (showing that 863 people were killed with a firearm by a spouse or other intimate partner in 2020). Because domestic violence is rarely confined to the intimate partner that receives the protective order, the Government's interest extends even further. In roughly a quarter of cases where an abuser killed an intimate partner, the abuser **[***38]** also killed someone else, such as a child, family member, or roommate. See S. Smith, K. Fowler, & P. Niolon, Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003-2009, 104 Am. J. Pub. Health 461, 463-464 (2014). Moreover, one study found that domestic disputes were the most dangerous type of call for responding officers, causing more officer deaths with a firearm than any other type of call. See N. Breul & M. Keith, Deadly Calls and Fatal Encounters: Analysis of U. S. Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement, 2010-2014, p. 15 (2016).

[*] By "means-end scrutiny," I refer to the mode of analysis that would permit courts "to consider the State's interest in preventing gun violence, the effectiveness of the contested law in achieving that interest, the degree to which the law burdens the Second Amendment right, and, if appropriate, any less restrictive alternatives." *Bruen*, 597 U. S., at 131, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting). Prior to *Bruen*, the Courts of Appeals would apply a level of means-end scrutiny " 'proportionate to the severity of the burden that the law imposes on the right': strict scrutiny if the burden is severe, and intermediate scrutiny if it is not." *Id.*, at 103, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

While the Second Amendment does not yield automatically to the Government's compelling interest, §922(g)(8) is tailored to the vital objective of keeping guns out of the hands of domestic abusers. See *ante,* at 3-4, 14. Section 922(g)(8) should easily pass constitutional muster under any level of scrutiny.

Although I continue to think that the means-end approach to Second Amendment analysis is the right one, neither party asks the Court to reconsider *Bruen* at this time, and that question would of course involve other considerations than whether *Bruen* was rightly decided. Whether considered under *Bruen* or under **[*1907]** means-end scrutiny, **[***39]** §922(g)(8) clears the constitutional bar. I join in full the Court's opinion, which offers a more **[**374]** helpful model than the dissent for lower courts struggling to apply *Bruen*.

JUSTICE GORSUCH, concurring.

Mr. Rahimi pursues the "most difficult challenge to mount successfully": a facial challenge. *United States* v. *Salerno*, 481 U. S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). He contends that 18 U. S. C. §922(g)(8) violates the Second Amendment "in all its applications." *Bucklew* v. *Precythe*, 587 U. S. 119, 138, 139 S. Ct. 1112, 203 L. Ed. 2d 521 (2019). To prevail, he must show "no set of circumstances" exists in which that law can be applied without violating the Second Amendment. *Salerno*, 481 U. S., at 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697. I agree with the Court that he has failed to make that showing. *Ante*, at 8.

That is not because the Constitution has little to say about the matter. The Second Amendment protects the "right of the people to keep and bear Arms." "'[T]ext and history'" dictate the contours of that right. *Ante*, at 6 (quoting *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 22, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)). As this Court has recognized, too, the Amendment's text "'guarantee[s] the individual right to possess and carry weapons in case of confrontation.'" *Id*., at 32, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (quoting *District of Columbia* v. *Heller*, 554 U. S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)). And where that "text covers an individual's conduct," a law regulating that conduct may be upheld only if it is "consistent with this Nation's historical tradition of firearms regulation." 597 U. S., at 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see *ante*, at 6.

In this case, no one questions that the law Mr. Rahimi challenges addresses **[***40]** individual conduct covered by the text of the Second Amendment. So, in this facial challenge, the question becomes whether that law, in at least some of its applications, is consistent with historic firearm regulations. To prevail, the government need not show that the current law is a "'dead ringer'" for some historical analogue. *Ante*, at 8 (quoting *Bruen*, 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387). But the government must establish that, in at least some of its applications, the challenged law "impose[s] a comparable burden on the right of armed self-defense" to that imposed by a

historically recognized regulation. *Id*., at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see *ante*, at 7. And it must show that the burden imposed by the current law "is comparably justified." *Bruen*, 597 U. S., at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see *ante*, at 7.

Why do we require those showings? Through them, we seek to honor the fact that the Second Amendment "codified a *pre-existing* right" belonging to the American people, one that carries the same "scope" today that it was "understood to have when the people adopted" it. *Heller*, 554 U. S., at 592, 634-635. When the people ratified the Second Amendment, they surely understood an arms-bearing citizenry posed some risks. But just as surely they believed that the right protected by the Second Amendment was itself vital to the preservation of life and **[***375]** liberty. See, *e.g.*, 1 Blackstone's Commentaries, Editor's **[***41]** App. 300 (St. George Tucker ed. 1803) (observing that the Second Amendment may represent the "palladium of liberty," for "[t]he right of self defence is the first law of nature," and "in most governments[,] it has been the study of rulers to confine this right within the narrowest limits"); 3 J. Story, Commentaries on the Constitution of the United States §1890, p. 746 (1833) ("The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic").

[*1908] We have no authority to question that judgment. As judges charged with respecting the people's directions in the Constitution—directions that are "trapped in amber," see *ante*, at 7—our only lawful role is to apply them in the cases that come before us. Developments in the world may change, facts on the ground may evolve, and new laws may invite new challenges, but the Constitution the people adopted remains our enduring guide. *Bruen*, 597 U. S., at 27-28, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see, *e.g.*, *United States* v. *Jones*, 565 U. S. 400, 404-405, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012); *Caetano* v. *Massachusetts*, 577 U. S. 411, 411-412, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (*per curiam*). If changes are to be made to the Constitution's directions, they must be made by the American people. Nor is there anything remotely unusual about any of this. Routinely, litigants and courts alike must consult history when seeking to discern the meaning and scope of a constitutional provision. See *post*, at 6-16 (KAVANAUGH, J., concurring) **[***42]** (offering examples). And when doing so, litigants and courts "must exercise care." See *post*, at 3, n. (BARRETT, J., concurring).

Consider just one example. We have recognized that the Sixth Amendment enshrines another pre-existing right: the right of a defendant to confront his accusers at trial. *Crawford* v. *Washington*, 541 U. S. 36, 54, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Just as here, we have recognized that, in placing this right in the Constitution, the people set its scope, "admitting only those exceptions established at the time of the founding." *Ibid.* And, just as here, when a party asks us to sustain some modern exception to the confrontation right, we require them to point to a close historic analogue to justify it. See *Giles* v. *California*, 554 U. S. 353, 358-361, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008). Just as here, too, we have expressly rejected arguments that courts should proceed

differently, such as by trying to glean from historic exceptions overarching "policies," "'purposes,'" or "values" to guide them in future cases. See *id.*, at 374-375, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (opinion of Scalia, J.). We have rejected those paths because the Constitution enshrines the people's choice to achieve certain policies, purposes, and values "through very specific means": the right of confrontation as originally understood at the time of the founding. *Id.*, at 375, 128 S. Ct. 2678, 171 L. Ed. 2d 488. As we have put it, a court may not "extrapolate" **[***43]** from the Constitution's text and history "the values behind [that right], and then . . . enforce its guarantees only to the extent they serve (in the courts' views) those underlying values." *Ibid.* Proceeding that way, we have warned, **[**376]** risks handing judges a license to turn "the guarantee of confrontation" into "no guarantee at all." *Ibid*. As there, so too here: Courts must proceed with care in making comparisons to historic firearms regulations, or else they risk gaming away an individual right the people expressly preserved for themselves in the Constitution's text.

Proceeding with this well in mind today, the Court rightly holds that Mr. Rahimi's facial challenge to §922(g)(8) cannot succeed. It cannot because, through surety laws and restrictions on "going armed," the people in this country have understood from the start that the government may disarm an individual temporarily after a "judicial determinatio[n]" that he "likely would threaten or ha[s] threatened another with a weapon." *Ante*, at 14. And, at least in some cases, the statute before us works in the same way and does so for the same reasons: It permits a court to disarm a person only if, after notice and hearing, it finds that he **[***44]** "represents a credible threat to the physical safety" of others. §§922(g)(8)(A), (g)(8)(C)(i). A court, too, **[*1909]** may disarm an individual only for so long as its order is in effect. §922(g)(8). In short, in at least some applications, the challenged law does not diminish any aspect of the right the Second Amendment was originally understood to protect. See *Bruen*, 597 U. S., at 24.

I appreciate that one of our colleagues sees things differently. *Post*, at 6-7 (THOMAS, J., dissenting). But if reasonable minds can disagree whether §922(g)(8) is analogous to past practices originally understood to fall outside the Second Amendment's scope, we at least agree that is the only proper question a court may ask. *Post*, at 5. Discerning what the original meaning of the Constitution requires in this or that case may sometimes be difficult. Asking that question, however, at least keeps judges in their proper lane, seeking to honor the supreme law the people have ordained rather than substituting our will for theirs. And whatever indeterminacy may be associated with seeking to honor the Constitution's original meaning in modern disputes, that path offers surer footing than any other this Court has attempted from time to time. Come to this Court with arguments from text and history, and we are bound to reason **[***45]** through them as best we can. (As we have today.) Allow judges to reign unbounded by those materials, or permit them to extrapolate their own broad new principles from those sources, and no one can have any idea how they might rule. (Except the

judges themselves.) Faithful adherence to the Constitution's original meaning may be an imperfect guide, but I can think of no more perfect one for us to follow.

Just consider how lower courts approached the Second Amendment before our decision in *Bruen*. They reviewed firearm regulations under a two-step test that quickly "devolved" into an interest-balancing inquiry, where courts would weigh a law's burden on the right against the benefits the law offered. See *Rogers* v. *Grewal*, 590 U. S. ___, ___, and n. 1, 140 S. Ct. 1865, 207 L. Ed. 2d 1059 (2020) (THOMAS, J., joined by KAVANAUGH, J., dissenting from denial of certiorari) (slip op., at 5, and n. 1); see also, *e.g.*, *Peruta* v. *County of San Diego*, 742 F. 3d 1144, 1167-1168, 1176-1177 (CA9 2014); **[**377]** *Drake* v. *Filko*, 724 F. 3d 426, 457 (CA3 2013) (Hardiman, J., dissenting). Some judges expressed concern that the prevailing two-step test had become "just window dressing for judicial policymaking." *Duncan* v. *Bonta*, 19 F. 4th 1087, 1148 (CA9 2021) (en banc) (Bumatay, J., dissenting). To them, the inquiry worked as a "black box regime" that gave a judge broad license to support policies he "[f]avored" and discard those he disliked. *Ibid.* How did the government fare under that **[***46]** regime? In one circuit, it had an "undefeated, 50-0 record." *Id*., at 1167, n. 8 (VanDyke, J., dissenting). In *Bruen*, we rejected that approach for one guided by constitutional text and history. 597 U. S., at 19, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Perhaps judges' jobs would be easier if they could simply strike the policy balance they prefer. And a principle that the government always wins surely would be simple for judges to implement. But either approach would let judges stray far from the Constitution's promise. See *Heller*, 554 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

One more point: Our resolution of Mr. Rahimi's facial challenge to §922(g)(8) necessarily leaves open the question whether the statute might be unconstitutional as applied in "particular circumstances." *Salerno*, 481 U. S., at 751, 107 S. Ct. 2095, 95 L. Ed. 2d 697. So, for example, we do not decide today whether the government may disarm a person without a judicial finding that he poses a "credible threat" to another's physical safety. §922(g)(8)(C)(i); see *ante*, at 8. We do not resolve whether **[*1910]** the government may disarm an individual permanently. See *ante*, at 14 (stressing that, "like surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to [Mr.] Rahimi"). We do not determine whether §922(g)(8) may be constitutionally enforced against a person who uses a firearm in self-defense. Notably, the surety laws that inform **[***47]** today's decision allowed even an individual found to pose a threat to another to "obtain an exception if he needed his arms for self-defense." *Ante*, at 12; see also *post*, at 23 (Thomas, J., dissenting). Nor do we purport to approve in advance other laws denying firearms on a categorical basis to any group of persons a legislature happens to deem, as the government puts it, "not 'responsible.'" *Ante*, at 17 (quoting Brief for United States 6); see Tr. of Oral Arg. 31-32; see also *post*, at 27 (opinion of Thomas, J.) ("Not a single Member of the Court adopts the Government's theory").

We do not resolve any of those questions (and perhaps others like them) because we cannot. Article III of the Constitution vests in this Court the power to decide only the "'actual cas[e]'" before us, "'not abstractions.'" *Public Workers* v. *Mitchell*, 330 U. S. 75, 89, 67 S. Ct. 556, 91 L. Ed. 754 (1947). And the case before us does not pose the question whether the challenged statute is always lawfully applied, or whether other statutes might be permissible, but only whether this one has *any* lawful scope. Nor should future litigants and courts read any more into our decision than that. As this Court has long recognized, what we say in our opinions must "be taken in connection with the case in which those expressions **[****378] [***48]** are used," *Cohens* v. *Virginia*, 19 U.S. 264, 6 Wheat. 264, 399, 5 L. Ed. 257 (1821), and may not be "stretch[ed] . . . beyond their context," *Brown* v. *Davenport*, 596 U. S. 118, 141, 142 S. Ct. 1510, 212 L. Ed. 2d 463 (2022).

Among all the opinions issued in this case, its central messages should not be lost. The Court reinforces the focus on text, history, and tradition, following exactly the path we described in *Bruen*. *Ante*, at 5-8. And after carefully consulting those materials, the Court "conclude[s] *only* this": "An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Ante*, at 17 (emphasis added). With these observations, I am pleased to concur.

JUSTICE KAVANAUGH, concurring.

The Framers of the Constitution and Bill of Rights wisely sought the best of both worlds: democratic self-government and the protection of individual rights against excesses of that form of government. In justiciable cases, this Court determines whether a democratically enacted law or other government action infringes on individual rights guaranteed by the Constitution. When performing that Article III duty, the Court does not implement its own policy judgments about, for example, free speech or gun regulation. Rather, the Court interprets and applies the Constitution by examining text, pre-ratification **[***49]** and post-ratification history, and precedent. The Court's opinion today does just that, and I join it in full.

The concurring opinions, and the briefs of the parties and *amici* in this case, raise important questions about judicial reliance on text, history, and precedent, particularly in Second Amendment cases. I add this concurring opinion to review the proper roles of text, history, and precedent in constitutional interpretation.

I

The American people established an enduring American Constitution. The first **[*1911]** and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood. The text of the Constitution is the "Law of the Land." Art. VI. As a general matter, the text of the

Constitution says what it means and means what it says. And unless and until it is amended, that text controls.

In many important provisions, the Constitution is a document of majestic specificity with "strikingly clean prose." A. Amar, America's Constitution xi (2005). Two Houses of Congress. A House elected every two years. Senators serve 6-year terms. Two Senators per State. A State's equal suffrage **[***50]** in the Senate may not be changed without the State's consent. A two-thirds House vote to expel a Member of the House. The same for the Senate. Appropriations are made by law. Bicameralism and presentment. The Presidential veto. The Presidential pardon. The President serves a 4-year term. A maximum of two elected terms for a President. The salary of a sitting President may not be increased or decreased. A vote of a majority of the House and two-thirds of the Senate to remove a President. **[**379]** The President nominates and the Senate confirms principal executive officers. One Supreme Court. Tenure and salary protection for Supreme Court and other federal judges. Two-thirds of each House of Congress together with three-fourths of the States may amend the Constitution. Congress meets at noon on January 3rd unless otherwise specified by Congress. The District of Columbia votes in Presidential elections. The list goes on.

Those and many other constitutional provisions are relatively clear. And when the "framers of the Constitution employed words in their natural sense; and where they are plain and clear, resort to collateral aids to interpretation is unnecessary and cannot be indulged in to narrow **[***51]** or enlarge the text." *McPherson* v. *Blacker*, 146 U. S. 1, 27, 13 S. Ct. 3, 36 L. Ed. 869 (1892).

Of course, some provisions of the Constitution are broadly worded or vague—to put it in Madison's words, "more or less obscure and equivocal." The Federalist No. 37, p. 229 (C. Rossiter ed. 1961). As Chief Justice Rehnquist explained, the Constitution is in some parts "obviously not a specifically worded document but one couched in general phraseology." W. Rehnquist, The Notion of a Living Constitution, 54 Texas L. Rev. 693, 697 (1976).

That is especially true with respect to the broadly worded or vague individual-rights provisions. (I will use the terms "broadly worded" and "vague" interchangeably in this opinion.) For example, the First Amendment provides that "Congress shall make no law" "abridging the freedom of speech." And the Second Amendment, at issue here, guarantees that "the right of the people to keep and bear Arms" "shall not be infringed."

Read literally, those Amendments might seem to grant *absolute* protection, meaning that the government could never regulate speech or guns in any way. But American law has long recognized, as a matter of original understanding and original meaning, that constitutional rights generally come with exceptions.

With respect to the First Amendment, for example, this Court's "jurisprudence over the past 216"—now 233—"years has rejected an absolutist **[***52]** interpretation." *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 482, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007) (opinion of ROBERTS, C. J.); see R. Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 21-22 (1971). From 1791 to the present, "the First Amendment has permitted restrictions **[*1912]** upon the content of speech in a few limited areas"—including obscenity, defamation, fraud, and incitement. *United States* v. *Stevens*, 559 U. S. 460, 468, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010) (quotation marks omitted). So too with respect to the Second Amendment: "Like most rights, the right secured by the Second Amendment is not unlimited"; it is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *District of Columbia* v. *Heller*, 554 U. S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

II

A recurring and difficult issue for judges, therefore, is how to interpret **[**380]** vague constitutional text. That issue often arises (as here) in the context of determining exceptions to textually guaranteed individual rights. To what extent does the Constitution allow the government to regulate speech or guns, for example? [1]

In many cases, judicial precedent informs or controls the answer (more on that later). But absent precedent, there are really only two potential answers to the question of how to determine exceptions to broadly worded constitutional rights: history or policy.

Generally speaking, the historical approach examines the laws, practices, and understandings from before and after ratification that may help the interpreter discern the **[***53]** meaning of the constitutional text and the principles embodied in that text. The policy approach rests on the philosophical or policy dispositions of the individual judge.

History, not policy, is the proper guide.

For more than 200 years, this Court has relied on history when construing vague constitutional text in all manner of constitutional disputes. For good reason. History can supply evidence of the original meaning of vague text. History is far less subjective than policy. And reliance on history

[1] There are two ways to frame this point—either (i) determining the exceptions to a constitutional right or (ii) determining the affirmative scope or contours of that constitutional right. Either way, the analysis is the same—does the constitutional provision, as originally understood, permit the challenged law? This opinion uses the term "exceptions," which underscores that the constitutional baseline is protection of the textually enumerated right. See *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 482, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007) (opinion of Roberts, C. J.) (stating in a First Amendment case that "it is worth recalling the language we are applying").

is more consistent with the properly neutral judicial role than an approach where judges subtly (or not so subtly) impose their own policy views on the American people.

Judges are like umpires, as THE CHIEF JUSTICE has aptly explained. And in a constitutional system that counts on an independent Judiciary, judges must act like umpires. To be an umpire, the judge "must stick close to the text and the history, and their fair implications," because there "is no principled way" for a neutral judge "to prefer any claimed human value to any other." R. Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 8 (1971). History establishes a "criterion that is conceptually quite separate from the preferences of the judge himself." A. Scalia, Originalism: The Lesser **[***54]** Evil, 57 U. Cin. L. Rev. 849, 864 (1989). When properly applied, history helps ensure that judges do not simply create constitutional meaning "out of whole cloth." A. Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1183 (1989). [2]

[*1913] Absent precedent, therefore, history **[**381]** guides the interpretation of vague constitutional text. Of course, this Court has been deciding constitutional cases for about 230 years, so relevant precedent often exists. As the Court's opinions over time amply demonstrate, precedent matters a great deal in constitutional interpretation.

I now turn to explaining how courts apply pre-ratification history, post-ratification history, and precedent when analyzing vague constitutional text.

A

Pre-ratification history. When interpreting vague constitutional text, the Court typically scrutinizes the stated intentions and understandings of the Framers and Ratifiers of the Constitution (or, as relevant, the Amendments). The Court also looks to the understandings of the American people from the pertinent ratification era. Those intentions and understandings do not necessarily determine meaning, but they may be strong evidence of meaning. See generally, *e.g.*, The Federalist (C. Rossiter ed. 1961); Records of the Federal Convention **[***55]** of 1787 (M. Farrand ed. 1911); Debates on the Federal Constitution (J. Elliot ed. 1836).

[2] The historical approach applies when the text is vague. But the text of the Constitution always controls. So history contrary to clear text is not to be followed. See, *e.g.*, *INS* v. *Chadha*, 462 U. S. 919, 945-959, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983); *Powell* v. *McCormack*, 395 U. S. 486, 546-547, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); *Brown* v. *Board of Education*, 347 U. S. 483, 490-495, 74 S. Ct. 686, 98 L. Ed. 873, and n. 5 (1954); cf. Sedition Act of 1798, ch. 74, 1 Stat. 596. In some cases, there may be debate about whether the relevant text is sufficiently clear to override contrary historical practices. See, *e.g.*, *NLRB* v. *Noel Canning*, 573 U. S. 513, 613, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014) (Scalia, J., concurring in judgment) ("What the majority needs to sustain its judgment is an ambiguous text and a clear historical practice. What it has is a clear text and an at-best-ambiguous historical practice"). The basic principle remains: Text controls over contrary historical practices.

Especially for the original Constitution and the Bill of Rights, the Court also examines the pre-ratification history in the American Colonies, including pre-ratification laws and practices. And the Court pays particular attention to the historical laws and practices in the United States from Independence in 1776 until ratification in 1788 or 1791. Pre-ratification American history can shed light on constitutional meaning in various ways.

For example, some provisions of the Constitution use language that appeared in the Articles of Confederation or state constitutional provisions. And when the language that appeared in the Articles of Confederation or in state constitutions is the same as or similar to the language in the U. S. Constitution, the history of how people understood the language in the Articles or state constitutions can inform interpretation of that language in the U. S. Constitution. See, *e.g.*, *Moore* v. *Harper*, 600 U. S. 1, 33, 143 S. Ct. 2065, 216 L. Ed. 2d 729 (2023) (the "Framers did not write the Elections Clause on a blank slate—they instead borrowed from the Articles of Confederation" as evidenced by their use of "closely parallel" language); *District of Columbia* v. *Heller*, 554 U. S. 570, 600-601, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) ("Our interpretation is confirmed by **[***56]** analogous arms-bearing rights in state constitutions that preceded and immediately followed adoption of the Second Amendment"); *United States Steel Corp*. v. *Multistate Tax Comm'n*, 434 U. S. 452, 460, 98 S. Ct. 799, 54 L. Ed. 2d 682, and n. 10 (1978) ("The history of interstate agreements under the Articles of Confederation suggests the same distinction between 'treaties, alliances, and confederations' **[*1914]** on the one hand, and 'agreements and compacts' **[**382]** on the other," as the distinction made in the Constitution's Treaty and Compact Clauses).

Similarly, other pre-ratification national or state laws and practices may sometimes help an interpreter discern the meaning of particular constitutional provisions. Those pre-ratification American laws and practices formed part of the foundation on which the Framers constructed the Constitution and Bill of Rights. Indeed, the Constitution did not displace but largely co-exists with state constitutions and state laws, except to the extent they conflict with federal law. See Art. VI.

On the other hand, some pre-ratification history can be probative of what the Constitution does *not* mean. The Framers drafted and approved many provisions of the Constitution precisely to depart from rather than adhere to certain pre-ratification laws, practices, or understandings.

For example, the "defects" of the Articles of Confederation inspired some of the key decisions **[***57]** made by the Framers in Philadelphia and by the First Congress in drafting the Bill of Rights. The Federalist No. 37, at 224 (J. Madison); see, *e.g.*, *id*., at 226 ("the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting upon it"); *PennEast Pipeline Co.* v. *New Jersey*, 594 U. S. 482, 508, 141 S. Ct. 2244, 210 L. Ed. 2d 624 (2021) ("When the Framers met in

Philadelphia in the summer of 1787, they sought to create a cohesive national sovereign in response to the failings of the Articles of Confederation"); *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 716-717, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004) ("The Continental Congress was hamstrung by its inability to 'cause infractions of treaties, or of the law of nations to be punished,'" and the "Framers responded by vesting the Supreme Court with original jurisdiction over 'all Cases affecting Ambassadors, other public ministers and Consuls,' and the First Congress followed through" (citation omitted)); *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 803, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995) ("After the Constitutional Convention convened, the Framers were presented with, and eventually adopted a variation of, a plan not merely to amend the Articles of Confederation but to create an entirely new National Government with a National Executive, National Judiciary, and a National Legislature" (quotation marks omitted)).

The **[***58]** pre-ratification history of America's many objections to British laws and the system of oppressive British rule over the Colonies—identified most prominently in the Declaration of Independence—can likewise inform interpretation of some of the crucial provisions of the original Constitution and Bill of Rights. Compare Declaration of Independence ¶11 (under British rule, the King "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries") with U. S. Const., Art. III, §1 ("The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office"); see, *e.g.*, The Federalist No. 37, at 226 ("The most that the convention could do" **[**383]** "was to avoid the errors suggested by the past experience of other countries, as well as of our own"); 1 Annals of Cong. 436 (1789) (J. Madison) ("The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution").

[*1915] This Court has recognized, for example, that no "purpose in ratifying the Bill of Rights was clearer than that **[***59]** of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed." *Bridges* v. *California*, 314 U. S. 252, 265, 62 S. Ct. 190, 86 L. Ed. 192 (1941). Ratified as it was "while the memory of many oppressive English restrictions on the enumerated liberties was still fresh," the Bill of Rights "cannot reasonably be taken as approving prevalent English practices." *Ibid.*; see, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 565 U. S. 171, 183, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012) ("Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church" through the First Amendment's Establishment Clause); *Powell* v. *Alabama*, 287 U. S. 45, 60, 53 S. Ct. 55, 77 L. Ed. 158 (1932) (right to counsel under the Sixth Amendment reflected America's

rejection of the English common law rule that a "person charged with treason or felony was denied the aid of counsel"). [3]

The Equal Protection Clause provides another example. Ratified in 1868, that Clause sought to reject the Nation's history of racial discrimination, not to backdoor incorporate racially discriminatory and oppressive historical practices and laws into the Constitution. See generally *Flowers* v. *Mississippi*, 588 U. S. 284, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019); *Batson* v. *Kentucky*, 476 U. S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986); *Loving* v. *Virginia*, 388 U. S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); *Brown* v. *Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

In short, pre-ratification American history—that is, pre-ratification laws, practices, and understandings—can inform interpretation of vague constitutional provisions in the original Constitution and Bill of Rights. The same principle **[***60]** of looking to relevant pre-ratification history applies when interpreting broadly worded language in the later amendments, including the Fourteenth Amendment ratified in 1868. But in using pre-ratification **[**384]** history, courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind.

B

Post-ratification history. As the Framers made clear, and as this Court has stated time and again for more than two **[*1916]** centuries, post-ratification history—sometimes referred to as tradition—can also be important for interpreting vague constitutional text and determining exceptions to individual constitutional rights. When the text is vague and the pre-ratification history is elusive or inconclusive, post-ratification history becomes especially important. Indeed, absent precedent, there can be little else to guide a judge deciding a constitutional case in that situation, unless the judge simply defaults to his or her own policy preferences.

After ratification, the National Government and the state governments began interpreting and applying the Constitution's text. They have continued to do so ever since. As the national and state

---

[3] To be sure, as the Court's cases reveal, pre-ratification English law and practices may supply background for some constitutional provisions. But the Constitution, including the Bill of Rights, did not purport to take English law or history wholesale and silently download it into the U. S. Constitution. See, *e.g.*, *Harmelin* v. *Michigan*, 501 U. S. 957, 975, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (opinion of Scalia, J.) ("Unless one accepts the notion of a blind incorporation, however, the ultimate question is not what 'cruell and unusuall punishments' meant in the [English] Declaration of Rights, but what its meaning was to the Americans who adopted the Eighth Amendment"). Therefore, reflexively resorting to English law or history without careful analysis can sometimes be problematic because America had fought a war—and would soon fight another in 1812—to free itself from British law and practices and rid itself of tyrannical British rule. See The Federalist No. 45, p. 289 (C. Rossiter ed. 1961) (J. Madison) ("Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety," but that they should continue to be subject to the "impious doctrine in the old world, that the people were made for kings, not kings for the people"?).

governments **[***61]** over time have enacted laws and implemented practices to promote the general welfare, those laws and practices have often reflected and reinforced common understandings of the Constitution's authorizations and limitations.

Post-ratification interpretations and applications by government actors—at least when reasonably consistent and longstanding—can be probative of the meaning of vague constitutional text. The collective understanding of Americans who, over time, have interpreted and applied the broadly worded constitutional text can provide good guidance for a judge who is trying to interpret that same text decades or centuries later. See, *e.g.*, *Republican Party of Minn.* v. *White*, 536 U. S. 765, 785, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002) (a "universal and long-established tradition of prohibiting certain conduct creates a strong presumption that the prohibition is constitutional" (quotation marks omitted)); *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472-473, 35 S. Ct. 309, 59 L. Ed. 673 (1915) ("officers, law-makers and citizens naturally adjust themselves to any long-continued action" of the government "on the presumption that" unconstitutional "acts would not have been allowed to be so often repeated as to crystallize into a regular practice"); *McPherson* v. *Blacker*, 146 U. S. 1, 27, 13 S. Ct. 3, 36 L. Ed. 869 (1892) (when constitutional text is vague, "contemporaneous and subsequent practical construction are entitled to the greatest **[***62]** weight"). [4]

[*1917] Importantly, the Framers themselves intended that post-ratification history would shed light on the meaning **[**385]** of vague constitutional text. They understood that some constitutional text may be "more or less obscure and equivocal" such that questions "daily occur in the course of practice." The Federalist No. 37, at 228-229. Madison explained that the meaning of vague text would be "liquidated and ascertained by a series of particular discussions and adjudications." *Id.*, at 229. In other words, Madison articulated the Framers' expectation and intent

---

[4] Post-ratification history is sometimes also referred to as tradition, liquidation, or historical gloss. Those concepts are probably not identical in all respects. In any event, in applying those concepts in constitutional interpretation, some important questions can arise, such as: (i) the level of generality at which to define a historical practice; (ii) how widespread a historical practice must have been; (iii) how long ago it must have started; and (iv) how long it must have endured.

Although this Court's constitutional precedents routinely rely on post-ratification history, those precedents do not supply a one-size-fits-all answer to those various methodological questions. See, *e.g.*, *Noel Canning*, 573 U. S., at 522-556; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 610-611, 72 S. Ct. 863, 96 L. Ed. 1153, 62 Ohio Law Abs. 417 (1952) (Frankfurter, J., concurring).

And I will not attempt to answer all of those questions here. Respected scholars are continuing to undertake careful analysis. See generally J. Alicea, Practice-Based Constitutional Theories, 133 Yale L. J. 568 (2023); R. Barnett & L. Solum, Originalism After *Dobbs*, *Bruen*, and *Kennedy*: The Role of History and Tradition, 118 Nw. U. L. Rev. 433 (2023); M. DeGirolami, Traditionalism Rising, 24 J. Contemp. Legal Issues 9 (2023); S. Girgis, Living Traditionalism, 98 N. Y. U. L. Rev. 1477 (2023); W. Baude, Constitutional Liquidation, 71 Stan. L. Rev. 1 (2019); C. Bradley, Doing Gloss, 84 U. Chi. L. Rev. 59 (2017); C. Bradley & T. Morrison, Historical Gloss and the Separation of Powers, 126 Harv. L. Rev. 411 (2012); A. Amar, America's Constitution (2005); C. Nelson, Originalism and Interpretive Conventions, 70 U. Chi. L. Rev. 519 (2003); M. McConnell, Tradition and Constitutionalism Before the Constitution, 1998 U. Ill. L. Rev. 173.

that post-ratification history would be a proper and important tool to help constitutional interpreters determine the meaning of vague constitutional text.

From early on, this Court followed Madison's lead. In 1819, in one of its most important decisions ever, the Court addressed the scope of Article I's Necessary and Proper Clause. *McCulloch* v. *Maryland*, 17 U.S. 316, 4 Wheat. 316, 4 L. Ed. 579 (1819). Writing for the Court, Chief Justice Marshall invoked post-ratification history to conclude that Congress's authority to establish a national bank could "scarcely be considered as an open question." *Id.*, at 401, 4 Wheat. 316, 4 L. Ed. 579. The constitutionality of the national bank had "been recognised by many successive legislatures," and an "exposition of the constitution, deliberately **[***63]** established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded." *Ibid.* Marshall added: The "respective powers of those who are equally the representatives of the people, are to be adjusted; if not put at rest by the practice of the government, ought to receive a considerable impression from that practice." *Ibid*.

In relying on post-ratification history as a proper tool to discern constitutional meaning, Madison and Marshall make for a formidable duo. Moving from distant American history to more recent times, one can add Justice Scalia. Throughout his consequential 30-year tenure on this Court, Justice Scalia repeatedly emphasized that constitutional interpretation must take account of text, pre-ratification history, and post-ratification history—the last of which he often referred to as "tradition." In his words, when judges interpret vague or broadly worded constitutional text, the "traditions of our people" are "paramount." *McDonald* v. *Chicago*, 561 U. S. 742, 792, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (Scalia, J., concurring). Constitutional interpretation should reflect "the principles adhered to, over time, by the American people, rather than those favored by the personal (and necessarily **[***64]** shifting) philosophical dispositions of a majority of this Court." *Rutan* v. *Republican Party of Ill.*, 497 U. S. 62, 96, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990) (Scalia, J., dissenting).

[386]** The U. S. Reports are well stocked with Scalia opinions looking to post-ratification history and tradition. [5] In *Heller*, Justice **[*1918]** Scalia wrote for the Court that "a critical tool

[5] Justice Scalia's opinions "made extensive use of post-ratification history," and "his assessment of post-ratification history" in those opinions extended "far beyond the time of enactment." M. Ramsey, Beyond the Text: Justice Scalia's Originalism in Practice, 92 Notre Dame L. Rev. 1945, 1957, 1960 (2017). Justice Scalia did not necessarily "use[ ] tradition as an independent source of interpretive authority; rather, he had a very broad view of what traditions might be indicative of original meaning." *Id*., at 1962, n. 79; see, *e.g.*, *NLRB* v. *Noel Canning*, 573 U. S. 513, 584-593, 602-615, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014) (Scalia, J., concurring in judgment); *District of Columbia* v. *Heller*, 554 U. S. 570, 605-619, 626-628, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); *McCreary County* v. *American Civil Liberties Union of Ky.*, 545 U. S. 844, 886-900, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005) (Scalia, J., dissenting); *Hamdi* v. *Rumsfeld*, 542 U. S. 507, 558-563, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (Scalia, J., dissenting); *Crawford* v. *Washington*, 541 U. S. 36, 47-50, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004); *Mitchell* v. *United States*, 526 U. S. 314, 334-336, 119 S. Ct. 1307, 143 L. Ed. 2d 424, and n. 1 (1999) (Scalia, J., dissenting); *Department of Commerce* v. *United States House of Representatives*, 525 U. S. 316, 347-349, 119 S. Ct. 765, 142 L. Ed. 2d 797 (1999) (Scalia, J., concurring

of constitutional interpretation" is "the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification." 554 U. S., at 605, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis in original); see also *ibid*. ("We now address how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century").

Heller echoed years of earlier Scalia opinions. To take one: "Where the meaning of a constitutional text (such as 'the freedom of speech') is unclear, the widespread and long-accepted practices of the American people are the best indication of what fundamental beliefs it was intended to enshrine." *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 378, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) (Scalia, J., dissenting). Or another: A "venerable and accepted tradition is not to be laid on the examining table and scrutinized for its conformity to some abstract principle" of "adjudication devised by this Court. To the contrary, such traditions are themselves **[***65]** the stuff out of which the Court's principles are to be formed. They are, in these uncertain areas, the very points of reference by which the legitimacy or illegitimacy of *other* practices is to be figured out." *Rutan*, 497 U. S., at 95-96, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (Scalia, J., dissenting) (emphasis in original).

[387]** As leading actors and theorists in the earliest and latest chapters of the American constitutional story, Madison, Marshall, and Scalia made clear that courts should look to post-ratification history as well as pre-ratification history to interpret vague constitutional text.

For more than two centuries—from the early 1800s to this case—this Court has done just that. The Court has repeatedly employed post-ratification history to determine the meaning of vague constitutional text. Reliance on post-ratification history "has shaped scores of Court cases spanning all domains of constitutional law, every era of the nation's history, and Justices of every stripe." S. Girgis, Living Traditionalism, 98 N. Y. U. L. Rev. 1477, 1480 (2023); see, *e.g.*, *Consumer Financial Protection Bureau* v. *Community Financial Services Assn. of America, Ltd.*, 601 U. S. 416, 441-445, 218 L. Ed. 2d 455 (2024) (Kagan, J., concurring); *Trump* v. *Anderson*, 601 U. S. 100, 113-115, 144 S. Ct. 662, 218 L. Ed. 2d 1 (2024) **[*1919]** (*per curiam*); *Moore* v. *Harper*,

---

in part); *Clinton* v. *City of New York*, 524 U. S. 417, 465-469, 118 S. Ct. 2091, 141 L. Ed. 2d 393 (1998) (Scalia, J., concurring in part and dissenting in part); *Printz* v. *United States*, 521 U. S. 898, 905-918, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997); *United States* v. *Gaudin*, 515 U. S. 506, 515-519, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995); *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 375-378, and nn. 1-2, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) (Scalia, J., dissenting); *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 223-225, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995); *Board of Ed. of Kiryas Joel Village School Dist.* v. *Grumet*, 512 U. S. 687, 732, 744, 114 S. Ct. 2481, 129 L. Ed. 2d 546 (1994) (Scalia, J., dissenting); *Herrera* v. *Collins*, 506 U. S. 390, 427-428, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993) (Scalia, J., concurring); *Richmond* v. *Lewis*, 506 U. S. 40, 54, 113 S. Ct. 528, 121 L. Ed. 2d 411 (1992) (Scalia, J., dissenting); *Harmelin* v. *Michigan*, 501 U. S. 957, 979-985, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (opinion of Scalia, J.); *Rutan* v. *Republican Party of Ill.*, 497 U. S. 62, 95-97, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990) (Scalia, J., dissenting); *McKoy* v. *North Carolina*, 494 U. S. 433, 466, 471, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990) (Scalia, J., dissenting); *Holland* v. *Illinois*, 493 U. S. 474, 481-482, 110 S. Ct. 803, 107 L. Ed. 2d 905, and n. 1 (1990).

600 U. S. 1, 22, 32-34, 143 S. Ct. 2065, 216 L. Ed. 2d 729 (2023); *Kennedy* v. *Bremerton School Dist.*, 597 U. S. 507, 535-536, 540-541, 142 S. Ct. 2407, 213 L. Ed. 2d 755, and n. 6 (2022); *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 35-37, 50-70, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022); *City of Austin* v. *Reagan Nat. Advertising of Austin, LLC*, 596 U. S. 61, 75, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022); *Houston Community College System* v. *Wilson*, 595 U. S. 468, 474-477, 142 S. Ct. 1253, 212 L. Ed. 2d 303 (2022); *PennEast Pipeline Co.* v. *New Jersey*, 594 U. S. 482, 494-497, 508, 141 S. Ct. 2244, 210 L. Ed. 2d 624 (2021); *TransUnion LLC* v. *Ramirez*, 594 U. S. 413, 424-425, 432-434, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021); *Torres* v. *Madrid*, 592 U. S. 306, 314, 141 S. Ct. 989, 209 L. Ed. 2d 190 (2021); *Trump* v. *Mazars USA, LLP*, 591 U. S. 848, 858-862, 140 S. Ct. 2019, 207 L. Ed. 2d 951 (2020); *Chiafalo* v. *Washington*, 591 U. S. 578, 592-597, 140 S. Ct. 2316, 207 L. Ed. 2d 761 (2020); *American Legion* v. *American Humanist Assn.*, 588 U. S. 19, 29, 58-66, 139 S. Ct. 2067, 204 L. Ed. 2d 452 (2019); *Zivotofsky* v. *Kerry*, 576 U. S. 1, 15-17, 23-28, 135 S. Ct. 2076, 192 L. Ed. 2d 83 (2015); *Town of Greece* v. *Galloway*, 572 U. S. 565, 575-579, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014); *District of Columbia* v. *Heller*, 554 U. S. 570, 605-619, 626-628, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); *Crawford* v. *Washington*, 541 U. S. 36, 47-50, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004); *Apprendi* v. *New Jersey*, 530 U. S. 466, 481-483, 120 S. Ct. 2348, 147 L. Ed. 2d 435, and n. 10 (2000); *Medina* v. *California*, 505 U. S. 437, 445-448, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992); *Holland* v. *Illinois*, 493 U. S. 474, 481-482, 110 S. Ct. 803, 107 L. Ed. 2d 905, and n. 1 (1990); *Marsh* v. *Chambers*, 463 U. S. 783, 786-792, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983); *Dames & Moore* v. *Regan*, 453 U. S. 654, 678-682, 101 S. Ct. 2972, 69 L. Ed. 2d 918 (1981); *Walz* v. *Tax Comm'n of City of New York*, 397 U. S. 664, 676-680, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970); *Powell* v. *McCormack*, 395 U. S. 486, 522, 541-547, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 610-613, 72 S. Ct. 863, 96 L. Ed. 1153, 62 Ohio Law Abs. 417 (1952) (Frankfurter, J., concurring); *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 321-329, 57 S. Ct. 216, 81 L. Ed. 255 (1936); *The Pocket Veto Case*, **[**388]** 279 U. S. 655, 688-691, 49 S. Ct. 463, 73 L. Ed. 894, 68 Ct. Cl. 786 (1929); *Myers* v. *United States*, 272 U. S. 52, 155-158, 47 S. Ct. 21, 71 L. Ed. 160 (1926); *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 469-475, 35 S. Ct. 309, 59 L. Ed. 673 (1915); *Marshall Field & Co.* v. *Clark*, 143 U. S. 649, 683-692, 12 S. Ct. 495, 36 L. Ed. 294 (1892); *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59 U.S. 272, 18 How. 272, 279-280, 15 L. Ed. 372 (1856); *McCulloch* v. *Maryland*, 17 U.S. 316, 4 Wheat. 316, 400-401, 4 L. Ed. 579 (1819). [6]

[6] The Court has similarly relied on history when deciding cases involving textually unenumerated rights under the Due Process Clause or the Privileges or Immunities Clause. In those contexts, the baseline is 180-degrees different: The text supplies no express protection of any asserted substantive right. The Court has recognized exceptions to that textual baseline, but in doing so has regularly observed that the Fourteenth Amendment "specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Washington* v. *Glucksberg*, 521 U. S. 702, 720-721, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997) (quotation marks omitted); see, *e.g.*, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535, 45 S.

C

Precedent. With a Constitution and a Supreme Court that are both more than **[*1920]** two centuries old, this Court and other courts are rarely **[***66]** interpreting a constitutional provision for the first time. Rather, a substantial body of Supreme Court precedent already exists for many provisions of the Constitution.

Precedent is fundamental to day-to-day constitutional decisionmaking in this Court and every American court. The "judicial Power" established in Article III incorporates the principle of *stare decisis*, both vertical and horizontal. As Hamilton stated, to "avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents" that will "unavoidably swell to a very considerable bulk" and "serve to define and point out their duty in every particular case that comes before them." The Federalist No. 78, at 471 (A. Hamilton).

Courts must respect precedent, while at the same time recognizing that precedent on occasion may appropriately be overturned. See, *e.g.*, *Brown*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 ; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937); see also *Ramos* v. *Louisiana*, 590 U. S. 83, 115-132, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020) (KAVANAUGH, J., concurring in part). In light of the significant amount of Supreme Court precedent that has built up over time, this Court and other courts often decide constitutional cases by reference to those extensive bodies of precedent.

Even then, however, text and history still matter a great deal. When **[***67]** determining how broadly or narrowly to read a precedent; when determining whether to extend, limit, or narrow a precedent; or in relatively infrequent cases, when determining whether to overrule a precedent, a court often will consider how the precedent squares with the Constitution's text and history. Therefore, the text, as well as pre-ratification and post-ratification history, may appropriately function as a gravitational pull on the Court's interpretation of precedent. See *Free Enterprise Fund* v. *Public Company Accounting Oversight **[**389]** Bd.*, 537 F. 3d 667, 698, 383 U.S. App. D.C. 119 (CADC 2008) (KAVANAUGH, J., dissenting) ("We should resolve questions about the scope of those precedents in light of and in the direction of the constitutional text and constitutional history").

But the first stop in this Court's constitutional decisionmaking is the Court's precedents—the accumulated wisdom of jurists from Marshall and Story to Harlan and Taft; from Hughes and Black to Jackson and White; from Rehnquist and O'Connor to Kennedy and Scalia; and so on.

III

Ct. 571, 69 L. Ed. 1070 (1925) ("liberty of parents and guardians to direct the upbringing and education of children under their control").

Some say that courts should determine exceptions to broadly worded individual rights, including the Second Amendment, by looking to policy. Uphold a law if it is a good idea; strike it down if it is not. True, the proponents of a policy-based approach to interpretation of **[***68]** broadly worded or vague constitutional text usually do not say so explicitly (although some do). Rather, they support a balancing approach variously known as means-end scrutiny, heightened scrutiny, tiers of scrutiny, rational basis with bite, or strict or intermediate or intermediate-plus or rigorous or skeptical scrutiny. Whatever the label of the day, that balancing approach is policy by another name. It requires judges to weigh the benefits against the burdens of a law and to uphold the law as constitutional if, in the judge's view, the law is sufficiently reasonable or important. See M. Barnes & E. Chemerinsky, The Once and Future Equal Protection Doctrine?, 43 Conn. L. Rev. 1059, 1080 (2011) ("The levels of scrutiny are essentially balancing tests").

[*1921] To begin, as I have explained, that kind of balancing approach to constitutional interpretation departs from what Framers such as Madison stated, what jurists such as Marshall and Scalia did, what judges as umpires should strive to do, and what this Court has actually done across the constitutional landscape for the last two centuries.

The balancing tests (heightened scrutiny and the like) are a relatively modern judicial innovation in constitutional decisionmaking. The "tiers of scrutiny have no basis in the text or original meaning of the **[***69]** Constitution." J. Alicea & J. Ohlendorf, Against the Tiers of Constitutional Scrutiny, National Affairs 72, 73 (2019). And before the late 1950s, "what we would now call strict judicial scrutiny did not exist." R. Fallon, The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny 30 (2019).

The Court "appears to have adopted" heightened-scrutiny tests "by accident" in the 1950s and 1960s in a series of Communist speech cases, "rather than as the result of a considered judgment." *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 125, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991) (Kennedy, J., concurring in judgment). The Court has employed balancing only in discrete areas of constitutional law—and even in those **[**390]** cases, history still tends to play a far larger role than overt judicial policymaking. [7]

[7] The Court has articulated a heightened-scrutiny test in some pockets of free-speech jurisprudence. But even when invoking heightened scrutiny in that context, the Court still often relies directly on history. See, *e.g.*, *City of Austin* v. *Reagan Nat. Advertising of Austin, LLC*, 596 U. S. 61, 75, 142 S. Ct. 1464, 212 L. Ed. 2d 418 (2022) (a city's regulation of solely off-premises billboards was within "the Nation's history of regulating off-premises signs" as "federal, state, and local jurisdictions have repeatedly relied upon on-/off-premises distinctions" "for the last 50-plus years"); *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 45-46, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983) ("In places which by long tradition" "have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed"). The Court has also used heightened scrutiny in certain equal protection cases. As discussed above, the Equal Protection Clause rejected the history of racially discriminatory laws and practices.

To be clear, I am not suggesting that the Court overrule cases where the Court has applied those heightened-scrutiny tests. But I am challenging the notion that those tests are the ordinary approach to constitutional interpretation. And I am arguing against extending those tests to new areas, including the Second Amendment.

One major problem with using a balancing approach to determine exceptions to constitutional rights is that it requires highly subjective judicial evaluations **[***70]** of how important a law is—at least unless the balancing test itself incorporates history, in which case judges might as well just continue to rely on history directly.

The subjective balancing approach forces judges to act more like legislators who decide what the law should be, rather than judges who "say what the law is." *Marbury* v. *Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803). That is because the balancing approach requires judges to weigh the benefits of a law against its burdens—a value-laden and political task that is usually reserved for the political branches. And that power in essence vests judges with "a roving commission to second-guess" legislators and administrative officers "concerning what is best for the country." W. Rehnquist, The Notion of a Living Constitution, 54 Texas L. Rev. 693, 698 (1976). Stated otherwise, when a court "does not have a solid textual anchor or an established social norm from **[*1922]** which to derive the general rule, its pronouncement appears uncomfortably like legislation." A. Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1185 (1989).

Moreover, the balancing approach is ill-defined. Some judges will apply heightened scrutiny with a presumption in favor of deference to the legislature. Other judges will apply heightened scrutiny with a presumption in **[***71]** favor of the individual right in question. Because it is unmoored, the balancing approach presents the real "danger" that "judges will mistake their own predilections for the law." A. Scalia, Originalism: The Lesser Evil, 57 U. Cin. L. Rev. 849, 863 (1989). Under the balancing approach, to use Justice Scalia's characteristically vivid description, if "We The Court conclude that They The People's answers to a problem" are unwise, "we are free to intervene," but if we "think the States may be on to something, we can loosen the leash." *McDonald* v. *Chicago*, 561 U. S. 742, 803, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (concurring opinion) (quotation marks omitted).

[391]** The balancing approach can be antithetical to the principle that judges must act like umpires. It turns judges into players. Justice Black once protested that the Court should not balance away bedrock free speech protections for the perceived policy needs of the moment. He argued that "the balancing approach" "disregards all of the unique features of our Constitution" by giving "the Court, along with Congress, a greater power, that of overriding the plain commands of the Bill of Rights on a finding of weighty public interest." H. Black, The Bill of Rights, 35 N. Y. U.

L. Rev. 865, 878-879 (1960). Like Justice Black, the Court in *Heller* cautioned that a "constitutional guarantee subject to future judges' assessments **[***72]** of its usefulness is no constitutional guarantee at all." 554 U. S. 570, 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

Some respond that history can be difficult to decipher. It is true that using history to interpret vague text can require "nuanced judgments," *McDonald*, 561 U. S., at 803-804, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (Scalia, J., concurring), and is "sometimes inconclusive," Scalia, Originalism: The Lesser Evil, 57 U. Cin. L. Rev., at 864. But at a minimum, history tends to narrow the range of possible meanings that may be ascribed to vague constitutional language. A history-based methodology supplies direction and imposes a neutral and democratically infused constraint on judicial decisionmaking.

The historical approach is not perfect. But "the question to be decided is not whether the historically focused method is a *perfect means* of restraining aristocratic judicial Constitution-writing; but whether it is the *best means available* in an imperfect world." *McDonald*, 561 U. S., at 804, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (Scalia, J., concurring) (emphasis in original). And the historical approach is superior to judicial policymaking. The historical approach "depends upon a body of evidence susceptible of reasoned analysis rather than a variety of vague ethico-political First Principles whose combined conclusion can be found to point in any direction the judges favor." *Ibid*. Moreover, the **[***73]** historical approach "intrudes less upon the democratic process because the rights it acknowledges are those established by a constitutional history formed by democratic decisions; and the rights it fails to acknowledge are left to be democratically adopted or rejected by the people." *Id.*, at 805, 130 S. Ct. 3020, 177 L. Ed. 2d 894.

IV

This Court's Second Amendment jurisprudence has carefully followed and reinforced the Court's longstanding approach **[*1923]** to constitutional interpretation—relying on text, pre-ratification and post-ratification history, and precedent.

In *Heller*, the Court began with the baseline point that the Second Amendment textually guarantees an individual right. The Court then explained that the Second Amendment right is, of course, "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" and is subject to "important" limitations. 554 U. S. 570, 626-627, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

Although *Heller* declined to "undertake an exhaustive historical analysis," it recognized a few categories of traditional exceptions to the right. **[**392]** *Id.*, at 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637. For example, *Heller* indicated that: (i) "prohibitions on carrying concealed weapons were lawful"; (ii) the Second Amendment attaches only to weapons "in common use" because "that

limitation is fairly supported by the historical tradition of prohibiting the carrying **[***74]** of dangerous and unusual weapons"; and (iii) "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms" are presumptively constitutional. *Id*., at 626-627, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (quotation marks omitted).

In *McDonald*, the Court held that the Second Amendment was incorporated against the States. In so holding, the Court reiterated the presumed constitutionality of the "longstanding regulatory measures" identified in *Heller*. 561 U. S. 742, 786, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (plurality opinion).

Then, in *Bruen*, the Court repeated that the "Nation's historical tradition of firearm regulation" guides the constitutional analysis of gun regulations and exceptions to the right to bear arms. 597 U. S. 1, 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022); see *id.*, at 79-81, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (KAVANAUGH, J., concurring).

This Court's approach in those three recent Second Amendment cases—and in the Court's opinion today—is entirely consistent with the Court's longstanding reliance on history and precedent to determine the meaning of vague constitutional text. *Heller* rested on "constitutional text and history," *ante*, at 6 (quotation marks omitted), and laid the foundation for *McDonald* and then *Bruen*.

In **[***75]** today's case, the Court carefully builds on *Heller*, *McDonald*, and *Bruen*. The Court applies the historical test that those precedents have set forth—namely, "whether the new law is relevantly similar to laws that our tradition is understood to permit." *Ante*, at 7 (quotation marks omitted). The Court examines "our historical tradition of firearm regulation," *ante*, at 6 (quotation marks omitted), and correctly holds that America's "tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others," *ante*, at 16. The law before us "fits neatly within the tradition the surety and going armed laws represent." *Ante*, at 13-14.

As the Court's decision today notes, Second Amendment jurisprudence is still in the relatively early innings, unlike the First, Fourth, and Sixth Amendments, for example. That is because the Court did not have occasion to recognize the Second Amendment's individual right until recently. See generally *Heller* v. *District of Columbia*, 670 F. 3d 1244, 1269-1296, 399 U.S. App. D.C. 314 (CADC 2011) (Kavanaugh, J., dissenting). Deciding constitutional cases in a still-developing area of this Court's jurisprudence can sometimes be difficult. But that is not a **[*1924]** permission slip for a judge to let constitutional analysis morph into policy preferences

under **[**393]** the **[***76]** guise of a balancing test that churns out the judge's own policy beliefs.

***

As exemplified by *Heller*, *McDonald*, *Bruen*, and the Court's opinion today, constitutional interpretation properly takes account of text, pre-ratification and post-ratification history, and precedent. Those are the tools of the trade for an American judge interpreting the American Constitution. Of course, difficult subsidiary questions can arise about how to apply those tools, both generally and in particular cases. And in some cases, text, history, and precedent may point in somewhat different directions. In law as in life, nothing is perfect. But in Second Amendment cases as in other constitutional cases, text, history, and precedent must remain paramount.

JUSTICE BARRETT, concurring.

Despite its unqualified text, the Second Amendment is not absolute. It codified a pre-existing right, and pre-existing limits on that right are part and parcel of it. *District of Columbia* v. *Heller*, 554 U. S. 570, 595, 627, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Those limits define the scope of "the right to bear arms" as it was originally understood; to identify them, courts must examine our "historical tradition of firearm regulation." *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 17, 19, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). That evidence marks where the right stops and the State's authority to regulate begins. A regulation is constitutional **[***77]** only if the government affirmatively proves that it is "consistent with the Second Amendment's text and historical understanding." *Id.*, at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Because the Court has taken an originalist approach to the Second Amendment, it is worth pausing to identify the basic premises of originalism. The theory is built on two core principles: that the meaning of constitutional text is fixed at the time of its ratification and that the "discoverable historical meaning . . . has legal significance and is authoritative in most circumstances." K. Whittington, Originalism: A Critical Introduction, 82 Ford. L. Rev. 375, 378 (2013) (Whittington). Ratification is a democratic act that renders constitutional text part of our fundamental law, see Arts. V, VII, and that text "remains law until lawfully altered," S. Sachs, Originalism: Standard and Procedure, 135 Harv. L. Rev. 777, 782 (2022). So for an originalist, the history that matters most is the history surrounding the ratification of the text; that backdrop illuminates the meaning of the enacted law. History (or tradition) that long postdates ratification does not serve that function. To be sure, postenactment history can be an important tool. For example, it can "reinforce our understanding of the Constitution's original meaning"; "liquidate ambiguous **[***78]** constitutional provisions"; provide persuasive evidence of the original meaning; and, if *stare decisis* applies, control the outcome. See *Vidal* v. *Elster*, 602 U. S. ___, ___-___, 2024 U.S. LEXIS 2605 (2024) (BARRETT, J., concurring in part) (slip op., at 13-14). But

generally speaking, the use of postenactment history requires some justification other than originalism simpliciter.

In *Bruen*, the Court took history beyond the founding era, considering gun regulations that spanned the **[**394]** 19th century. 597 U. S., at 50-70, 142 S. Ct. 2111, 213 L. Ed. 2d 387. I expressed reservations about the scope of that inquiry but concluded that the timing question did not matter to *Bruen*'s holding. *Id*., at 81-83, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (concurring opinion). It bears emphasis, however, that my questions were about the time period relevant **[*1925]** to discerning the Second Amendment's original meaning—for instance, what is the post-1791 cutoff for discerning how the Second Amendment was originally understood? *Id.*, at 82, 142 S. Ct. 2111, 213 L. Ed. 2d 387 ("How long after ratification may subsequent practice illuminate original public meaning?"). My doubts were *not* about whether "tradition," standing alone, is dispositive. *Id.*, at 83, 142 S. Ct. 2111, 213 L. Ed. 2d 387 ("[T]oday's decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights"). As I have explained elsewhere, evidence of "tradition" unmoored from original meaning is not binding **[***79]** law. *Vidal*, 602 U. S., at ___-___, 2024 U.S. LEXIS 2605 (BARRETT, J., concurring in part) (slip op., at 13-15). And scattered cases or regulations pulled from history may have little bearing on the meaning of the text. *Samia* v. *United States*, 599 U. S. 635, 656-657, 143 S. Ct. 2004, 216 L. Ed. 2d 597 (2023) (BARRETT, J., concurring in part and concurring in judgment).

"Original history"—*i.e.*, the generally dispositive kind—plays two roles in the Second Amendment context. It elucidates how contemporaries understood the text—for example, the meaning of the phrase "bear Arms." See *Heller*, 554 U. S., at 582-592, 128 S. Ct. 2783, 171 L. Ed. 2d 637. It also plays the more complicated role of determining the scope of the pre-existing right that the people enshrined in our fundamental law. [*] In Rahimi's case, the Court uses history in this latter way. Call this "original contours" history: It looks at historical gun regulations to identify the contours of the right.

Courts have struggled with this use of history in the wake of *Bruen*. One difficulty is a level of generality problem: Must the government produce a founding-era relative of the challenged

[*] To my mind, this use of history walks a fine line between original meaning (which controls) and expectations about how the text would apply (which do not). See Whittington 383 ("Specific expectations about the consequences of a legal rule are distinct from the meaning of the rule itself "). Contemporary government actors might have been "wrong about the consequences of their own constitutional rule," or they "might not have fully and faithfully implemented the adopted constitutional rule themselves." *Id.*, at 384. Thus, while early applications of a constitutional rule can help illuminate its original scope, an interpreter must exercise care in considering them. *Id.*, at 385–386. In the Second Amendment context, particular gun regulations—even if from the ratification era—do not themselves have the status of constitutional law.

regulation—if not a twin, a cousin? Or do founding-era gun regulations yield concrete principles that mark the borders of the right?

Many courts, including the Fifth Circuit, have understood *Bruen* to require the former, narrower approach. But *Bruen* emphasized that "analogical reasoning" is not a "regulatory straightjacket." **[***80]** 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387. To be *consistent* with historical limits, a challenged regulation need not be an updated model of a historical counterpart. **[**395]** Besides, imposing a test that demands overly specific analogues has serious problems. To name two: It forces 21st-century regulations to follow late-18th-century policy choices, giving us "a law trapped in amber." *Ante*, at 7. And it assumes that founding-era legislatures maximally exercised their power to regulate, thereby adopting a "use it or lose it" view of legislative authority. Such assumptions are flawed, and originalism does not require them.

"Analogical reasoning" under *Bruen* demands a wider lens: Historical regulations reveal a principle, not a mold. See, *e.g.*, 597 U. S., at 28-29, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (explaining that the Amendment does not apply only to the catalogue of arms that existed in the **[*1926]** 18th century, but rather to all weapons satisfying the "*general definition*" of "bearable arms" (emphasis added)); *id.*, at 30-31, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (discussing the "'sensitive places'" principle that limits the right to public carry); cf. *Vidal*, 602 U. S., at ___-___, 2024 U.S. LEXIS 2605 (BARRETT, J., concurring in part) (slip op., at 7-9); Whittington 386 ("The insight to be gleaned is not the authoritative status of the expected application, but the apparent rule at play given that such an application is expected to follow from **[***81]** it"). To be sure, a court must be careful not to read a principle at such a high level of generality that it waters down the right. Pulling principle from precedent, whether case law or history, is a standard feature of legal reasoning, and reasonable minds sometimes disagree about how broad or narrow the controlling principle should be.

Here, though, the Court settles on just the right level of generality: "Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Ante*, at 5; see also *Kanter* v. *Barr*, 919 F. 3d 437, 451, 464-465 (CA7 2019) (Barrett, J., dissenting) ("History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns"). Section 922(g)(8)(C)(i) fits well within that principle; therefore, Rahimi's facial challenge fails. Harder level-of-generality problems can await another day.

JUSTICE JACKSON, concurring.

This case tests our Second Amendment jurisprudence as shaped in particular by *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). I disagree with the methodology of that decision; I would have joined the dissent had I been a

Member of the Court at that time. See generally *id.*, at 83-133, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting). But *Bruen* is now binding law. Today's decision **[***82]** fairly applies that precedent, so I join the opinion in full.

I write separately because we now have two years' worth of post-*Bruen* cases under our belts, and the experiences of courts applying its history-and-tradition test should bear on our assessment of the workability of that legal standard. This case highlights the apparent difficulty faced by judges on the ground. Make no mistake: Today's effort to clear up "misunderst[andings]," *ante,* at 7, is a tacit admission that **[**396]** lower courts are struggling. In my view, the blame may lie with us, not with them.

I

The Court today expounds on the history-and-tradition inquiry that *Bruen* requires. *Ante*, at 7-8. We emphasize that the Second Amendment is "not . . . a law trapped in amber." *Ante,* at 7. It "permits more than just those regulations identical to ones that could be found in 1791"; indeed, "a challenged regulation [that] does not precisely match its historical precursors . . . 'still may be analogous enough to pass constitutional muster.'" *Ibid*. (quoting *Bruen*, 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387). Gun regulations need only "comport with the principles underlying the Second Amendment." *Ante,* at 7-8. These clarifying efforts are welcome, given the many questions *Bruen* left unanswered.

When this Court adopts a **[***83]** new legal standard, as we did in *Bruen*, we do not do so in a vacuum. The tests we establish bind lower court judges, who then apply those legal standards to the cases before them. In my view, as this Court thinks of, and speaks about, history's relevance to the interpretation of constitutional provisions, **[*1927]** we should be mindful that our common-law tradition of promoting clarity and consistency in the application of our precedent *also* has a lengthy pedigree. So when courts signal they are having trouble with one of our standards, we should pay attention. Cf. *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 538-539, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985).

The message that lower courts are sending now in Second Amendment cases could not be clearer. They say there is little method to *Bruen*'s madness. [1] It isn't just that *Bruen*'s history-and-tradition

[1] See, *e.g.*, *Barris* v. *Stroud Twp.*, ___ Pa. ___, ___, 310 A. 3d 175, 190 (2024) ("[M]ore guidance in this challenging and ever-shifting area of the law is welcome"); *State* v. *Wilson*, 154 Haw. 8, 21, 543 P. 3d 440, 453 (2024) ("[B]y turning the test into history and nothing else, [*Bruen*] dismantles workable methods to interpret firearms laws"); *United States* v. *Dubois*, 94 F. 4th 1284, 1293 (CA11 2024) ("We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of [18 U. S. C. §]922(g)(1)"); *United States* v. *Daniels*, 77 F. 4th 337, 358 (CA5 2023) (Higginson, J., concurring) ("[C]ourts, operating in good faith, are struggling at every stage of the *Bruen* inquiry. Those struggles encompass numerous, often dispositive, difficult questions"); *Atkinson* v. *Garland*, 70 F. 4th 1018, 1024 (CA7 2023) ("[T]he historical analysis required by *Bruen* will be difficult and no doubt yield some measure of indeterminancy"); *id*., at 1036 (Wood, J., dissenting) ("As other courts have begun to apply

test is burdensome (though that is no small thing to courts with heavier caseloads and **[**397]** fewer resources than we have). The more worrisome concern is that lower courts appear to be diverging in both approach and outcome as they struggle to conduct the inquiry *Bruen* requires of them. Scholars report that lower courts applying *Bruen*'s approach have been unable to produce "consistent, principled results," Brief for Second Amendment Law Scholars as *Amici Curiae* 4, and, in fact, **[***84]** they "have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them," *id.*, at 4-5, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see also *id.*, at 5-6, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (collecting examples). Given this, it appears indisputable that, after *Bruen*, "confusion plagu[es] the lower courts." *Id.*, at 6, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

II

This discord is striking when compared to the relative harmony that had developed **[*1928]** prior to *Bruen*. To be sure, our decision in *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), which first recognized an individual right to keep and bear arms for self-defense, see *id.*, at 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637, was disruptive in its own way. After all, before *Heller*, "[t]he meaning of the Second Amendment ha[d] been considered settled by courts and legislatures for over two centuries," and "judges and legislators . . . properly believed . . . that the Second Amendment did not reach possession of firearms for purely private activities." *Id.*, at 676, n. 38, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (Stevens, J., dissenting). Nonetheless, after *Heller*, lower courts took up the necessary work of reviewing burdens on this newly unearthed right. By the time this Court decided *Bruen*, every court of appeals evaluating whether a firearm regulation was consistent with the Second Amendment did so using a two-step framework that incorporated means-end scrutiny. See *Bruen*, 597 U. S., at 103, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting). **[***85]**

Bruen, [the] need for further research and further guidance has become clear"); *Gonyo* v. *D. S.*, 210 N. Y. S. 3d 612, 615, 2024 N. Y. Slip Op. 24018 (Jan. 19, 2024) ("Interpretations and applications of *Bruen* by lower courts have been widely divergent and thus, very difficult to apply as precedent"); *United States* v. *Sing-Ledezma*, ___ F. Supp. 3d ___, ___, 2023 U.S. Dist. LEXIS 223028, 2023 WL 8587869, *3 (WD Tex. Dec. 11, 2023) ("[T]he Court pauses to join the choir of lower courts urging the Supreme Court to resolve the many unanswered questions left in *Bruen*'s wake"); *United States* v. *Bartucci*, 658 F. Supp. 3d 794, 800 (ED Cal. 2023) ("[T]he unique test the Supreme Court announced in *Bruen* does not provide lower courts with clear guidance as to how analogous modern laws must be to founding-era gun laws. In the short time post-*Bruen*, this has caused disarray among the lower courts"); *United States* v. *Bullock*, 679 F. Supp. 3d 501, 534 (SD Miss. 2023) (raising methodological questions "in hopes that future judges and justices can answer them with enough detail to enable trial courts to perform their duties"); *Fraser* v. *Bureau of Alcohol, Tobacco*, *Firearms and Explosives*, 672 F. Supp. 3d 118, 137, n. 20 (ED Va. 2023) ("The Court is staffed by lawyers who are neither trained nor experienced in making the nuanced historical analyses called for by *Bruen*. . . . The analytical construct specified by *Bruen* is thus a difficult one for non-historians"); *United States* v. *Jackson*, 661 F. Supp. 3d 392, 406 (Md. 2023) (noting "the challenges created by *Bruen's* assignment"); *United States* v. *Love*, 647 F. Supp. 3d 664, 670 (ND Ind. 2022) ("By . . . announcing an inconsistent and amorphous standard, the Supreme Court has created mountains of work for district courts that must now deal with *Bruen*-related arguments in nearly every criminal case in which a firearm is found").

Rejecting that "two-step approach" as having "one step too many," *id*., at 19, 142 S. Ct. 2111, 213 L. Ed. 2d 387, the *Bruen* majority subbed in another two-step evaluation. Courts must, first, determine whether "the Second Amendment's plain text covers an individual's conduct." *Id.*, at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387. If it does, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Ibid.*

No one seems to question that "[h]istory has a role to play in Second Amendment analysis." *Ante,* at 4 (SOTOMAYOR, J., concurring). But, per *Bruen*, courts evaluating a Second Amendment challenge must consider history *to the exclusion of all else*. This means legislators must locate and produce—and **[**398]** courts must sift through—troves of centuries-old documentation looking for supportive historical evidence. [2]

This very case provides a prime example of the pitfalls of *Bruen*'s approach. Having been told that a key marker of a constitutional gun regulation is "a well-established and representative historical analogue," *Bruen*, 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (emphasis deleted), Rahimi argued below that "there is little or no historical evidence suggesting disarmament for those who committed domestic violence; and there is certainly no tradition of disarming people subject to a no-contact **[***86]** order related to domestic violence." Supp. Brief for Appellant in No. 21-11001 (CA5), p. 15 (emphasis deleted). The Government then proffered what it maintained were sufficient historical analogues to 18 U. S. C. §922(g)(8), including surety and going armed laws. Supp. Brief for Appellee in No. 21-11001 (CA5), pp. 23, n. 2, 27-31. But the Fifth Circuit concluded that the federal statute was unconstitutional because the Government's analogues were not "'relevantly similar.'" 61 F. 4th 443, 460-461 (2023).

Neither the parties nor the Fifth Circuit had the benefit of today's decision, in which we hold that the Government had in fact offered "ample evidence that the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others." *Ante,* at 8. But even setting aside whether the historical examples the Government found were sufficiently analogous, just canvassing the universe of historical records and **[*1929]** gauging the sufficiency of such evidence is an exceedingly difficult task. [3] Consistent analyses and outcomes are likely to

---

[2] It is not clear what qualifies policymakers or their lawyers (who do not ordinarily have the specialized education, knowledge, or training of professional historians) to engage in this kind of assessment. And dutiful legislators are not the only stakeholders who are far outside their depth: *Bruen* also conscripts parties and judges into service as amateur historians, casting about for similar historical circumstances.

[3] The mad scramble for historical records that *Bruen* requires also suggests that only those solutions that States implemented in the distant past comport with the Constitution. That premise is questionable because, given the breadth of some of the Constitution's provisions, it is likely that the Founders understood that new solutions would be needed over time, even for traditional problems, and that the principles they were adopting would allow for such flexibility. See *District of Columbia* v. *Heller*, 554 U. S. 570, 722,

remain elusive because whether *Bruen*'s test is satisfied in a particular case seems to depend on the suitability of whatever historical sources the parties can manage to cobble together, **[***87]** as well as the level of generality at which a court evaluates those sources—neither of which we have as yet adequately clarified.

And the unresolved questions hardly end there. Who is protected by the Second Amendment, from a historical perspective? To what conduct does the Second Amendment's plain text apply? To what historical era (or eras) should courts look to divine a historical tradition of gun regulation? **[**399]** How many analogues add up to a tradition? Must there be evidence that those analogues were enforced or subject to judicial scrutiny? How much support can nonstatutory sources lend? I could go on—as others have. See, *e.g.*, *United States* v. *Daniels*, 77 F. 4th 337, 358-360 (CA5 2023) (Higginson, J., concurring) (providing a similarly nonexhaustive list). But I won't.

III

Maybe time will resolve these and other key questions. Maybe appellate courts, including ours, will find a way to "[b]rin[g] discipline to the increasingly erratic and unprincipled body of law that is emerging after *Bruen*." J. Blocher & E. Ruben, Originalism-by-Analogy and Second Amendment Adjudication, 133 Yale L. J. 99, 174 (2023). Indeed, "[m]any constitutional standards involve undoubted gray areas," and "it normally might be fair to venture the assumption that case-by-case development [will] lead to a workable standard." *Garcia*, 469 U. S., at 540, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (internal quotation marks and alteration omitted). By underscoring that gun **[***88]** regulations need only "comport with the *principles* underlying the Second Amendment," *ante,* at 7-8 (emphasis added), today's opinion inches that ball forward.

But it is becoming increasingly obvious that there are miles to go. [4] Meanwhile, the Rule of Law suffers. That ideal—key to our democracy—thrives on legal standards that foster stability, facilitate consistency, and promote predictability. So far, *Bruen*'s history-focused test ticks none of those boxes.

***

128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (Breyer, J., dissenting) (expressing doubt that the Framers "intended future generations to ignore [modern-day] matters"). It stifles both helpful innovation and democratic engagement to read the Constitution to prevent advancement in this way. In any event, what we see now is that *Bruen*'s history-and-tradition test is not only limiting legislative solutions, it also appears to be creating chaos.

[4] Extremely pertinent inquiries relevant to consistent application of *Bruen*'s standard await resolution. For example, in *Bruen* we acknowledged the existence of "an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government)." 597 U. S., at 37, 142 S. Ct. 2111, 213 L. Ed. 2d 387. We saw no need to address the issue in *Bruen*. *Id.*, at 38, 142 S. Ct. 2111, 213 L. Ed. 2d 387. We similarly decline to resolve that dispute today. *Ante*, at 8, n. 1.

I concur in today's decision applying *Bruen*. But, in my view, the Court should **[*1930]** also be mindful of how its legal standards are actually playing out in real life. We must remember that legislatures, seeking to implement meaningful reform for their constituents while simultaneously respecting the Second Amendment, are hobbled without a clear, workable test for assessing the constitutionality of their proposals. See Tr. of Oral Arg. 54-57; cf. *Bruen*, 597 U. S., at 90-91, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (Breyer, J., dissenting). And courts, which are currently at sea when it comes to evaluating firearms legislation, need a solid anchor for grounding their constitutional pronouncements. The public, too, deserves clarity when this Court interprets our Constitution.

Dissent by: THOMAS

Dissent

JUSTICE THOMAS, dissenting.

After *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), this **[***89]** Court's directive was clear: A firearm regulation that falls within the Second Amendment's plain text is unconstitutional unless it is consistent with the Nation's historical tradition of firearm regulation. Not a **[**400]** single historical regulation justifies the statute at issue, 18 U. S. C. §922(g)(8). Therefore, I respectfully dissent.

I

Section 922(g)(8) makes it unlawful for an individual who is subject to a civil restraining order to possess firearms or ammunition. To trigger §922(g)(8)'s prohibition, a restraining order must bear three characteristics. First, the order issues after a hearing where the accused "received actual notice" and had "an opportunity to participate." §922(g)(8)(A). Second, the order restrains the accused from engaging in threatening behavior against an intimate partner or child. §922(g)(8)(B). Third, the order has either "a finding that [the accused] represents a credible threat to the physical safety of [an] intimate partner or child," or an "explici[t] prohibit[ion]" on "the use, attempted use, or threatened use of physical force against [an] intimate partner or child." §922(g)(8)(C). If those three characteristics are present, §922(g)(8) automatically bans the individual subject to the order from possessing "any firearm or ammunition." §922(g).

Just as important as §922(g)(8)'s express terms **[***90]** is what it leaves unsaid. Section 922(g)(8) does not require a finding that a person has ever committed a crime of domestic violence. It is not triggered by a criminal conviction or a person's criminal history, unlike other §922(g) subsections. See §§922(g)(1), (9). And, §922(g)(8) does not distinguish contested orders from joint orders—

for example, when parties voluntarily enter a no-contact agreement or when both parties seek a restraining order.

In addition, §922(g)(8) strips an individual of his ability to possess firearms and ammunition without any due process. [1] Rather, the ban is an automatic, uncontestable consequence of certain orders. See §922(g) ("It shall be unlawful for any [qualifying] person [to] possess in or affecting commerce, any firearm or ammunition"). There is no hearing or opportunity to be heard on the statute's applicability, and a court need not decide whether a person should be disarmed under §922(g)(8). The only process §922(g)(8) requires is that provided (or not) for the *underlying* restraining order.

Despite §922(g)(8)'s broad scope and lack of process, it carries strong penalties. **[*1931]** Any violation of §922(g)(8) is a felony punishable by up to 15 years' imprisonment. §924(a)(8); see also *ante,* at 3. And, a conviction for violating §922(g)(8) itself triggers a permanent, life-long **[***91]** prohibition on possessing firearms and ammunition. See §922(g)(1).

In 2020, Zackey Rahimi and his ex-girlfriend, C. M., entered into a qualifying civil restraining order. App. 1. C. M. had requested the order and asserted that Rahimi assaulted her. See *id.*, at 2. Because the order found that Rahimi presented a credible threat and prohibited him from using physical force against C. M., the order automatically triggered §922(g)(8)'s firearms ban. A year later, officers discovered firearms in **[**401]** Rahimi's home. Rahimi pleaded guilty to violating §922(g)(8).

Before his guilty plea, Rahimi challenged his conviction under the Second Amendment. He pointed to *District of Columbia* v. *Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), which held that the Second Amendment protects an individual right to keep and bear firearms. Section 922(g)(8), Rahimi argued, violates that right by penalizing firearms possession. The District Court rejected Rahimi's claim. At that time, the Courts of Appeals, including the Fifth Circuit, applied a form of means-end scrutiny to Second Amendment claims. See, *e.g.*, *United States* v. *McGinnis*, 956 F. 3d 747, 753-754 (2020). Applying Circuit precedent, the Fifth Circuit affirmed the District Court. 2022 U.S. App. LEXIS 15799, 2022 WL 2070392 (2022).

Roughly two weeks later, this Court issued its opinion in *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*. The Court rejected the means-end-scrutiny approach and laid out the appropriate framework **[***92]** for assessing whether a firearm regulation is constitutional. *Bruen*, 597 U. S., at 17-19, 142 S. Ct. 2111, 213 L. Ed. 2d 387. That framework requires the Government to prove that the "regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id*., at 19, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The Fifth Circuit withdrew its

[1] Rahimi does not ask the Court to consider, and I do not address, whether §922(g)(8) satisfies the Due Process Clause.

opinion to apply the correct framework to Rahimi's claim. Relying on *Bruen*, the Fifth Circuit concluded that the Government failed to present historical evidence that §922(g)(8) "fits within our Nation's historical tradition of firearm regulation." 61 F. 4th 443, 460 (2023). The Fifth Circuit, accordingly, vacated Rahimi's conviction. We granted certiorari. 600 U. S. ___, 143 S. Ct. 2688, 216 L. Ed. 2d 1255 (2023).

II

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." As the Court recognizes, *Bruen* provides the framework for analyzing whether a regulation such as §922(g)(8) violates the Second Amendment's mandate. "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." 597 U. S., at 17, 142 S. Ct. 2111, 213 L. Ed. 2d 387. To overcome this presumption, "the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation." *Ibid*. The presumption against restrictions **[***93]** on keeping and bearing firearms is a central feature of the Second Amendment. That Amendment does not merely narrow the Government's regulatory power. It is a barrier, placing the right to keep and bear arms off limits to the Government.

When considering whether a modern regulation is consistent with historical regulations and thus overcomes the presumption against firearms restrictions, our precedents "point toward at least two metrics [of comparison]: how and why the regulations **[*1932]** burden a law-abiding citizen's right to armed self-defense." *Id*., at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387. A historical law must satisfy both considerations to serve as a comparator. See *ibid*. While a historical law need not be a "historical twin," it must **[**402]** be "well-established and representative" to serve as a historical analogue. *Id.*, at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (emphasis deleted).

In some cases, "the inquiry [is] fairly straightforward." *Id*., at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387. For instance, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through **[***94]** materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.*, at 26-27, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

The Court employed this "straightforward" analysis in *Heller* and *Bruen*. *Heller* considered the District of Columbia's "flat ban on the possession of handguns in the home," *Bruen*, 597 U. S., at 27, 142 S. Ct. 2111, 213 L. Ed. 2d 387, and *Bruen* considered New York's effective ban on carrying a firearm in public, see *id.*, at 11-13, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The Court

determined that the District of Columbia and New York had "addressed a perceived societal problem—firearm violence in densely populated communities—and [they] employed a regulation . . . that the Founders themselves could have adopted to confront that problem." *Id.*, at 27, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Accordingly, the Court "consider[ed] 'founding-era historical precedent'" and looked for a comparable regulation. *Ibid*. (quoting *Heller*, 554 U. S., at 631, 128 S. Ct. 2783, 171 L. Ed. 2d 637). In both cases, the Court found no such law and held the modern regulations unconstitutional. *Id.*, at 631, 128 S. Ct. 2783, 171 L. Ed. 2d 637; *Bruen*, 597 U. S., at 27, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Under our precedent, then, we must resolve two questions to determine if §922(g)(8) violates the Second Amendment: (1) Does §922(g)(8) target conduct protected by the Second Amendment's plain text; and (2) does the Government establish that §922(g)(8) is consistent with the Nation's historical tradition of firearm regulation?

III

Section 922(g)(8) violates the Second Amendment. First, it targets conduct at the core of **[***95]** the Second Amendment—possessing firearms. Second, the Government failed to produce any evidence that §922(g)(8) is consistent with the Nation's historical tradition of firearm regulation. To the contrary, the founding generation addressed the same societal problem as §922(g)(8) through the "materially different means" of surety laws. *Id.*, at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

A

It is undisputed that §922(g)(8) targets conduct encompassed by the Second Amendment's plain text. After all, the statute bans a person subject to a restraining order from possessing or using virtually any firearm or ammunition. §922(g) (prohibiting covered individuals from "possess[ing]" or "receiv[ing] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce"). A covered individual cannot even possess a firearm in his home for self-defense, "the central component of the [Second Amendment] **[**403]** right itself." *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis deleted). There is no doubt that §922(g)(8) is irreconcilable with the Second Amendment's text. *Id.*, at 628-629, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

[*1933] It is also undisputed that the Second Amendment applies to Rahimi. By its terms, the Second Amendment extends to "'the people,'" and that "term unambiguously refers to all members of the political community, not an unspecified subset." *Id.*, at 580, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The Second Amendment thus recognizes a right "guaranteed to 'all Americans.'" *Bruen*, 597 U. S., at 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (quoting *Heller*, 554 U. S., at 581, 128 S. Ct. 2783,

171 L. Ed. 2d 637). Since Rahimi is a member of **[***96]** the political community, he falls within the Second Amendment's guarantee.

B

The Government fails to carry its burden of proving that §922(g)(8) is "consistent with the Nation's historical tradition of firearm regulation." 597 U. S., at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Despite canvassing laws before, during, and after our Nation's founding, the Government does not identify even a single regulation with an analogous burden and justification. [2]

The Government's failure is unsurprising given that §922(g)(8) addresses a societal problem—the risk of interpersonal violence—"that has persisted since the 18th century," yet was addressed "through [the] materially different means" of surety laws. *Id.*, at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Surety laws were, in a nutshell, a fine on certain behavior. If a person threatened someone in his community, he was given the choice to either keep the peace or forfeit a sum of money. Surety laws thus shared the same justification as §922(g)(8), but they imposed a far less onerous burden. The Government has not shown that §922(g)(8)'s more severe approach is consistent with our historical tradition of firearm regulation.

1

The Government does not offer a single historical regulation that is relevantly similar to §922(g)(8). As the Court has explained, the "central considerations" when comparing modern and historical **[***97]** regulations are whether the regulations "impose a comparable burden" that is "comparably justified." *Id.*, at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The Government offers only two categories of evidence that are even within the ballpark of §922(g)(8)'s burden and justification: English laws disarming persons "dangerous" to the peace of the kingdom, and commentary discussing peaceable citizens bearing arms. Neither category ultimately does the job.

i

The Government points to various English laws from the late 1600s and **[**404]** early 1700s to argue that there is a tradition of restricting the rights of "dangerous" persons. For example, the Militia Act of 1662 authorized local officials to disarm individuals judged "dangerous to the Peace of the Kingdome." 14 Car. 2 c. 3, §13. And, in the early 1700s, the Crown authorized lords and justices of the peace to "cause search to be made for arms in the possession of any persons whom

[2] I agree with the majority that we need not address the "'ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government).'" *Ante,* at 8, n. 1 (quoting *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 37, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)).

they judge dangerous, and seize such arms according to law." Calendar of State Papers Domestic: William III, 1700-1702, p. 234 (E. Bateson ed. 1937) (Calendar William III).

At first glance, these laws targeting "dangerous" persons might appear relevant. **[*1934]** After all, if the Second Amendment right was historically understood to allow an official to disarm anyone he deemed "dangerous," **[***98]** it may follow that modern Congresses can do the same. Yet, historical context compels the opposite conclusion. The Second Amendment stems from English resistance *against* "dangerous" person laws.

The sweeping disarmament authority wielded by English officials during the 1600s, including the Militia Act of 1662, prompted the English to enshrine an individual right to keep and bear arms. "[T]he Stuart Kings Charles II and James II succeeded in using select militias loyal to them to suppress political dissidents, in part by disarming their opponents." *Heller*, 554 U. S., at 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Englishmen, as a result, grew "to be extremely wary of concentrated military forces run by the state and to be jealous of their arms." *Id.*, at 593, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Following the Glorious Revolution, they "obtained an assurance . . . in the Declaration of Right (which was codified as the English Bill of Rights), that Protestants would never be disarmed." *Ibid.*

The English Bill of Rights "has long been understood to be the predecessor to our Second Amendment." *Ibid.* In fact, our Founders expanded on it and made the Second Amendment even more protective of individual liberty. The English Bill of Rights assured Protestants "Arms for their Defence," but only where "suitable to their Conditions and as allowed by Law." 1 Wm. & Mary, ch. 2, (1688), in 6 Statutes of the Realm **[***99]** 143. The Second Amendment, however, contains no such qualifiers and protects the right of "the people" generally. In short, laws targeting "dangerous" persons led to the Second Amendment. It would be passing strange to permit the Government to resurrect those selfsame "dangerous" person laws to chip away at that Amendment's guarantee.

Even on their own terms, laws targeting "dangerous" persons cannot support §922(g)(8). Those laws were driven by a justification distinct from that of §922(g)(8)—quashing treason and rebellion. The Stuart Kings' reign was marked by religious and political conflict, which at that time were often one and the same. The Parliament of the late 1600s "re-established an intolerant episcopalian church" through legislation targeting other sects, including "[a] fierce penal code" to keep those other sects out of local government and "to criminalize nonconformist worship." Oxford Handbook of the English Revolution 212 (M. Braddick ed. 2015) (Oxford Handbook); see G. Clark, The Later Stuarts 1660-1714, p. 22 (2d ed. 1955). These laws were driven in large part by a desire to suppress rebellion. "Nonconformist ministers were thought to preach resistance **[**405]** to divinely ordained monarchs." Oxford Handbook 212; see

Calendar **[***100]** of State Papers Domestic: Charles II, 1661-1662, p. 161 (M. Green ed. 1861) (Calendar Charles II) ("[P]reachers go about from county to county, and blow the flames of rebellion"). Various nonconformist insurrections gave credibility to these fears. See, *e.g.,* Clark, The Later Stuarts, at 22; Privy Council to Lord Newport (Mar. 4, 1661), in Transactions of the Shropshire Archaeological and Natural History Society, Pt. 2, 3d Ser., Vol. 4, p. 161 (1904).

It is in this turbulent context that the English kings permitted the disarming of "dangerous persons." English lords feared that nonconformists—*i.e.*, people with "'wicked and Rebellious Principles'"—had "'furnished themselves with quantities of Arms, and Ammunition'" "'to put in Execution their Trayterus designs.'" Privy Council to Lord Newport (Jan. 8, 1660), in *id.*, at 156; see Calendar Charles II 541 **[*1935]** ("The fanatics . . . are high and insolent, and threaten all loyal people; they will soon be in arms"). In response, the Crown took measures to root out suspected rebels, which included "disarm[ing] all factious and seditious spirits." *Id.*, at 538 (Nov. 1, 1662). For example, following "turbulency and difficulties" arising from the Conventicles Act of 1670, which **[***101]** forbade religious nonconformists from assembling, the lord mayor of London pressed that "a special warrant or commission [was] necessary" empowering commissioners to "resist, fight, kill, and execute such rebels." Calendar of State Papers, Domestic Series, 1670, p. 236 (May 25, 1670) (M. Green ed. 1895) (emphasis deleted). King Charles II ordered the lord mayor "to make strict search in the city and precincts for dangerous and disaffected persons, seize and secure them and their arms, and detain them in custody till our further pleasure." *Id.*, at 237 (May 26, 1670).

History repeated itself a few decades later. In 1701, King William III declared that "great quantities of arms, and other provisions of war" had been discovered in the hands of "papists and other disaffected persons, who disown [the] government," and that such persons had begun to assemble "in great numbers . . . in the cities of London and Westminster." Calendar William III 233. He ordered the lord mayor of London and the justices of the peace to "secur[e] the government" by disarming "any persons whom they judge[d] dangerous," including "any papist, or reputed papist." *Id.*, at 233-234 (emphasis deleted). Similar disarmaments targeting "Papists and Non-jurors dangerous to the peace of the kingdom" continued **[***102]** into the 1700s. Privy Council to the Earl of Carlisle (July 30, 1714), in Historical Manuscripts Comm'n, Manuscripts of the Earl of Westmoreland et al. 10th Report, Appx., Pt. 4, p. 343 (1885). As before, disarmament was designed to stifle "wicked conspirac[ies]," such as "raising a Rebellion in this Kingdom in favour of a Popish Pretender." Lord Lonsdale to Deputy Lieutenants of Cumberland (May 20, 1722), in Historical Manuscripts Commission, Manuscripts of the Earl of Carlisle, 15th Report, Appx., Pt. 6, pp. 39-40 (1897).

While the English were concerned about preventing insurrection and armed rebellion, §922(g)(8) is concerned with preventing interpersonal **[**406]** violence. "Dangerous" person laws thus offer the Government no support.

ii

The Government also points to historical commentary referring to the right of "peaceable" citizens to carry arms. It principally relies on commentary surrounding two failed constitutional proposals. [3] First, at the Massachusetts convention, Samuel Adams unsuccessfully proposed that the Bill of Rights deny Congress the power "to prevent the people of the United States, who are peaceable citizens, from keeping their own arms." 6 Documentary History of the Ratification of the Constitution **[***103] **[*1936]** 1453 (J. Kaminski & G. Saladino eds. 2000) (Documentary History). Second, Anti-Federalists at the Pennsylvania convention unsuccessfully proposed a Bill of Rights providing a "right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game." 2 *id.,* at 597-598, ¶7 (M. Jensen ed. 1976). The Anti-Federalists' Bill of Rights would also state that "no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals." *Id*., at 598, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

These proposals carry little interpretative weight. To begin with, it is "dubious to rely on [drafting] history to interpret a text that was widely understood to codify a pre-existing right." *Heller*, 554 U. S., at 603, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Moreover, the States rejected the proposals. Samuel Adams withdrew his own proposal after it "alarmed both Federalists and Antifederalists." 6 Documentary History 1453 (internal quotation marks omitted). [4] The Pennsylvania Anti-Federalists' proposal similarly failed to gain a majority of the state convention. 2 B. Schwartz, The Bill of Rights: A Documentary History 628 (1971).

The Government never explains why or how language *excluded* from the Constitution could operate to limit the language actually ratified. The more natural **[***104]** inference seems to be the opposite—the unsuccessful proposals suggest that the Second Amendment preserves a more expansive right. After all, the Founders considered, and rejected, any textual limitations in favor

[3] The Government also cites an amendment to the Massachusetts Constitution providing that "the people have a right to keep and to bear Arms for their Own and the Common defence." The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780, p. 624 (O. Handlin & M. Handlin eds. 1966). The Government emphasizes that the amendment's proponents believed they "Ought Never to be deprived" of their arms, so long as they "Continue[d] honest and Lawfull Subjects of Government." *Ibid.* Even if the amendment contemplated disarming dishonest and unlawful subjects, the Government makes no effort to define those terms or explain why they necessarily include the individuals covered by §922(g)(8). In any event, evidence concerning what proponents behind an amendment to a single state constitution believed is too paltry to define the Second Amendment right. See *Bruen*, 597 U. S., at 46, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

[4] When Anti-Federalists renewed Samuel Adams' proposal, not only did the proposal fail, but Adams himself voted against it. 6 Documentary History 1453.

of an unqualified directive: "[T]he right of the people to keep and bear Arms, shall not be infringed."

In addition to the proposals, the Government throws in a hodgepodge of sources from the mid-to-late 1800s **[**407]** that use the phrase "peaceable" in relation to firearms. Many of the sources simply make passing reference to the notion. See, *e.g.*, H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p. 229 (1866) (proposed circular explaining freed slaves "have shown by their peaceful and orderly conduct that they can safely be trusted with fire-arms, and they need them to kill game for subsistence"). Other sources are individual musings on firearms policy. See, *e.g.*, The Sale of Pistols, N. Y. Times, June 22, 1874 (advocating for "including pistols in the law against carrying concealed weapons"). Sources that do discuss disarmament generally describe nonpeaceable citizens as those who threaten the public or government. For example, the Government quotes a Union General's order that "all loyal and peaceable **[***105]** citizens in Missouri will be permitted to bear arms." Headquarters, Dept. of the Missouri, General Orders, No. 86 (Aug. 25, 1863), in The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies, Ser. 1, Vol. 22, Pt. 2, p. 475 (1888). Yet, the Government fails to mention that the Union General's order addresses the "[l]arge numbers of men . . . leaving the broken rebel armies . . . and returning to Missouri . . . with the purpose of following a career of plunder and murder." *Id.*, at 474. The order provided that "all those who voluntarily abandon[ed] the rebel cause" could return to Missouri, but only if they "surrender[ed] themselves and their arms," "[took] the oath of allegiance and [gave] bond for their future good conduct." *Ibid.* By contrast, "all loyal and peaceable citizens in Missouri w[ere] permitted to bear arms" to "protect themselves from violence" and "aid the troops." *Id.*, at 475. Thus, the term "loyal and peaceable" distinguished between the former **[*1937]** rebels residing in Missouri who were disarmed to prevent rebellion and those citizens who would help fight against them.

The Government's smorgasbord of commentary proves little of relevance, and it certainly does not establish a "historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U. S., at 19, 142 S. Ct. 2111, 213 L. Ed. 2d 387 .

iii

The Government's remaining evidence is even further afield. The Government points to an assortment of **[***106]** firearm regulations, covering everything from storage practices to treason and mental illness. They are all irrelevant for purposes of §922(g)(8). Again, the "central considerations" when comparing modern and historical regulations are whether they "impose a comparable burden" that is "comparably justified." *Id.*, at 29 (emphasis deleted; internal quotation marks omitted). The Government's evidence touches on one or *none* of these considerations.

The Government's reliance on firearm storage laws is a helpful example. These laws penalized the improper storage of firearms with forfeiture of those weapons. See, *e.g.*, Act of Mar. 1, 1783, ch. 46, 1782 Mass. Acts pp. 119-120. First, these storage laws did not impose a "comparable burden" to that of §922(g)(8). Forfeiture still allows a person to keep their other firearms or obtain additional ones. It is in no way equivalent to §922(g)(8)'s complete prohibition on owning or possessing any firearms.

In fact, the Court already reached a similar conclusion in *Heller*. The **[**408]** Court was tasked with comparing laws imposing "a small fine and forfeiture of the weapon" with the District of Columbia's ban on keeping functional handguns at home for self-defense, which was punishable by a year in prison. 554 U. S., at 633-634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. We explained that the forfeiture laws were "akin **[***107]** to modern penalties for minor public-safety infractions like speeding or jaywalking." *Id.*, at 633, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Such inconsequential punishment would not have "prevented a person in the founding era from using a gun to protect himself or his family." *Id.*, at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Accordingly, we concluded that the burdens were not equivalent. See *id.*, at 633-634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. That analysis applies here in full force. If a small fine and forfeiture is not equivalent to the District of Columbia's handgun ban, it certainly falls short of §922(g)(8)'s ban on possessing any firearm.

The Government resists the conclusion that forfeiture is less burdensome than a possession ban, arguing that "[t]he burdens imposed by bans on keeping, bearing, and obtaining arms are all comparable." Reply Brief 10. But, there is surely a distinction between having *no* Second Amendment rights and having *some* Second Amendment rights. If self-defense is "the central component of the [Second Amendment] right," then common sense dictates that it matters whether you can defend yourself with a firearm anywhere, only at home, or nowhere. *Heller*, 554 U. S., at 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (emphasis deleted). And, the Government's suggestion ignores that we have repeatedly drawn careful distinctions between various laws' burdens. See, *e.g.*, *id.*, at 632, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (explaining that laws that "did not clearly prohibit loaded weapons **[***108]** . . . do not remotely burden the right of self-defense as much as an absolute ban on handguns"); see also *Bruen*, 597 U. S., at 48, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Our careful parsing of regulatory burdens makes sense given that the Second Amendment codifies a right with a "historically fixed meaning." *Id.*, at 28, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Accordingly, history is our reference **[*1938]** point and anchor. If we stray too far from it by eliding material differences between historical and modern laws, we "risk endorsing outliers that our ancestors would never have accepted." *Id.*, at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (internal quotation marks and alteration omitted).

Second, the Government offers no "comparable justification" between laws punishing firearm storage practices and §922(g)(8). It posits that both laws punish persons whose "conduct suggested that he would not use [firearms] responsibly." Brief for United States 24. The Government, however, does not even attempt to ground that justification in historical evidence. See *infra*, at 28-29.

The Government's proposed justification is also far too general. Nearly all firearm regulations can be cast as preventing "irresponsible" or "unfit" persons from accessing firearms. In addition, to argue that a law limiting access to firearms is justified by the fact that the regulated groups should not have access **[***109]** to firearms is a logical merry-go-round. As the Court has **[**409]** made clear, such overly broad judgments cannot suffice. In *Bruen*, New York claimed it could effectively ban public carry because "the island of Manhattan [is] a 'sensitive place.'" 597 U. S., at 31, 142 S. Ct. 2111, 213 L. Ed. 2d 387. New York defined a "sensitive place" as "all places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available." *Id.*, at 30-31, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (internal quotation marks omitted). The Court rejected that definition as "far too broa[d]" as it "would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense." *Id*., at 31, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Likewise, calling a modern and historical law comparably justified because they both prevent unfit persons from accessing firearms would render our comparable-justification inquiry toothless. [5]

In sum, the Government has not identified any historical regulation that is relevantly similar to §922(g)(8).

2

This dearth of evidence is unsurprising because the Founders responded to the societal problem of interpersonal violence through a less burdensome regime: surety laws. Tracing back to early English history, surety laws were a preventative mechanism for ensuring an **[***110]** individual's future peaceable conduct. See D. Feldman, The King's Peace, the Royal Prerogative and Public Order, 47 Cambridge L. J. 101, 101-102 (1988); M. Dalton, The Countrey Justice 140-144 (1619). If someone received a surety demand, he was required to go to a court or judicial officer with one

[5] The Government's other analogies suffer from the same flaws as the firearm storage laws. It cites laws restricting firearm sales to and public carry by various groups such as minors and intoxicated persons; laws confiscating firearms from rioters; and laws disarming insurrectionists and rebels. Brief for United States 22-27. These laws target different groups of citizens, for different reasons, and through different, less onerous burdens than §922(g)(8). See *Bruen*, 597 U. S., at 70, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (explaining that regulations "limit[ing] the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms" do not justify "broadly prohibit[ing] the public carry of commonly used firearms for personal defense"). None establishes that the particular regulation at issue here would have been within the bounds of the pre-existing Second Amendment right.

or more members of the community—*i.e.*, sureties—and comply with certain conditions. 4 W. Blackstone, Commentaries on the Laws of England 249-250 (1769) (Blackstone). Specifically, the person providing sureties was required to "keep the **[*1939]** peace: either generally . . . or . . . with regard to the person who crave[d] the security" until a set date. *Id.*, at 250. If he kept the peace, the surety obligation dissolved on that predetermined date. See *ibid*. If, however, he breached the peace before that date, he and his sureties would owe a set sum of money. See *id.*, at 249-250. Evidence suggests that sureties were readily available. Even children, who "[we]re incapable of engaging themselves to answer any debt," could still find "security by their friends." *Id.*, at 251.

There is little question that surety laws applied to the threat of future interpersonal violence. "[W]herever **[**410]** any private man [had] just cause to fear, that another w[ould] **[***111]** burn his house, or do him a corporal injury, by killing, imprisoning, or beating him . . . he [could] demand surety of the peace against such person." *Id.*, at 252; see also J. Backus, The Justice of the Peace 25 (1816) (providing for sureties when a person "stands in fear of his life, or of some harm to be done to his person or his estate" (emphasis deleted)).

Surety demands were also expressly available to prevent domestic violence. Surety could be sought by "a wife against her husband who threatens to kill her or beat her outrageously, or, if she have notorious cause to fear he will do either." *Id.*, at 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387; see 1 W. Hawkins, Pleas of the Crown 253 (6th ed. 1777) ("[I]t is certain, that a wife may demand [a surety] against her husband threatening to beat her outrageously, and that a husband also may have it against his wife"). The right to demand sureties in cases of potential domestic violence was recognized not only by treatises, but also the founding-era courts. Records from before and after the Second Amendment's ratification reflect that spouses successfully demanded sureties when they feared future domestic violence. See, *e.g.*, Records of the Courts of Quarter Sessions and Common Pleas of Bucks County, Pennsylvania, **[***112]** 1684-1700, pp. 80-81 (1943) (detailing surety demanded upon allegations that a husband was "abusive to [his wife] that she was afraid of her Life & of her Childrns lifes"); see also *Heyn's Case*, 2 Ves. & Bea. 182, 35 Eng. Rep. 288 (Ch. 1813) (1822) (granting wife's request to order her husband who committed "various acts of ill usage and threats" to "find sufficient sureties"); *Anonymous*, 1 S. C. Eq. 113 (1785) (order requiring husband to "enter into recognizance . . . with two sureties . . . for keeping the peace towards the complainant (his wife)").

3

Although surety laws shared a common justification with §922(g)(8), surety laws imposed a materially different burden. Critically, a surety demand did not alter an individual's right to keep and bear arms. After providing sureties, a person kept possession of all his firearms; could purchase

additional firearms; and could carry firearms in public and private. Even if he breached the peace, the only penalty was that he and his sureties had to pay a sum of money. 4 Blackstone 250. To disarm him, the Government would have to take some other action, such as imprisoning him for a crime. See Feldman, 47 Cambridge L. J., at 101.

By contrast, §922(g)(8) strips an individual of his Second Amendment right. The statute's breadth cannot be overstated. For one, §922(g) criminalizes nearly all conduct related to covered **[***113]** firearms and ammunition. Most fundamentally, possession is prohibited, except in the rarest of circumstances. See, *e.g.*, *United States* v. *Rozier*, 598 F. 3d 768, 771 (CA11 2010) (*per curiam*) (concluding that it was "irrelevant" whether defendant "possessed the handgun for purposes of self-defense (in his home)"); *United States* v. *Gant*, 691 F. 2d 1159, 1162 (CA5 1982) **[*1940]** (affirming conviction of a business owner under §922(g) predecessor statute for briefly possessing a firearm to ward off suspected robbers). Courts of Appeals have understood "possession" broadly, upholding **[**411]** convictions where a person "picked up . . . three firearms for a few seconds to inspect" each, *United States* v. *Matthews*, 520 F. 3d 806, 807 (CA7 2008), or "made direct contact with the firearm by sitting on it," *United States* v. *Johnson*, 46 F. 4th 1183, 1189 (CA10 2022). They have also construed §922(g) to bar "constructive possession" of a firearm, including, for example, ammunition found in a jointly occupied home. See, *e.g., United States* v. *Stepp*, 89 F. 4th 826, 832-835 (CA10 2023).

Moreover, §922(g) captures virtually all commercially available firearms and ammunition. It prohibits possessing a firearm "in or affecting commerce" and "receiv[ing] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." §922(g). As courts have interpreted that nexus, if a firearm or ammunition has at any point crossed interstate lines, it is regulated by §922(g). See *Scarborough* v. *United States*, 431 U. S. 563, 566-567, 97 S. Ct. 1963, 52 L. Ed. 2d 582 (1977) (holding §922(g)'s predecessor statute **[***114]** covered firearm that "had previously traveled in interstate commerce"); *United States* v. *Lemons*, 302 F. 3d 769, 772 (CA7 2002) (affirming conviction under §922(g) for possessing firearm that "crossed into Wisconsin after its manufacture at some indeterminate moment in time—possibly years before it was discovered in [the defendant's] possession"). [6] In fact, the statute goes even further by regulating not only ammunition but also all *constituent parts* of ammunition—many of which are parts with no dangerous function on their own. See 18 U. S. C. §921(a)(17)(A).

[6] The majority correctly declines to consider Rahimi's Commerce Clause challenge because he did not raise it below. See *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, 125 S. Ct. 2113, 161 L. Ed. 2d 1020, n. 7 (2005) ("[W]e are a court of review, not of first view"). That said, I doubt that §922(g)(8) is a proper exercise of Congress's power under the Commerce Clause. See *United States* v. *Lopez*, 514 U. S. 549, 585, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995) (THOMAS, J., concurring).

These sweeping prohibitions are criminally enforced. To violate the statute is a felony, punishable by up to 15 years. §924(a)(8). That felony conviction, in turn, triggers a permanent, life-long prohibition on exercising the Second Amendment right. See §922(g)(1).

The combination of the Government's sweeping view of the firearms and ammunition within its regulatory reach and the broad prohibition on any conduct regarding covered firearms and ammunition makes §922(g)(8)'s burden unmistakable: The statute revokes a citizen's Second Amendment right while the civil restraining order is in place. And, that revocation is absolute. It makes no difference if the covered individual agrees to a no-contact order, posts a bond, or even moves across the country from his former **[***115]** domestic partner—the bar on exercising the Second Amendment right remains. See *United States* v. *Wilkey*, 2020 U.S. Dist. LEXIS 138928, 2020 WL 4464668, *1 (D Mont., Aug. 4, 2020) (defendant agreed to Florida protection order so he could "'just walk away'" and was prosecuted several years later for possessing firearms in Montana).

That combination of burdens places §922(g)(8) in an entirely different stratum from surety laws. Surety laws preserve the Second Amendment **[**412]** right, whereas §922(g)(8) strips an individual of that right. While a breach of a surety demand was punishable by a fine, §922(g)(8) is **[*1941]** punishable by a felony conviction, which in turn permanently revokes an individual's Second Amendment right. At base, it is difficult to imagine how surety laws can be considered relevantly similar to a complete ban on firearm ownership, possession, and use.

This observation is nothing new; the Court has already recognized that surety laws impose a lesser relative burden on the Second Amendment right. In *Bruen*, the Court explained that surety laws merely "provide financial incentives for responsible arms carrying." 597 U. S., at 59, 142 S. Ct. 2111, 213 L. Ed. 2d 387. "[A]n accused arms-bearer 'could go on carrying without criminal penalty' so long as he 'post[ed] money that would be forfeited if he breached the peace or injured others.'" *Id.*, at 56-57, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (quoting *Wrenn* v. *District of Columbia*, 864 F. 3d 650, 661, 431 U.S. App. D.C. 62 (CADC 2017); alteration in original). As a result, we held that surety laws were not analogous **[***116]** to New York's effective ban on public carry. 597 U. S., at 55, 142 S. Ct. 2111, 213 L. Ed. 2d 387. That conclusion is damning for §922(g)(8), which burdens the Second Amendment right even more with respect to covered individuals.

Surety laws demonstrate that this case should have been a "straightforward" inquiry. *Id.*, at 27, 142 S. Ct. 2111, 213 L. Ed. 2d 387. The Government failed to produce a single historical regulation that is relevantly similar to §922(g)(8). Rather, §922(g)(8) addresses a societal problem—the risk of interpersonal violence—"that has persisted since the 18th century," yet was addressed "through [the] materially different means" of surety laws. *Id.*, at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

C

The Court has two rejoinders, surety and affray laws. Neither is a compelling historical analogue. As I have explained, surety laws did not impose a burden comparable to §922(g)(8). And, affray laws had a dissimilar burden *and* justification. The Court does not reckon with these vital differences, asserting that the disagreement is whether surety and affray laws must be an exact copy of §922(g)(8). *Ante*, at 16. But, the historical evidence shows that those laws are worlds—not degrees—apart from §922(g)(8). For this reason, the Court's argument requires combining aspects of surety and affray laws to justify §922(g)(8). This piecemeal approach is not what the Second Amendment or our precedents countenance.

1

Despite **[***117]** the foregoing evidence, the Court insists that surety laws in fact *support* §922(g)(8). To make its case, the Court studiously avoids discussing the full extent of §922(g)(8)'s burden as compared to surety laws. The most the Court does is attack *Bruen*'s conclusion that surety laws were less burdensome than a public carry ban. The Court reasons that *Bruen* dealt with a "broad prohibitory regime" while §922(g)(8) applies to only a subset of citizens. *Ante,* at 15-16. Yet, that was only one way in which *Bruen* distinguished a public carry ban from surety laws' burden. True, **[**413]** *Bruen* noted that, unlike the public carry ban, surety laws did not restrict the general citizenry. But, *Bruen* also plainly held that surety laws did not "constitut[e] a 'severe' restraint on public carry, let alone a restriction tantamount to a ban." 597 U. S., at 59, 142 S. Ct. 2111, 213 L. Ed. 2d 387. In fact, that conclusion is repeated throughout the opinion. *Id.*, at 55-59, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (surety laws "were not *bans* on public carry"; "surety laws did not *prohibit* public carry"; surety laws "were not viewed as substantial restrictions on public carry"; and "surety statutes did not directly restrict public carry"). *Bruen*'s conclusion is inescapable and correct. Because surety laws are not equivalent to an effective ban **[*1942]** on public **[***118]** carry, they do not impose a burden equivalent to a complete ban on carrying *and* possessing firearms.

Next, the Court relies on affray laws prohibiting "riding or going armed, with dangerous or unusual weapons, [to] terrif[y] the good people of the land." 4 Blackstone 149 (emphasis deleted). These laws do not justify §922(g)(8) either. As the Court concedes, why and how a historical regulation burdened the right of armed self-defense are central considerations. *Ante*, at 7. Affray laws are not a fit on either basis.

First, affray laws had a distinct justification from §922(g)(8) because they regulated only certain public conduct that injured the entire community. An affray was a "common Nusanc[e]," 1 Hawkins, Pleas of the Crown, at 135, defined as "the fighting of two or more persons in some public place, to the terror of his majesty's subjects," 4 Blackstone 145. Even though an affray generally required "actual violence," certain other conduct could suffice. 1 R. Burn, The Justice of

the Peace, and Parish Officer 13 (2d ed. 1756). As relevant here, an affray included arming oneself "with dangerous and unusual weapons, in such a manner as [to] naturally cause a terror to the people"—*i.e.*, "going armed." ***[***119]*** *Ibid.* Many postfounding going armed laws had a self-defense exception: A person could "go armed with a[n] . . . offensive and dangerous weapon" so long as he had "reasonable cause to fear an assault or other injury." Mass. Rev. Stat., ch. 134, §16 (1836); see also 1838 Terr. of Wis. Stat. §16, p. 381; 1851 Terr. of Minn. Rev. Stat., ch. 112, §18.

Affrays were defined by their public nature and effect. An affray could occur only in "some public place," and captured only conduct affecting the broader public. 4 Blackstone 145. To that end, going armed laws did not prohibit carrying firearms at home or even public carry generally. See *Bruen*, 597 U. S., at 47-50, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Instead, they targeted only public carry that was "accompanied with such circumstances as are apt to terrify the people." 1 Burn, Justice of the Peace, at 13; see *Bruen*, 597 U. S., at 50, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (explaining that going armed laws "prohibit bearing arms in a way that spreads 'fear' or 'terror' among the people").

Affrays were intentionally distinguished from assaults and private interpersonal violence on that same basis. See *Cash* v. *State*, 2 Tenn. 198, 199 (1813) ("It is because the violence is committed in a public place, and to the terror of the people, that the crime is called an affray, instead of assault and battery"); *Nottingham* v. *State*, **[**414]** 227 Md. App. 592, 602, 135 A. 3d 541, 547 (Md. 2016) ("[U]nlike assault and battery," affray is "not a crime against the person; rather, affray is a crime against **[***120]** the public" (internal quotation marks omitted)). As treatises shortly before the founding explain, "there may be an Assault which will not amount to an Affray; as where it happens in a private Place, out of the hearing or seeing of any, except the Parties concerned; in which Case it cannot be said to be to the Terror of the People." 1 Hawkins, Pleas of the Crown, at 134; see 1 Burn, Justice of the Peace, at 13. Affrays thus did not cover the very conduct §922(g)(8) seeks to prevent—interpersonal violence in the home.

Second, affray laws did not impose a burden analogous to §922(g)(8). They regulated a niche subset of Second Amendment-protected activity. As explained, affray laws prohibited only carrying certain weapons ("dangerous and unusual") in a particular manner ("terrifying the good people of the land" without a need for self-defense) and in particular places (in public). Meanwhile, §922(g)(8) prevents a covered person from carrying any firearm or **[*1943]** ammunition, in any manner, in any place, at any time, and for any reason. Section 922(g)(8) thus bans *all* Second Amendment-protected activity. Indeed, this Court has already concluded that affray laws do not impose a burden "analogous to the burden created by" an effective ban on public carry. *Bruen*, 597 U. S., at 50, 142 S. Ct. 2111, 213 L. Ed. 2d 387. Surely, then, a **[***121]** law that imposes a public and private ban on a covered individual cannot have an analogous burden either.

The Court counters that since affray laws "provided for imprisonment," they imposed a greater burden than §922(g)(8)'s disarmament. *Ante*, at 14. But, that argument serves only to highlight another fundamental difference: Affray laws were criminal statutes that penalized past behavior, whereas §922(g)(8) is triggered by a civil restraining order that seeks to prevent future behavior. Accordingly, an affray's burden was vastly harder to impose. To imprison a person, a State had to prove that he committed the crime of affray beyond a reasonable doubt. The Constitution provided a bevy of protections during that process—including a right to a jury trial, counsel, and protections against double jeopardy. See Amdts. 5, 6.

The imposition of §922(g)(8)'s burden, however, has far fewer hurdles to clear. There is no requirement that the accused has actually committed a crime; instead, he need only be prohibited from threatening or using force, or pose a "credible threat" to an "intimate partner or child." §922(g)(8)(C). Section 922(g)(8) thus revokes a person's Second Amendment right based on the suspicion that he *may* commit a crime in the future. In addition, the only **[***122]** process required before that revocation is a hearing on the underlying court order. §922(g)(8)(A). During that civil hearing—which is not even about §922(g)(8)—a person has fewer constitutional protections compared to a criminal prosecution for affray. Gone are the Sixth Amendment's panoply of rights, including the rights to confront witnesses and have assistance of counsel, as well as the Fifth Amendment's protection against double jeopardy. See *Turner* v. *Rogers*, 564 U. S. 431, 441, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011) ("[T]he Sixth Amendment **[**415]** does not govern civil cases"); *Hudson* v. *United States*, 522 U. S. 93, 99, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997) ("The [Double Jeopardy] Clause protects only against the imposition of multiple *criminal* punishments for the same offense"). Civil proceedings also do not require proof beyond a reasonable doubt, and some States even set aside the rules of evidence, allowing parties to rely on hearsay. See, *e.g.*, Wash. Rule Evid. 1101(c)(4) (2024) (providing the state rules of evidence "need not be applied" to applications for protection orders (boldface and capitalization deleted)); Cal. Civ. Proc. Code Ann. §527.6(i) (West Supp. 2024) (judge "shall receive any testimony that is relevant" and issue order based on clear and convincing evidence). The differences between criminal prosecutions and civil hearings are numerous and consequential.

Affray laws are wide of the mark. While the Second Amendment does not demand a historical twin, it requires something closer than affray **[***123]** laws, which expressly carve out the very conduct §922(g)(8) was designed to prevent (interpersonal violence in the home). Nor would I conclude that affray laws—criminal laws regulating a specific type of public carry—are analogous to §922(g)(8)'s use of a civil proceeding to bar all Second Amendment-protected activity.

2

The Court recognizes that surety and affray laws on their own are not enough. **[*1944]** So it takes pieces from each to stitch together an analogue for §922(g)(8). *Ante,* at 13. Our precedents foreclose that approach. The question before us is whether a single historical law has both a comparable burden **[**416]** and justification as §922(g)(8), not whether several laws can be cobbled together to qualify. As *Bruen* explained, "determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations"—the historical and modern regulations—"are 'relevantly similar.'" 597 U. S., at 28-29, 142 S. Ct. 2111, 213 L. Ed. 2d 387. In doing so, a court must consider whether that single historical regulation "impose[s] a comparable burden on the right of armed self-defense *and* whether that burden is comparably justified." *Id.*, at 29, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (emphasis added).

The Court's contrary approach of mixing and matching historical laws—relying on one **[***124]** law's burden and another law's justification—defeats the purpose of a historical inquiry altogether. Given that imprisonment (which involved disarmament) existed at the founding, the Government can always satisfy this newly minted comparable-burden requirement. See *ante,* at 14-15. That means the Government need only find a historical law with a comparable justification to validate modern disarmament regimes. As a result, historical laws fining certain behavior could justify completely disarming a person for the same behavior. That is the exact sort of "regulatory blank check" that *Bruen* warns against and the American people ratified the Second Amendment to preclude. 597 U. S., at 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

Neither the Court nor the Government identifies a single historical regulation with a comparable burden and justification as §922(g)(8). Because there is none, I would conclude that the statute is inconsistent with the Second Amendment.

IV

The Government, for its part, tries to rewrite the Second Amendment to salvage its case. It argues that the Second Amendment allows Congress to disarm anyone who is not "responsible" and "law-abiding." Not a single Member of the Court adopts the Government's theory. Indeed, the Court disposes of it in half a page—and for good reason. *Ante,* at 17. The Government's **[***125]** argument lacks any basis in our precedents and would eviscerate the Second Amendment altogether.

A

The Government's position is a bald attempt to refashion this Court's doctrine. At the outset of this case, the Government contended that the Court has already held the Second Amendment protects only "responsible, law-abiding" citizens. Brief for United States 6, 11-12. The plain text

of the Second Amendment quashes this argument. The Amendment recognizes "the right of the *people* to keep and bear Arms." (Emphasis added.) When the Constitution refers to "the people," the term "unambiguously refers to all members of the political community." *Heller*, 554 U. S., at 580, 128 S. Ct. 2783, 171 L. Ed. 2d 637 ; see also *id.*, at 581, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (beginning its analysis with the strong "presumption that the Second Amendment right . . . belongs to all Americans"). The Government's claim that the Court already held the Second Amendment protects only "law-abiding, responsible citizens" is specious at best. [7] See *ante*, at 17.

[*1945] At argument, the Government invented yet another position. It explained that when it used the term "responsible" in its briefs, it *really* meant "not dangerous." See Tr. of Oral Arg. 10-11. Thus, it posited that the Second Amendment protects only law-abiding and *non-dangerous* citizens. No matter how many adjectives the Government swaps out, the fact **[***126]** remains that the Court has never adopted anything akin to the Government's test. In reality, the "law-abiding, dangerous citizen" test is the Government's own creation, designed to justify every one of its existing regulations. It has no doctrinal or constitutional mooring.

The Government finally tries to cram its dangerousness test into our precedents. It argues that §922(g)(8) and its proffered historical laws have a shared justification of disarming dangerous citizens. The Government, however, does not draw that conclusion by examining the historical justification for each law cited. Instead, the Government simply looks—from a modern vantage point—at the mix of laws and manufactures a possible connection between them all. Yet, our task is to "assess whether modern firearms regulations are consistent with the Second Amendment's text and *historical* understanding." *Bruen*, **[**417]** 597 U. S., at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (emphasis added). To do so, we must look at the historical law's justification as articulated during the relevant time period—not at modern *post-hoc* speculations. See, *e.g.*, *id.*, at 41-42, 48-49, 142 S. Ct. 2111, 213 L. Ed. 2d 387; *Heller*, 554 U. S., at 631-632, 128 S. Ct. 2783, 171 L. Ed. 2d 637. As I have explained, a historically based study of the evidence reveals that the Government's position is untenable. *Supra*, at 7-13.

As it does today, the Court should continue **[***127]** to rebuff the Government's attempts to rewrite the Second Amendment and the Court's precedents interpreting it.

B

The Government's "law-abiding, dangerous citizen" theory is also antithetical to our constitutional structure. At bottom, its test stems from the idea that the Second Amendment points to general

[7] The only conceivably relevant language in our precedents is the passing reference in *Heller* to laws banning felons and others from possessing firearms. See 554 U. S., at 626-627, and n. 26, 128 S. Ct. 2783, 171 L. Ed. 2d 637. That discussion is dicta. As for *Bruen*, the Court used the phrase "ordinary, law-abiding citizens" merely to describe those who were unable to publicly carry a firearm in New York. See, *e.g.*, 597 U. S., at 9, 15, 31-32, 71, 142 S. Ct. 2111, 213 L. Ed. 2d 387.

principles, not a historically grounded right. And, it asserts that one of those general principles is that Congress can disarm anyone it deems "dangerous, irresponsible, or otherwise unfit to possess arms." Brief for United States 7. This approach is wrong as a matter of constitutional interpretation, and it undermines the very purpose and function of the Second Amendment.

The Second Amendment recognizes a pre-existing right and that right was "enshrined with the scope" it was "understood to have when the people adopted [the Amendment]." *Heller*, 554 U. S., at 634-635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Only a subsequent constitutional amendment can alter the Second Amendment's terms, "whether or not future legislatures or . . . even future judges think [its original] scope [is] too broad." *Id.*, at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

Yet, the Government's "law-abiding, dangerous citizen" test—and indeed any similar, principle-based approach—would hollow out the Second Amendment of any substance. Congress could impose any firearm regulation so long as it targets "unfit" persons. And, **[***128]** of course, Congress would also dictate what "unfit" means and who qualifies. See Tr. of Oral Arg. 7, 51. The historical understanding of the Second Amendment right would be irrelevant. In fact, the Government posits that Congress could enact a law that the Founders explicitly rejected. See *id.,* at 18 (agreeing that **[*1946]** modern judgment would override "[f]ounding-[e]ra applications"). At base, whether a person could keep, bear, or even possess firearms would be Congress's policy choice under the Government's test.

That would be the direct inverse of the Founders' and ratifying public's intent. Instead of a substantive right guaranteed to every individual *against* Congress, we would have a right controlled *by* Congress. "A constitutional guarantee subject to future judges' [or Congresses'] assessments of its usefulness is no constitutional guarantee at all." *Heller*, 554 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637. The Second Amendment is "the very *product* of an interest balancing by the people." *Id.*, at 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637. It is this policy judgment—not that of modern and future Congresses—"that demands our unqualified deference." *Bruen*, 597 U. S., at 26, 142 S. Ct. 2111, 213 L. Ed. 2d 387 .

[418]** The Government's own evidence exemplifies the dangers of approaches based on generalized principles. Before the Court of Appeals, the Government pointed to colonial statutes **[***129]** "disarming classes of people deemed to be threats, including . . . slaves, and native Americans." Supp. Brief for United States in No. 21-11001 (CA5), p. 33. It argued that since early legislatures disarmed groups considered to be "threats," a modern Congress has the same authority. *Ibid.* The problem with such a view should be obvious. Far from an exemplar of Congress's authority, the discriminatory regimes the Government relied upon are cautionary tales. They warn that when majoritarian interests alone dictate who is "dangerous," and thus can be disarmed, disfavored groups become easy prey. One of many such examples was the treatment of

freed blacks following the Civil War. "[M]any of the over 180,000 African-Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks." *McDonald* v. *Chicago*, 561 U. S. 742, 771, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). Some "States formally prohibited AfricanAmericans from possessing firearms." *Ibid.* And, "[t]hroughout the South, armed parties . . . forcibly took firearms from newly freed slaves." *Id.*, at 772, 130 S. Ct. 3020, 177 L. Ed. 2d 894. "In one town, the marshal took all arms from returned colored soldiers, and was very prompt in shooting the blacks whenever an opportunity **[***130]** occurred." *Ibid*. (alterations and internal quotation marks omitted). A constitutional amendment was ultimately "necessary to provide full protection for the rights of blacks." *Id.*, at 775, 130 S. Ct. 3020, 177 L. Ed. 2d 894.

The Government peddles a modern version of the governmental authority that led to those historical evils. Its theory would allow federal majoritarian interests to determine who can and cannot exercise their constitutional rights. While Congress cannot revive disarmament laws based on race, one can easily imagine a world where political minorities or those with disfavored cultural views are deemed the next "dangers" to society. Thankfully, the Constitution prohibits such laws. The "very enumeration of the [Second Amendment] right takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 544 U. S., at 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637.

The Court rightly rejects the Government's approach by concluding that any modern regulation must be justified by specific historical regulations. See *ante*, at 10-15. But, the Court should remain wary of any theory in the future that would exchange the Second Amendment's boundary line—"the right of the people to keep and bear Arms, shall not be infringed"—for vague (and dubious) **[***131]** principles with contours defined by whoever happens to be in power.

[*1947] ***

This case is not about whether States can disarm people who threaten others. States have a ready mechanism for disarming anyone who uses a firearm to threaten physical violence: criminal prosecution. Most States, including Texas, classify aggravated **[**419]** assault as a felony, punishable by up to 20 years' imprisonment. See Tex. Penal Code Ann. §§22.02(b), 12.33 (West 2019 and Supp. 2023). Assuming C. M.'s allegations could be proved, Texas could have convicted and imprisoned Rahimi for every one of his alleged acts. Thus, the question before us is not whether Rahimi and others like him can be disarmed consistent with the Second Amendment. Instead, the question is whether the Government can strip the Second Amendment right of anyone subject to a protective order—even if he has never been accused or convicted of a crime. It cannot. The Court and Government do not point to a single historical law revoking a citizen's Second

Amendment right based on possible interpersonal violence. The Government has not borne its burden to prove that §922(g)(8) is consistent with the Second Amendment's text and historical understanding.

The Framers and ratifying public understood "that the right to keep and bear arms was essential to the preservation **[***132]** of liberty." *McDonald*, 561 U. S., at 858, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (THOMAS, J., concurring in part and concurring in judgment). Yet, in the interest of ensuring the Government can regulate one subset of society, today's decision puts at risk the Second Amendment rights of many more. I respectfully dissent.

End of Document

Cause No. 1822224

	§	**IN THE 176TH JUDICIAL**
EX PARTE	§	
BRANDIN ERIC LAW	§	**DISTRICT COURT OF**
	§	
	§	**HARRIS COUNTY, TEXAS**

[FIRST PROPOSED] ORDER
ON
PRETRIAL MOTION 27: APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS—QUASHING INDICTMENT AS UNCONSTITUTIONAL

On this day came to be heard the Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional in Cause No. 1822224. The Court, having considered the application, finds as follows:

(1) The pleadings of Applicant have established that TEX. PENAL CODE §46.04(a) is facially unconstitutional.

(2) Applicant Brandin Eric Law is being unlawfully restrained as a result of his indictment in Cause No. 1822224, which charges him with violation of TEX. PENAL CODE §46.04(a), an unconstitutional statute.

(3) No legal cause for further restraint in this cause exists.

THEREFORE, the Court ORDERS the indictment in Cause No. 1822224 to be dismissed and ORDERS Applicant BRANDIN ERIC LAW to be discharged from further restraint in this cause.

SIGNED this _____ day of _____, 2024.

_____
JUDGE PRESIDING
176th DISTRICT COURT OF HARRIS COUNTY

Cause No. 1822224

	§	**IN THE 176TH JUDICIAL**
EX PARTE	§	
BRANDIN ERIC LAW	§	**DISTRICT COURT OF**
	§	
	§	**HARRIS COUNTY, TEXAS**

[SECOND PROPOSED] ORDER
ON
PRETRIAL MOTION 27: APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS—QUASHING INDICTMENT AS UNCONSTITUTIONAL

The Court, having considered the Application for Pretrial Writ of Habeas Corpus—Quashing Indictment as Unconstitutional in Cause No. 1822224, finds a hearing and further argument from counsel necessary to the resolution of this case.

THEREFORE, the Court ORDERS a hearing to be held. The hearing is set for the _____ day of _____, 2024, at _____AM/PM.

SIGNED this _____ day of _____, 2024.

_____
JUDGE PRESIDING
176th DISTRICT COURT OF HARRIS COUNTY

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Naomi Howard on behalf of Naomi Howard
Bar No. 24092541
slfofcounsel@thesparkslawfirm.com
Envelope ID: 95217924
Filing Code Description: Motion
Filing Description: Applicant Second Motion for Extension of Time to File Brief
Status as of 12/11/2024 4:43 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
LaRhonda Sparks		LaRhonda@thesparkslawfirm.com	12/11/2024 4:22:36 PM	SENT
Monique Sparks		monique@thesparkslawfirm.com	12/11/2024 4:22:36 PM	SENT
Monica Perez		monica@thesparkslawfirm.com	12/11/2024 4:22:36 PM	SENT
Naomi Howard		slfofcounsel@thesparkslawfirm.com	12/11/2024 4:22:36 PM	SENT
Jessica Caird		Caird_Jessica@dao.hctx.net	12/11/2024 4:22:36 PM	SENT
Matea Gerussi		info@thesparkslawfirm.com	12/11/2024 4:22:36 PM	SENT