IN THE SUPREME COURT OF THE UNITED STATES

No. 24A997

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, ET AL., APPLICANTS

v.

CALEB REESE, ET AL.

APPLICATION FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General -- on behalf of applicants Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Daniel P. Driscoll, Acting Director, ATF; and Pamela J. Bondi, Attorney General -- respectfully requests a 28-day extension time, to and including June 27, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The opinion of the court of appeals (App., infra, 1a-29a) is reported at 127 F.4th 583. The memorandum ruling of the district court (App., infra, 30a-51a) is reported at 647 F. Supp. 3d. 508.

The court of appeals entered its judgment on January 30, 2025. On April 21, 2025, Justice Alito extended the time within which to

file a petition for a writ of certiorari to and including May 30, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. Under 18 U.S.C. 922(b)(1), a federal firearms licensee may not sell a handgun or handgun ammunition to "any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age." Ibid. Under 18 U.S.C. 922(c)(1), a licensee may sell a handgun or handgun ammunition to a person who does not appear at the licensee's business premises only if the person submits a sworn declaration that he is at least 21 years old. See 18 U.S.C. 922(c)(1). ATF has issued rules implementing those provisions. See, e.g., 27 C.F.R. 478.99(b).

Respondents -- 18-to-20-year-old individuals and non-profit advocacy organizations -- sued the federal government in the U.S. District Court for the District of Louisiana. See App., infra, 3a, 30a. They claimed that Sections 922(b)(1) and (c)(1), as well as ATF's implementing regulations, violate the Second Amendment rights of 18-to-20-year-olds. See id. at 2a-3a.

The district court rejected respondents' Second Amendment challenge and granted the government's motion to dismiss the complaint for failure to state a claim. App., infra, 30a-51a. The court emphasized that the age of majority at the founding was 21. Id. at 46a. It concluded that Sections 922(b)(1) and (c)(1) fit

within "a longstanding tradition of age- and safety-based restrictions on the ability to access arms." Id. at 47a (citation omitted).

The Fifth Circuit reversed and remanded, holding that the challenged statutes and regulations violate the Second Amendment rights of 18-to-20-year-olds. App., infra, 1a-29a. The court first rejected the government's argument that 18-to-20-year-olds fall outside the scope of the "people" protected by the Second Amendment, observing that other Bill of Rights provisions that use the phrase "right of the people," such as the Petition Clause and the Fourth Amendment, protect 18-to-20-year-olds. See id. at 10a-19a. The court then rejected the government's argument that Sections 922(b)(1) and (c)(1) fit within the Nation's tradition of firearm regulation, finding that the government had not "met its burden to demonstrate historical analogues supporting the challenged regulations." Id. at 9a; see id. at 19a-28a.

2. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. The President has issued an Executive Order directing the Department of Justice to re-evaluate its litigation positions in certain Second Amendment cases. See Protecting Second Amendment Rights, 90 Fed. Reg. 9503 (Feb. 12, 2025). The additional time sought in this application is needed to continue consultation within the government and to assess the legal and practical impact of the court of

appeals' ruling. Additional time is also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025

APPENDIX

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 30, 2025
Lyle W. Cayce
Clerk

No. 23-30033

CALEB REESE; FIREARMS POLICY COALITION, INCORPORATED; SECOND AMENDMENT FOUNDATION; LOUISIANA SHOOTING ASSOCIATION; EMILY NAQUIN,

Plaintiffs—Appellants,

versus

BUREAU OF ALCOHOL, TOBACCO, FIREARMS, and EXPLOSIVES; STEVEN DETTELBACH, *Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives*; JAMES R. MCHENRY III, *Acting U.S. Attorney General*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:20-CV-1438

Before ELROD, *Chief Judge*, JONES, and BARKSDALE, *Circuit Judges*.

EDITH H. JONES, *Circuit Judge*:

This is a second challenge in our court to the constitutionality of 18 U.S.C. §§ 922(b)(1) and (c)(1), which together prohibit Federal Firearms Licensees from selling handguns to eighteen-to-twenty-year-old adults. In *National Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*,

700 F.3d 185 (5th Cir. 2012) ("*NRA I*"), this court upheld those provisions. But that decision, which was criticized at the time, *see National Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 714 F.3d 334, 341 (5th Cir. 2013) ("*NRA II*") (Jones, J., dissenting from denial of rehearing en banc), preceded two recent clarifying Supreme Court opinions on the methodology by which we construe gun regulations under the Second Amendment. We are now compelled to focus intently on the evidence of firearm access and ownership by eighteen-to-twenty-year-olds near and at the founding, and we conclude that (1) *NRA I* is incompatible with the *Bruen* and *Rahimi* decisions of the Supreme Court, and (2) these provisions are inconsistent with the Second Amendment. Accordingly, we REVERSE the district court's contrary judgment and REMAND for further proceedings consistent with this opinion.

I. Background

A. Procedural History

Appellants filed suit in the district court against the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), its Director, and the Attorney General of the United States, challenging the constitutionality of 18 U.S.C. §§ 922(b)(1) and (c)(1), and their attendant regulations, including 27 C.F.R. §§ 478.99(b), 478.124(a), and 478.96(b). These provisions, in effect, prohibit Federal Firearms Licensees ("FFLs") from selling or delivering handguns to adults under the age of twenty-one. *Id.* Appellants contend that the federal laws unconstitutionally infringe on their right to keep and bear

arms under the Second Amendment and deny them equal protection under the Due Process Clause of the Fifth Amendment.[1]

Appellants are individuals between the ages of eighteen and twenty-one and three nonprofit organizations, filing on behalf of their members who are unable to buy handguns from FFLs and FFLs who are, in turn, prohibited from selling them handguns. Because the federal laws ban purchases by adults of a certain age, Appellants recently added additional named Plaintiffs who are currently over eighteen and under twenty-one.

In 2021, the government moved to dismiss or for summary judgment, contending that Appellants lacked Article III standing and failed to state a claim upon which relief could be granted. Appellants filed a cross-motion for summary judgment. The district court found that Appellants had standing, but granted the government's motion to dismiss under Rule 12(b)(6).

In so doing, the district court purported to adopt the framework established by the Supreme Court in *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022). The court considered first "whether the Second Amendment's plain text protects the ability of 18 to 20-year-olds to directly purchase handguns from FFLs," and, if so, "whether the challenged restrictions are consistent with the Nation's historical tradition of firearm regulation." *See id.* at 24, 142 S. Ct. at 2129–30. "Out of an abundance of caution," the court assumed that the Second Amendment's plain text covered the purchase of firearms by eighteen-to-twenty-year-olds. Proceeding to *Bruen*'s historical prong, the court found that the prohibition is consistent with this Nation's historical tradition of

[1] Appellants also sought as-applied relief with respect to women under the age of twenty-one. The district court did not rule on that question. Given our conclusion on the facial unconstitutionality of these statutes and regulations, we do not address this issue.

firearms regulation. The court relied considerably on this court's analysis in *NRA I*, which upheld the same laws challenged here under intermediate means-ends scrutiny. The court acknowledged, however, that means-ends scrutiny was rejected by *Bruen*, 597 U.S. 1, 142 S. Ct. 2111. Appellants timely appealed.

After oral argument, this appeal was abated pending the Supreme Court's decision in *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889 (2024). There, the Supreme Court largely reinforced and refined the *Bruen* analysis and ultimately upheld 18 U.S.C. § 922(g)(8), which prohibits individuals subject to a domestic violence restraining order from possessing firearms. *Id.* at 692, 144 S. Ct. at 1898. After supplemental briefing and another round of oral argument, we now return to the constitutionality of §§ 922(b)(1), (c)(1) and their attendant regulations.

B. Statutory Framework

Congress enacted the Omnibus Crime Control and Safe Streets Act ("Act") in 1968, and, *inter alia*, prohibited FFLs from selling certain firearms to certain purchasers based on the purchaser's age. Pub. L. No. 90-351, tit. IV, § 922(b)(1), 82 Stat. 197 (1968). The first challenged provision states:

> It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver [] any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age[.]

18 U.S.C. § 922(b)(1). Additionally, § 922(c)(1) prohibits FFLs from selling such a firearm to "a person who does not appear in person at the licensee's

business premises," absent a sworn statement that they are "twenty-one years or more of age[.]" 18 U.S.C. § 922(c)(1).

ATF implemented regulations prohibiting the sale of firearms "other than a shotgun or rifle" to adults under twenty-one. 27 C.F.R. § 478.99(b), for instance, states in part:

> A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver . . . [any] firearm, or ammunition, . . . other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age[.]

As a result, eighteen-to-twenty-year-olds "may not purchase handguns from FFLs." *NRA I*, 700 F.3d at 190. The Act and regulations do nothing to prohibit eighteen-to-twenty-year-olds from owning, possessing, or carrying handguns, nor does it prohibit them from buying handguns in the unlicensed, private market or receiving handguns as gifts.

Appellants allege that this "handgun ban" is inconsistent with our Nation's history of firearm regulation and thus unconstitutionally infringes on their Second Amendment right to keep and bear arms.

C. The Second Amendment

The Second Amendment provides: "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." U.S. CONST. amend. II. In *District of Columbia v. Heller* and *McDonald v. City of Chicago*, the Supreme Court held that the Amendment, in conjunction with the Fourteenth, "protect[s] an individual right to keep and bear arms for self-defense." *Bruen*, 597 U.S. at 17, 142 S. Ct. at 2125; *Heller*, 554 U.S. 570, 628, 128 S. Ct. 2783, 2817 (2008); *McDonald*, 561 U.S. 742, 767–68, 130 S. Ct. 3020, 3036 (2010).

Subsequently, *Bruen* clarified the framework for determining when a given statute or regulation unconstitutionally infringes on that right. *Bruen*, 597 U.S. at 24, 142 S. Ct. at 2129–30. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct." *Id.* If so, "the Constitution presumptively protects that conduct," and "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.*

"Why and how the regulation burdens the right are central to this inquiry" in "considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692, 144 S. Ct. at 1898 (citing *Bruen*, 597 U.S. at 26–31, 142 S. Ct. at 2131–34). Neither *Bruen* nor *Rahimi* contemplates "a law trapped in amber," where the government must show a "historical twin." *Id.* at 691–692, 144 S. Ct. at 1897–98 (quoting *Bruen*, 597 U.S. at 30, 142 S. Ct. at 2111). If a challenged regulation "does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster.'" *Id.* at 692, 144 S. Ct. at 1898 (quoting *Bruen*, 597 U.S. at 30, 142 S. Ct. at 2133). At the same time, a law may unconstitutionally infringe on the right when it goes "beyond what was done at the founding," "[e]ven when [it] regulates arms-bearing for a permissible reason." *Id.*

In *Bruen*, the Court considered the constitutionality of New York's licensing regime for carrying handguns in public. 597 U.S. at 8–11, 142 S. Ct. at 2122. Following up on a 1905 law, New York's "Sullivan Law" criminalized the possession of handguns, either concealed or otherwise, without a government-issued license, which could be issued if the applicant demonstrated "good moral character" and "proper cause." *Id.* (quoting 1913 N.Y. Laws ch. 608, § 1, p. 1629; citing 1911 N.Y. Laws ch. 195, § 1, p. 443). At the time *Bruen* was decided, the regulatory scheme had evolved to criminalize the possession of "any firearm without a license, whether inside

or outside the home." *Id.* at 11–12, 142 S. Ct. at 2122 (internal quotations omitted). What made New York's licensing regime relatively unique was its "may issue" framework, which gave state authorities discretion in issuing licenses even where the applicant had demonstrated the requisite criteria. *Id.* at 13–14, 142 S. Ct. at 2123–24.

The Court considered it "undisputed" that the plaintiffs in *Bruen*, both "law-abiding, adult citizens," were a part of "the people" protected by the Amendment, and that "handguns are weapons in 'common use' today for self-defense." *Id.* at 31–32, 142 S. Ct. at 2134 (citing *Heller*, 554 U.S. at 580, 627, 128 S. Ct. at 2790–91, 2817). Because the plain text of the Amendment covered the conduct at issue, the government bore the burden of justifying the regulation under our Nation's regulatory tradition. Turning to that tradition, the "historical record . . . [did] not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." *Id.* at 38, 142 S. Ct. at 2138. While there were a "handful of late-19th-century" examples of such prohibitions, there was "little evidence of an early American practice of regulating public carry by the general public." *Id.* at 38, 46, 142 S. Ct. at 2138, 2142. Further, "late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Id.* at 38, 46, 66, 142 S. Ct. at 2138, 2142, 2154 (citing *Heller*, 554 U.S. at 614, 128 S. Ct. at 2810). After a thorough discussion of firearm regulation stretching from medieval England to the early 20th century, the Court concluded that the government had "not met [its] burden to identify an American tradition justifying [New York's] proper-cause requirement." Accordingly, the licensing statute violated the Second Amendment as incorporated by the Fourteenth. *Id.* at 34, 70–71, 142 S. Ct. at 2135–36, 2156.

Two years later, in *Rahimi*, the Court applied the *Bruen* two-part framework and upheld a challenge to the federal law that prohibits individuals

subject to a domestic violence restraining order from possessing firearms. 602 U.S. at 684–686, 144 S. Ct. at 1894; 18 U.S.C. § 922(g)(8). The Court analogized the provision to surety laws and "going armed" laws around the time of the founding. *Rahimi*, 602 U.S. at 693–699, 144 S. Ct. at 1899–1901. Surety laws, a form of "preventive justice," "authorized magistrates to require individuals suspected of future misbehavior to post a bond" (which would be forfeited on any breaking of the peace), providing a "mechanism for preventing violence before it occurred." *Id.* at 695, 144 S. Ct. at 1899–1900. "Going armed" laws prohibited "riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land," and were punishable, *inter alia*, by "forfeiture of . . . arms." *Id.* at 697, 144 S. Ct. at 1901 (alterations in original) (quoting 4 William Blackstone, *Commentaries on the Laws of England* 149 (10th ed. 1787)). "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." *Id.* at 698, 144 S. Ct. at 1901. Consequently, § 922(g)(8) was consistent with the principles that underlie our regulatory tradition and passed constitutional muster.

II. Analysis

With this background, we review the constitutional questions *de novo*. *United States v. Perez-Macias*, 335 F.3d 421, 425 (5th Cir. 2003). Addressing the first question under *Bruen*, the government contends that "the Second Amendment's plain text" does not cover the conduct that §§ 922(b)(1) and (c)(1) prohibit. *Bruen*, 597 U.S. at 24, 142 S. Ct. at 2130. The government argues that a limited ban on the purchase of handguns from FFLs is not an infringement on the Second Amendment rights, and in any event eighteen-to-twenty-year-olds are not among "the people" protected by the right. We reject these points, then move to *Bruen*'s second inquiry: whether the

government met its burden to demonstrate historical analogues supporting the challenged regulations.

A. Purchasing Firearms

Contrary to the district court's assumption, the government denies that the plain text of the Second Amendment "establish[es] a right" to purchase firearms "at any time from any source." It emphasizes that § 922(b)(1) only limits the sale of handguns by a "particular type of seller" (FFLs) to a "particular class of buyers (under-21-year-olds)." Of course, the words "purchase," "sale," or similar terms describing a transaction do not appear in the Second Amendment. But the right to "keep and bear arms" surely implies the right to purchase them. *See Luis v. United States*, 578 U.S. 5, 26, 136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring) ("Constitutional rights . . . implicitly protect those closely related acts necessary to their exercise."); *see also Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) ("[T]he core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms.") (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 96 (2012) (When "a text authorizes a certain act, it implicitly authorizes whatever is a necessary predicate of that act.").

Further, the contention that sales to young adults are not covered by the Second Amendment simply because of the Act's targeted application is fundamentally inconsistent with the *Bruen/Rahimi* framework. The threshold textual question is not whether the laws and regulations impose reasonable or historically grounded limitations, but whether the Second Amendment "covers" the conduct (commercial purchases) to begin with. Because constitutional rights impliedly protect corollary acts necessary to their exercise, we hold that it does. To suggest otherwise proposes a world

where citizens' constitutional right to "keep and bear arms" excludes the most prevalent, accessible, and safe market used to exercise the right. The baleful implications of limiting the right at the outset by means of narrowing regulations not implied in the text are obvious; step by step, other limitations on sales could easily displace the right altogether.[2]

B. "The People"

The government next asserts that eighteen-to-twenty-year-olds are not "part of 'the people' whom the Second Amendment protects." *Bruen*, 597 U.S. at 31–32, 142 S. Ct. at 2134. This argument is based largely on the common law's recognition of 21 years as the date of legal maturity at the time of the founding, and the fact that legislatures have long established minimum age requirements for various activities.

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[2] In *Rocky Mountain Gun Owners v. Polis*, the court upheld a Colorado state firearms purchase ban on 18- to 20-year old adults as a "presumptively lawful regulatory measure" not characterized by "abuse" and therefore outside Second Amendment protection. 121 F.4th 96, 112–128 (10th Cir. 2024). The court excluded this ban from the *Bruen* analysis allegedly based on *Heller*'s statement that regulations on commercial firearms sales are "presumptively lawful." In our view, as pointed out above, the court committed a category error in its analysis that a complete ban of the most common way for a young adult to secure a firearm is not an abridgement of the Second Amendment right and therefore subject to *Bruen*'s test.

Nor is this court's decision in *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024), to the contrary. *McRorey* upheld expanded federal background checks for firearms purchases by 18- to 20-year olds. Although this court stated that the "keep and bear" language does not include "purchase," it also observed that the right to "keep and bear" can "implicate the right to purchase" and noted that is the reason "the Court prohibits shoehorning restrictions on purchase into functional prohibitions on keeping." *Id.* at 838 (citing *Bruen,* 597 U.S. at 38 n.9, 142 S. Ct. at 2138). The case before us is more than a "functional prohibition," it is an outright ban. We fail to see how a purchase ban unknown at the time of the founding can evade *Bruen* analysis. *See also United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024) (applying *Bruen* to federal law disarming convicted felons).

The operative clause of the Second Amendment states that "the right of *the people* to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II (emphasis added). There are no age or maturity restrictions in the plain text of the Amendment, as there are in other constitutional provisions. *See, e.g.*, U.S. CONST. art. I, § 2, cl. 2 (members of the House of Representatives must be at least 25 years old). This suggests that the Second Amendment lacks a minimum age requirement. *See, e.g.*, Scalia & Garner, *supra*, at 93–100 (discussing the "omitted-case canon—the principle that what a text does not provide is unprovided").

Moreover, in the unamended Constitution and Bill of Rights, the phrase "right of the people" appears in the First Amendment's Assembly-and-Petition Clause, the Fourth Amendment's Search-and-Seizure Clause, and the Ninth Amendment. *Heller*, 554 U.S. at 579, 128 S. Ct. at 2790. All of these references confer "individual rights" and undoubtedly protect eighteen-to-twenty-year-olds as much as twenty-one-year-olds. In fact, with modifications, the rights they confer extend to younger minors. *See, e.g.*, *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212, 95 S. Ct. 2268, 2274 (1975) ("[M]inors are entitled to a significant measure of First Amendment protection."); *New Jersey v. T.L.O.*, 469 U.S. 325, 337, 105 S. Ct. 733, 740 (1985) (school-age children are protected by the Fourth Amendment, with greater permissible intrusions in the school context).

Elsewhere in the Constitution, "the people" refers to all Americans collectively. *See* U.S. CONST. pmbl.; *id.* art. I, § 2; *id.* amend. X. But as *Heller* explained, these provisions "deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does 'a right' attributed to 'the people' refer to anything other than an individual right." 554 U.S. at 579–80, 128 S. Ct. at 2790. From another angle, "in all six other provisions of the Constitution that mention 'the people', the term unambiguously refers to all members of the political community, not an unspecified subset." *Id.* at

580, 128 S. Ct. at 2790–91. In sum, "the people" is a term of art that refers to a "class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S. Ct. 1056, 1061 (1990). On examining the constitutional text, *Heller* "start[ed] therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." *Id.* at 581, 128 S. Ct. at 2791.

Seizing on *Heller*'s reference to a "political community," the government asserts that, because eighteen-to-twenty-year-olds did not "enjoy the full range of civil and political rights" in the founding-era, they are not a part of "the people" for Second Amendment purposes. *Id.* at 580, 128 S. Ct. at 2790; *see, e.g.*, 1 John Bouvier, *Institutes of American Law* 148 (new ed. 1858) ("The rule that a man attains his majority at the age of twenty-one years accomplished, is perhaps universal in the United States."); 1 Blackstone, *supra*, at 463 ("[F]ull age in male or female is twenty-one years . . ."). While it may be true that eighteen-to-twenty-year-olds could not then serve on juries, firearm restrictions are notably absent from the government's list of founding-era age-limited civil and political rights. *See* Albert W. Aschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. CHI. L. REV. 867, 877 n.52 (1994). Nor does the government provide any evidence suggesting that eighteen-to-twenty-year-olds historically lacked the right to self-defense, the "central component" of the Second Amendment. *Heller*, 554 U.S. at 599, 128 S. Ct. at 2801 (emphasis omitted).

Still, the government emphasizes that the right to vote "from the founding to the Twenty-Sixth Amendment" was typically reserved for citizens over twenty-one. Thus, because voting is a "hallmark of membership in the polity," eighteen-to-twenty-year-olds were originally, and

now remain, excluded from the "political community" described in *Heller*. This argument is incompatible with Second Amendment precedent, nonsensical when considered against the backdrop of American suffrage, and contradicted by the history of firearm use at the founding.

First, *Heller* unambiguously holds that "the Second Amendment confer[s] an *individual* right to keep and bear arms" (as opposed to a right conditioned on service in the militia). 554 U.S. at 595, 600, 128 S. Ct. at 2799, 2802 (emphasis added). And in contrast to "civic rights" that presuppose virtue limitations, the right to keep and bear arms is an "individual right" rooted in the right to self-defense. *See Kanter v. Barr*, 919 F.3d 437, 462–63 (7th Cir. 2019) (Barrett, J., dissenting); *Heller*, 554 U.S. at 595, 128 S. Ct. at 2799. The fact that eighteen-to-twenty-year-olds were minors unable to vote (or exercise other civic rights) does not mean they were deprived of the individual right to self-defense. *See NRA I*, 700 F.3d at 204 n.17 ("The terms 'majority' and 'minority' lack content without reference to the right at issue."), *abrogated by Bruen*, 597 U.S. 1, 142 S. Ct. 2111.

Second, the contention that "the people" covered by the Second Amendment is limited to those who enjoyed civic or voting rights at the founding does not withstand common-sense scrutiny. In most cases, early colonial governments conditioned eligibility to vote on various criteria, including variations of the "forty-shilling freehold" requirement.[3] Shortly after the Constitution was ratified in 1788, states began to reassess this "landed" requirement,[4] but often maintained race and gender-based voter

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[3] New York, for example, amended its voting laws in 1701 to exclude anyone who was not in "possession [of] an Estate of freehold." Hayley N. Lawrence, *The Untold History of Women's Suffrage: Voting Rights Pre-Ratification*, 52 INT'L SOC'Y BARRISTERS Q., 1, 8 (2020).

[4] *See, e.g.*, Laura E. Free, *Suffrage Reconstructed: Gender, Race, and Voting Rights in the Civil War Era* 3 (2015). By 1840, only three states retained a property qualification, and

qualifications.[5] In 1870, nearly eighty years after the ratification of the Bill of Rights, the Fifteenth Amendment extended voting rights to all Americans, regardless of race; and it was not until 1920 that the Nineteenth Amendment guaranteed women the right to vote. Finally, the Twenty-Sixth Amendment lowered the voting age for all Americans from twenty-one to eighteen in 1971.

Thus, to say that "the people" covered by the Second Amendment is limited to those who were a part of the "political community" *at the founding* would imply excluding "law-abiding, adult citizens" based on property ownership, race, or gender. *See Bruen*, 597 U.S. at 31–32, 142 S. Ct. at 2134 ("It is undisputed that petitioners . . .—two ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects.") (citing *Heller*, 554 U.S. at 580, 128 S. Ct. at 2790). Just as defining "arms" as "only those arms in existence in the 18th century" "border[s] on the frivolous," likewise, attempting to limit "the people" to individuals who were part of the "political community" at ratification is ludicrous. *See Heller*, 554 U.S. at 582, 128 S. Ct. at 2791. "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." *Bruen*, 597 U.S. at 28, 142 S. Ct. at 2132.

Finally, the history of firearm use, particularly in connection with militia service, contradicts the premise that eighteen-to-twenty-year-olds are not covered by the plain text of the Second Amendment. The Second

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the practice finally ended nation-wide with North Carolina in 1856. Stanley Engerman & Kenneth Sokoloff, *The Evolution of Suffrage Institutions in the New World*, NAT'L BUREAU OF ECON. RSCH. 18 (2001).

[5] Delaware, for example, amended its constitution in 1831 to limit the right to "free white male citizen[s]" that were over the age of twenty-one, and was followed shortly thereafter by Tennessee in 1843. Lawrence, *supra*, at 15.

Amendment's prefatory clause states that "[a] well regulated Militia, being necessary to the security of a free State . . . ." U.S. CONST. amend. II. While *Heller* recognized that the "central component" of the right to keep and bear arms is self-defense, the "prefatory clause announces the *purpose* for which the right was codified: to prevent elimination of the militia." 554 U.S. at 599, 128 S. Ct at 2801 (emphasis omitted and added); *see also Bruen*, 597 U.S. at 18, 142 S. Ct. at 2126. The Framers knew all too well the dangers a disarmed and defenseless public could face under monarchical control. *See Heller*, 554 U.S. at 592–95, 128 S. Ct. at 2797–99.

At the founding, "the 'militia' in colonial America consisted of a subset of 'the people'—those who were male, able bodied, and within a certain age range." *Id.* at 580, 595–97, 128 S. Ct. at 2791, 2799–800 (citing *United States v. Miller*, 307 U.S. 174, 179, 59 S. Ct. 816, 818 (1939) ("the Militia comprised all males physically capable of acting in concert for the common defense"); The Federalist No. 46, pp. 329, 334 (B. Wright ed. 1961) (J. Madison) ("near half a million of citizens with arms in their hands"); Letter to Destutt de Tracy (Jan. 26, 1811), in *The Portable Thomas Jefferson* 520, 524 (M. Peterson ed. 1975) ("the militia of the State, that is to say, of every man in it able to bear arms")). Under Article I, Congress has the power to "call[] forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions[.]" U.S. CONST. art. I, § 8, cl. 15. When called, militiamen were "expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *Miller*, 307 U.S. at 179, 59 S. Ct. at 818.

The Second Congress consequently enacted the Militia Act of 1792, which stated, in part:

> That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except

> as is herein excepted) shall severally and respectively be enrolled in the militia . . . . And it shall at all time hereafter be the duty of every such captain or commanding officer of a company to enroll every such citizen, as aforesaid, and also those who shall, from time to time, arrive at the age of eighteen years . . . . That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, . . . [and] a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock; . . . or with a good rifle, . . . [and] twenty balls suited to the bore of his rifle . . . .

Act of May 8, 1792, 1 Stat. 271, 271. After *Heller*, there is no doubt that "the militia" was "a subset of 'the people'" protected by its operative clause. *See Heller*, 554 U.S. at 580, 128 S. Ct. at 2790–91. The 1792 Militia Act, in turn, shows that eighteen-to-twenty-year-olds not only served in that militia, but were required to serve. Act of May 8, 1792, 1 Stat. 271, 271. Eighteen-to-twenty-year-olds therefore must be covered by the plain text of the Second Amendment, as they were compulsorily enrolled in the regiments that the Amendment was written to protect.

In response, the government points to four instances in which states set the minimum age for militia service above eighteen. One is from the colonial era, while the rest were codified between 1829 and 1868.[6] Colonial Virginia exempted men under twenty-one from militia service from 1738 to 1757, but adopted the minimum age of eighteen in response to a need for

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[6] The government points to New Jersey's 1829 "Act to exempt minors from Militia Duty in time of peace," the 1860 Code of the State of Georgia, and the 1868 North Carolina Constitution as examples of states raising the minimum militia age to twenty-one. An Act to exempt minors from Militia Duty in time of peace (1829), *reprinted in A Compilation of the Public Laws of the State of New-Jersey, Passed Since the Revision in the Year 1820* 266 (Josiah Harrison ed., 1833); *The Code of the State of Georgia*, pt. 1, tit. 11, chs. 1, 2, §§ 981, 1027, at 189, 199 (Richard H. Clark et al. eds., 1861); N.C. CONST. of 1868, art. XII, § 1.

additional forces during the French & Indian War. David B. Kopel & Joseph G. S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL. U. L.J. 495, 533, 579 (2019) ("*Rights of Young Adults*"). Apart from this example, colonial legislatures consistently set the minimum militia age at eighteen, and in some cases even lower.[7] *Id.* at 533; *see Miller*, 307 U.S. at 180–81, 59 S. Ct. at 819 (discussing Massachusetts and New York laws from 1784 and 1786, respectively, that required able-bodied men from sixteen to forty-five to enroll in the militia, and "provide himself, at his own Expense, with a good Musket").

One brief pre-ratification aberration and a handful of post-ratification examples do not outweigh the consistent approach of all states—including Virginia—where the minimum age of eighteen prevailed at or immediately after ratification of the Second Amendment. *See NRA II*, 714 F.3d at 340–41 n.8 (Jones, J., dissenting from denial of rehearing en banc). The founding-era laws are far more probative of what "the people" meant when the Second Amendment was ratified, as "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Heller*, 554 U.S. at 634–35, 128 S. Ct. at 2821.

Reliance on the Militia Act does not, of course, constrain the Second Amendment to founding-era militiamen. *Heller* expressly rejected that argument. *Id.* at 577, 128 S. Ct. at 2789. But the prefatory clause, in establishing the Amendment's purpose, describes those who, at a minimum, must have been covered by it. In other words, the Framers wanted to ensure that individuals eligible for militia service to defend "themselves, if

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[7] After returning to a minimum age of eighteen in 1757, Virginia briefly lowered the minimum age for militia service to sixteen during the Revolutionary War. Shortly thereafter, Virginia brought the minimum age back to eighteen in 1784, where it remained through ratification of the Second Amendment. *Id.* at 582–83.

necessary, and . . . their country" could not be disarmed. *Id.* at 613, 128 S. Ct. at 2809 (quoting *State v. Chandler*, 5 La. Ann. 489, 490 (1850)).

Finally, the government argues that mere participation in the militia was not enough to establish Second Amendment protections because (1) black men served in the militia but were otherwise barred from possessing arms; and (2) Virginia, by law, disarmed men who refused to take a loyalty oath while still requiring them to enroll in the militia, albeit without firearms.[8] The treatment of blacks is hardly probative as to eighteen-to-twenty-year-olds because race-based classifications would apply regardless of age. *See McDonald*, 561 U.S. at 770–78, 130 S. Ct. at 3038–42 (discussing race, ratification of the Fourteenth Amendment, and the right to keep and bear arms). Similarly, although Virginia (and presumably other states) disarmed men who refused to swear loyalty to the United States during the Revolution, this exception does not show that eighteen-to-twenty-year-olds, as a class, were excluded from the right to keep and bear arms. *See NRA II*, 714 F.3d at 343 (Jones, J., dissenting from denial of rehearing en banc). In some respects, "Loyalty Tests" contradict the government's position. Virginia required men over sixteen years old to swear an oath of allegiance lest they "be *dis*armed".[9] This language implies that Virginia expected that potential dissidents as young as sixteen may be armed; and young men of sixteen were "considered to have rights even if they were being restricted equally with other suspect class members." *NRA II*, 714 F.3d at 343 (Jones, J., dissenting from denial of rehearing en banc). Finally, this Virginia law was a wartime

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[8] An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age to Give Assurance of Allegiance to the Same, and for Other Purposes ("Virginia Loyalty Act") (1777), *printed in Printed Ephemera Collection*, Library of Congress, Portfolio 178, Folder 27.

[9] Virginia Loyalty Act (emphasis added).

measure, not unlike the "military dictates" that *Bruen* cautions should be discounted when assessing the "Constitution's usual application during times of peace." *Bruen*, 597 U.S. at 63 n.26, 142 S. Ct. at 2152.

The Supreme Court recognized in *Heller* and repeated in *Bruen* that the Second Amendment "belongs to *all* Americans" (subject, of course, to "reasonable, well-defined restrictions"). *Heller*, 554 U.S. at 581, 128 S. Ct. at 2791 (emphasis added); *Bruen*, 597 U.S. at 31–32, 70, 142 S. Ct. at 2134, 2156. While the core of the right is rooted in self-defense and unconnected with the militia, the text of the Amendment's prefatory clause considered along with the overwhelming evidence of their militia service at the founding indicates that eighteen-to-twenty-year-olds were indeed part of "the people" for Second Amendment purposes. *See Worth v. Jacobson*, 108 F.4th 677, 689–92 (8th Cir. 2024) (holding the same); *Lara v. Commissioner*, No. 21-1832, 2025 WL 86539, at *5–7 (3d Cir. Jan. 13, 2025).

C. Tradition of Firearms Regulation

Because the "Second Amendment's plain text covers [the] conduct" at issue, "the Constitution presumptively protects [the] conduct." *Bruen*, 597 U.S. at 24, 142 S. Ct. at 2129–30. According to *Bruen*, the next question is whether restricting eighteen-to-twenty-year-olds from purchasing handguns from FFLs is "consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17, 142 S. Ct. at 2126. The government bears the burden of proof. *Id.*

The Supreme Court reiterated in *Rahimi* that "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." 602 U.S. at 692, 144 S. Ct. at 1898 (citing *Bruen*, 597 U.S. at 26–31, 142 S. Ct. at 2131–34). Courts must "ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit." *Id.* (quoting *Bruen*, 597 U.S. at

29, 142 S. Ct. at 2132); *see Lara*, 2025 WL 86539, at *1. Central to this analogical inquiry are "[*w*]*hy* and *how* the regulation burdens the right," *Rahimi*, 602 U.S. at 692, 144 S. Ct. at 1898 (emphasis added), or, "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified . . . ." *Bruen*, 597 U.S. at 29, 142 S. Ct. at 2133. For "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi*, 602 U.S. at 692, 144 S. Ct. at 1898.

As discussed above, the 1792 Militia Act, passed shortly after the Second Amendment was ratified, required eighteen-year-olds to enroll in the militia, and militia members were required to furnish their own weapons. *See supra* Section II.B. Of course, "[t]he right to keep and bear arms was not coextensive with militia service," however, "[g]un ownership was necessary for militia service; militia service wasn't necessary for gun ownership." *NRA II*, 714 F.3d at 342 (Jones, J., dissenting from denial of rehearing en banc). Certainly, eighteen-year-olds "must have been allowed to 'keep' firearms for personal use," and "were within the 'core' rights-holders at the founding . . . ." *Id.* at 339. To satisfy its burden that banning eighteen-to-twenty-year-olds from purchasing handguns is consistent with our Nation's historical tradition of firearm regulation, the government must overcome this clear and germane evidence that eighteen-to-twenty-year-olds enjoyed the same Second Amendment rights as their twenty-one-year-old peers at the founding.

The government's theory inverts historical analysis by relying principally on mid-to-late-19th century statutes (most enacted after Reconstruction) that restricted firearm ownership based on age. Then the government works backward to assert that these laws are consistent with founding-era analogues focusing on the minority status and general

"irresponsibility" of eighteen-to-twenty-year-olds. The government thus confects a longstanding tradition of firearm restrictions imposed on individuals under twenty-one.

We look at the historical evidence chronologically and fail to see the unbroken tradition or validity of the analogues that the government deploys.

1. Firearm Regulation at the Founding

The government presents a handful of regulations and practices from near the founding that asserted parental or supervisory authority over arms-bearing by eighteen-to-twenty-year-olds.

First, resolutions passed in 1810 and 1824, respectively, prohibited firearm possession by public university students at the Universities of Georgia and Virginia.[10] These resolutions, however, are too different in both the "how" and the "why" to establish a compelling historical analogue for contemporary restrictions. The resolutions applied to *all* enrolled students regardless of age. Moreover, universities had heightened authority over student conduct *in loco parentis*. Actions taken *in loco parentis* say little about the general scope of Constitutional rights and protections. *See, e.g.*, *Morse v. Frederick*, 551 U.S. 393, 416, 127 S. Ct. 2618, 2633 (2007) (Thomas, J., concurring) ("The doctrine of *in loco parentis* limited the ability of schools to set rules and control their classrooms in almost no way. It merely limited the imposition of excessive physical punishment.").

Further, the "principle" behind the resolutions was to effectuate student discipline and academic rigor, not to disarm all minors. *See Rahimi*, 602 U.S. at 692, 144 S. Ct. at 1898 ("The law must comport with the

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[10] *See* University of Georgia Libraries, The Minutes of the Senatus Academicus 1799–1842, 73 (Nov. 4, 1976); University of Virginia Board of Visitors Minutes, ENCYC. VA. (1824).

principles underlying the Second Amendment . . . .") (emphasis added). These resolutions also imposed a markedly different burden on students. *See Bruen*, 597 U.S. at 29, 142 S. Ct. at 2133. The current handgun ban prohibits law-abiding, adult citizens from buying handguns from FFLs on account of their age, whereas the university resolutions simply disarmed students while on school grounds. Not only are these resolutions inapt in scope and purpose, but we are mindful of the Supreme Court's caution against construing too broadly the category of "sensitive places such as schools and government buildings," as it would "eviscerate the general right to publicly carry arms for self-defense." *See Bruen*, 597 U.S. at 30–31, 142 S. Ct. at 2133–34.

Second, the government points to Pennsylvania's 1755 Militia Act, which permitted individuals under twenty-one to enroll in the militia only with the prior consent of their parents.[11] Similarly, six state laws enacted between 1810 and 1826 required parents to furnish firearms for young men's militia duty. The Pennsylvania act is not relevant, as the legislature passed a militia statute in 1777 that set an unqualified enrollment age of eighteen, which remained through ratification of the Second Amendment.[12] Further, requirements that parents furnish firearms for their sons' militia service do not mean that the military-age young men lacked the right to keep and bear (or obtain) such arms themselves. They just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by parents.

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[11] *See* 5 James T. Mitchell & Henry Flanders, *The Statutes at Large of Pennsylvania from 1682 to 1801* 200 (1898).

[12] *See* 9 James T. Mitchell and Henry Flanders, *The Statutes at Large of Pennsylvania from 1682 to 1801* 77 (1903).

Finally, the government cites an 1810 South Carolina treatise discussing the eligibility criteria for constables. At the time, justices of the peace appointed constables who could select "any particular private person" for appointment in "any case of emergency."[13] Although "infants," *i.e.*, legal minors under the age of 21, were categorically excluded from serving as constables, so also were justices of the peace, lawyers, attorneys, physicians, the poor, the sick, and the elderly.[14] Obviously, limiting firearm access did not run parallel to constabulary duty. In any case, exempting "minors" from serving as constables hardly qualifies as "relevantly similar" to curtailing (or in some cases practically prohibiting, for those who lack access to gifts or secondary markets) their ability to acquire a handgun. *See Bruen*, 597 U.S. at 29, 142 S. Ct. at 2132–33.

In supplemental briefing after the Supreme Court's decision in *Rahimi*, the government makes passing mention that 28 U.S.C. §§ 922(b)(1) and (c)(1) evidence legislatures' broader authority to restrict arms-bearing by "categories of persons" that "present a special danger of misuse." *Rahimi*, 602 U.S. at 698, 144 S. Ct. at 1901. But this misquotes *Rahimi*, which added that those laws "appl[y] *only* once a court has found that *the defendant* 'represents a credible threat to the physical safety' of another." *Id.* at 699, 144 S. Ct. at 1901 (citing 28 U.S.C. § 922(g)(8)(C)(i)) (emphasis added). The government's contention is meritless. The domestic violence gun ban in *Rahimi* was held "relevantly similar" to a historic tradition of "restrict[ing] gun use to mitigate demonstrated threats of physical violence" through surety and going armed laws. *Id.* at 698, 144 S. Ct. at 1901. The under-twenty-one handgun purchase ban, however, requires no "judicial

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[13] John Fauchereaud Grimke, *The South Carolina Justice of Peace* 118 (3d ed. 1810).

[14] *Id.* at 117.

determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 699, 144 S. Ct. at 1902. *Rahimi* expressly rejected the contention that, under its historical analysis, "[Petitioner] may be disarmed simply because he is not 'responsible.'" *Id.* at 701, 144 S. Ct. at 1903.

As William Rawle explained in his influential 1829 treatise, "even the carrying of arms abroad by a single individual, attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them, would be sufficient cause to require him to give surety of the peace."[15] Rawle "clearly differentiated between the people's right to bear arms and their service in a militia: 'In a people permitted and accustomed to bear arms, we have the rudiments of a militia, which properly consists of armed citizens.'" *Heller*, 554 U.S. at 607, 128 S. Ct. at 2806 (quoting W. Rawle, *A View of the Constitution of the United States of America* 140 (1825)). Taken together, Rawle's writings demonstrate that eighteen-to-twenty-year-olds, who were required to enroll in the militia, should be "permitted and accustomed to bear arms," *id.*, "burdened only if another could make out a specific showing of reasonable cause to fear an injury, or breach of the peace." *Bruen*, 597 U.S. at 56, 142 S. Ct. at 2148 (internal quotations omitted); *see* Kopel & Greenlee, *Rights of Young People*, *supra*, at 135–36.

Moreover, contrary to the government's recitation of concerns expressed in the colonial and founding eras about the "irresponsibility" of those under twenty-one, these young individuals were expected to keep the peace rather than disturb it. In addition to serving in the militia, eighteen-to-

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[15] David B. Kopel & Joseph G.S. Greenlee, History and Tradition in Modern Circuit Cases on the Second Amendment Rights of Young People, 43 S. Ill. U. L.J. 119, 135 (2018) ("Rights of Young People") (quoting William Rawle, A View of the Constitution of the United States of America 125–26 (William S. Hein & Co. 2003) (2d ed. 1829)).

twenty-year-olds could be obliged to join the *posse comitatus*, for which the minimum age was often fifteen or sixteen, and bring "such arms or weapons as they have or can provide". *See* Kopel & Greenlee, *Rights of Young Adults*, *supra*, at 534, n.235. Before the emergence of standing police forces, the *posse comitatus* was made up of civilians who accompanied sheriffs or other officials in pursuit of fugitives. Gautham Rao, *The Federal Posse Comitatus Doctrine: Slavery, Compulsion, and Statecraft in the Mid-Nineteenth-Century America*, 26 L. & HIST. REV. 1, 10 (2008). In early colonial America, the *posse* was "transformed . . . from an instrument of royal prerogative to an institution of local self-governance" that "all but precipitated the American Revolution." *Id.* at 10. Citizens could be called to "execute arrests, level public nuisances, and keep the peace;" they faced fines or imprisonment if they refused. *Id.* at 2. Instead of refusing to arm young Americans for fear of their irresponsibility, founding-era regulations required them to *be* armed to secure public safety.[16]

The government's proposed founding-era analogues do not meet its burden to establish a historical tradition of firearm restrictions imposed on eighteen-to-twenty-year-old Americans.

2. Reconstruction-era and late-19th Century

The government also contends that 19th century statutes show that eighteen-to-twenty-year-olds' access to handguns has been controlled for "most of American history."

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[16] This is not to suggest that 15- or 16-year-olds have Second Amendment rights by virtue of the possibility of *posse comitatus* duty. That issue is not before us, and this evidence on its own would be insufficient to establish any such rights. In contrast, the evidence supporting the rights and duties of 18-year-olds and older individuals is wide-reaching and compelling.

Twenty-two jurisdictions, including nineteen states, the District of Columbia, and two municipalities, passed laws between 1856 and 1897 that limited the Second Amendment rights of eighteen-to-twenty-year-olds in some way.[17] One of the states prohibited only *concealed* carry of handguns and other weapons and is less immediately relevant in "how" it burdened the right. *See* 1885 Nev. Stat. 51, ch. 51, § 1 ("Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword . . . concealed upon his person, shall be deemed guilty of a misdemeanor . . . ."). Another comes from Kansas, where the state Supreme Court demonstrated a "fundamental misunderstanding of the right to bear arms, as expressed in *Heller*" around the time of its enactment. *Bruen*, 597 U.S. at 68, 142 S. Ct. at 2155 (discussing *Salina v. Blaksley*, 72 Kan. 230 (1905)). These proposed analogues are less probative in establishing a historical tradition of similar regulations.

The remaining 19th century laws, however, appear to be "relevantly similar" to the current handgun purchase ban, insofar as they purported to restrict firearm access by those under twenty-one-years-old to prevent misuse.[18] *See Rahimi*, 602 U.S. at 692, 144 S. Ct. at 1898 (quoting *Bruen*, 597

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[17] 1856 Ala. Acts 17, No. 26, § 1; 16 Del. Laws 716 (1881); 27 Stat. 116–17 (1892) (District of Columbia); 1876 Ga. Laws 112, No. CXXVIII (O. No. 63), § 1; 1881 Ill. Laws 73, § 2; 1875 Ind. Laws 59, ch. XL, § 1; 1884 Iowa Acts 86, ch. 78, § 1; 1883 Kan. Sess. Laws 159, ch. CV, §§ 1, 2; 1859 Ky. Acts 245, § 23; 1890 La. Acts 39, No. 46, § 1; 1882 Md. Laws 656, ch. 242, § 2; 1878 Miss. Laws 175, ch. 66, §§ 1–2; Mo. Rev. Stat. § 1274 (1879); 1885 Nev. Stat. 51, ch. 51, § 1; 1893 N.C. Sess. Laws 468–69, ch. 514; 1856 Tenn. Pub. Acts 92, ch. 81, §2; 1897 Tex. Gen. Laws 221–22, ch. 155, § 1; 1882 W. Va. Acts 421–22, ch. 135, § 1; 1883 Wis. Sess. Laws 290, ch. 329, §§ 1–2; 1890 Wyo. Sess. Laws 140, § 97. The municipal authority comes from Chicago, Illinois (1872-1873) and Lincoln, Nebraska (1895).

[18] There are, of course, some peripheral differences. Alabama, for example, prohibited only sales to *male* minors, and the majority of laws cited also prohibited the

U.S. at 29, 142 S. Ct. at 2132). Proceeding past the bounds of founding-era analogues, however, is risky under *Bruen*, and courts must "guard against giving [such] postenactment history more weight than it can rightly bear." *Bruen*, 597 U.S. at 35, 142 S. Ct. at 2136. The limitation of these late 19th century analogues is not in the "how" or the "why" of regulation, but rather that the laws were passed too late in time to outweigh the tradition of pervasively acceptable firearm ownership by eighteen-to-twenty-year-olds at "the crucial period of our nation's history." *NRA II*, 714 F.3d at 339 (Jones, J., dissenting from denial of rehearing en banc).

Bruen cautioned that "when it comes to interpreting the Constitution, not all history is created equal." 597 U.S. at 34, 142 S. Ct. at 2136. Rather, "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 634–35, 128 S. Ct. at 2821; *see Bruen*, 597 U.S. at 34, 142 S. Ct. at 2136. As Justice Barrett explained in her concurrence in *Rahimi*, "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." *Rahimi*, 602 U.S. at 737–38, 144 S. Ct. at 1924 (Barrett, J., concurring); *see Bruen*, 597 U.S. at 36, 142 S. Ct. at 2137 (quoting *Heller*, 554 U.S. at 614, 128 S. Ct. at 2810) ("[B]ecause 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

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provision of bowie-knives, dirks, and the like depending on the age of the recipient. Ala. Acts 17, No. 26, § 1; *see, e.g.,* 1890 Wyo. Sess. Laws 140, § 97.

earlier sources.'"); *United States v. Connelly*, 117 F.4th 269, 281–82 (5th Cir. 2024).

To be sure, *Heller* and *Bruen* both considered 19th century sources in their analysis—to confirm and reinforce earlier historical evidence contemporaneous with the Constitution's ratification. *See Bruen*, 597 U.S. at 37, 142 S. Ct. at 2137 (quoting *Gamble v. United States*, 587 U.S. 678, 702, 139 S. Ct. 1960, 1976 (2019)) (stating that, in *Heller*, "[t]he 19th-century evidence was 'treated as mere confirmation of what the Court thought had already been established.'"). While acknowledging the "ongoing scholarly debate" regarding the most relevant period of history for issues arising under the Fourteenth Amendment, the Court clarified that "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Id.* at 36, 38, 142 S. Ct. at 2137–38 (citations omitted) (emphasis in original). "[T]he 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." *Id.* at 37, 142 S. Ct. at 2137–38 (citing *Crawford v. Washington*, 541 U.S. 36, 42–50, 124 S. Ct. 1354 (2004) (Sixth Amendment); *Virginia v. Moore*, 553 U.S. 164, 168–69, 128 S. Ct. 1598 (2008) (Fourth Amendment); *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 122–25, 131 S. Ct. 2343 (2011) (First Amendment)).

III. Conclusion

Ultimately, the text of the Second Amendment includes eighteen-to-twenty-year-old individuals among "the people" whose right to keep and bear arms is protected. The federal government has presented scant evidence that eighteen-to-twenty-year-olds' firearm rights during the founding-era were restricted in a similar manner to the contemporary federal handgun purchase ban, and its 19th century evidence "cannot provide much

insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Id.* at 66, 142 S. Ct. at 2154 (citing *Heller*, 554 U.S. at 614, 128 S. Ct. at 2810). In sum, 18 U.S.C. §§ 992(b)(1), (c)(1) and their attendant regulations are unconstitutional in light of our Nation's historic tradition of firearm regulation.

We REVERSE the district court's judgment and REMAND for further proceedings consistent with this opinion.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

CALEB REESE, ET AL.	**CASE NO. 6:20-CV-01438**
VERSUS	**JUDGE ROBERT R. SUMMERHAYS**
BUREAU OF ALCOHOL TOBACCO FIREARMS & EXPLOSIVES, ET AL.	**MAGISTRATE JUDGE WHITEHURST**

MEMORANDUM RULING

This suit is brought to relitigate the constitutionality of federal laws prohibiting federally licensed firearms dealers from selling handguns or handgun ammunition to persons aged 18 to 20.[1] Plaintiffs Caleb Reese and Emily Naquin ("Individual Plaintiffs") are citizens of the United States and the State of Louisiana and are between the ages of 18 and 21.[2] Plaintiffs Firearms Policy Coalition, Inc., The Second Amendment Foundation, and Louisiana Shooting Association ("Organizational Plaintiffs") allege that their members include persons under the age of 21, as well as federally licensed firearms retailers—*i.e.* federal firearms licensees ("FFLs")—some of whom reside in the Western District of Louisiana.[3] The Organizational Plaintiffs bring this suit on behalf of their "individual members who would purchase handguns and handgun ammunition from lawful retailers, and [their] member FFL handgun retailers who would sell handguns and handgun ammunition to adults under the age of twenty-one, but are prohibited from doing so by the Handgun Ban enforced by Defendants."[4] The Individual Plaintiffs allege that they are members of each of the forgoing organizations.[5]

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[1] *See* 18 U.S.C. § 922(b)(1) and (c)(1); 27 C.F.R. §§ 478.99(b)(1), 478.96(b), and 478.124(a) and (f).
[2] A third individual plaintiff, Joseph Granich, voluntarily withdrew his claims. ECF Nos. 41, 44.
[3] ECF No. 29 at 4–6, ¶¶ 9–11.
[4] *Id.* at ¶ 9; *see also* ¶¶ 10–11.
[5] *Id.* at pp. 3, 4; ¶¶ 6, 8 .

Plaintiffs seek a declaratory judgment that the challenged laws are facially unconstitutional, as well as injunctive relief, arguing the challenged laws violate the Second Amendment in that they "prevent law-abiding, responsible adult citizens under age twenty-one" from purchasing handguns from FFLs (Count I).[6] Alternatively, Plaintiffs seek a declaratory judgment that the laws are unconstitutional as applied to 18 to 20-year-old women, as well as injunctive relief (Count II).[7] Plaintiffs further seek "nominal damages for constitutional injuries caused by Defendants Lombardo's and Garland's enforcement of the Handgun Ban and resulting deprivation of Plaintiffs' Second Amendment rights."[8] Plaintiffs acknowledge the Fifth Circuit in *National Rifle Association of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives* ("*NRA*") held that the forgoing laws are constitutional, but they bring this suit "as a good faith attempt to change the law."[9]

The parties have filed dispositive cross-motions which are ripe for adjudication. Specifically, Defendants—Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), Regina Lombardo (Acting Director of the ATF),[10] and Merrick B. Garland (Attorney General of the United States)—have filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim, or alternatively, for summary judgment on all claims.[11] Plaintiffs have filed a motion for partial summary judgment, seeking judgment in their favor on Count II.[12]

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[6] *Id.* at 17–21, 23–24.
[7] *Id.* at 21-23, 24.
[8] *Id.* at 7, 24.
[9] ECF No. 29 at 3, ¶ 4 (citing *NRA*, 714 F.3d 185, 191 (5th Cir. 2012), *abrogated by New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022)). The original briefing in this matter was filed prior to the issuance of *Bruen*, which abrogated *NRA* in part, as discussed in Section III(A), *infra*.
[10] The Court notes that Steven M. Dettelbach was sworn in as the Director of the ATF on July 13, 2022. *See* https://www.atf.gov/about-atf/executive-staff/director#:~:text=Steven%20Dettelbach,Mr. (last visited Nov. 10, 2022).
[11] ECF No. 32. Giffords Law Center to Prevent Gun Violence has filed an amicus curiae brief in support of Defendants' motion. ECF No. 40; *see also* ECF No. 39.
[12] ECF No. 49.

I.
JURISDICTION

The Court begins with jurisdiction. Defendants assert Plaintiffs have failed to establish Article III standing, and therefore seek dismissal of all claims pursuant to Rule 12(b)(1).[13] Motions filed under Rule 12(b)(1) permit a party to challenge a court's subject-matter jurisdiction to hear a case. A district court may dismiss an action for lack of subject-matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts, as well as the court's resolution of disputed facts.[14] The burden of proof is on the party asserting jurisdiction.[15] At the motion to dismiss stage, this requires a plaintiff to allege "a plausible set of facts establishing jurisdiction."[16]

Standing—*i.e.*, "the power of the court to entertain the suit"—is the "threshold question in every federal case."[17] Article III of the United States Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies."[18] Standing to sue is a jurisprudential doctrine used to ensure federal courts do not exceed their limited authority over cases and controversies.[19] Standing "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong."[20] In its simplest terms, "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."[21] The "irreducible

[13] ECF No. 35 at 13–16.
[14] *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Willoughby v. U.S. Dept. of the Army*, 730 F.3d 476, 479 (5th Cir. 2013).
[15] *McMahon v. Fenves*, 946 F.3d 266, 270 (5th Cir. 2020); *Ramming* at 161.
[16] *McMahon* at 270 (quoting *Physician Hosps. of Am. v. Sebelius*, 691 F3d 649, 652 (5th Cir. 2012)).
[17] *Warth v. Seldin*, 422 U.S. 490, 498 (1975).
[18] *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (quoting U.S. Const., Art. III, § 2).
[19] *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337-38 (2016); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).
[20] *Spokeo* at 338.
[21] *Warth* at 498.

constitutional minimum" of standing consists of three elements which the plaintiff must satisfy: (1) the plaintiff suffered an injury in fact—*i.e.*, a concrete and particularized invasion of a legally protected interest; (2) the injury is fairly traceable to the challenged conduct of the defendant, which means there must be a causal connection between the injury and the conduct complained of; and (3) it is likely (as opposed to merely speculative) that the injury will be redressed by a favorable judicial decision.[22] Further, a plaintiff must have standing for each claim asserted and for each form of relief sought.[23] An association has standing to bring suit on behalf of its members if: (1) its individual members would have standing to sue in their own right; (2) the association seeks to vindicate interests germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members.[24]

Here, Defendants contend the Individual Plaintiffs lack standing to sue because they have failed to plead an "imminent injury traceable to Defendants."[25] Defendants contend the Individual Plaintiffs have an available option under federal law for obtaining a handgun—*i.e.*, their parents or guardians may lawfully purchase handguns from FFLs and gift them to the Individual Plaintiffs—and therefore Plaintiffs suffer no injury traceable to Defendants sufficient to confer standing.[26] According to Defendants, the Individual Plaintiffs "may not manufacture injury" by forgoing "legally available means by which they may obtain handguns."[27] As to the claims asserted by the Organizational Plaintiffs on behalf of their members between the ages of 18 and 20, Defendants contend they lack standing because those members do not have standing to sue in their

[22] *Spokeo* at 338, 339; *see also Lujan* at 560.
[23] *Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *El Paso County, Texas v. Trump*, 982 F.3d 332, 338 (5th Cir. 2020).
[24] *Students for Fair Admissions, Inc. v. Univ. of Texas at Austin*, 37 F.4th 1078, 1084 (5th Cir. 2022); *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010).
[25] ECF No. 35 at 14
[26] *Id.* at 14–15.
[27] *Id.*

own right for the reasons previously set forth.[28] As to the claims asserted by the Organizational Plaintiffs on behalf of their member FFLs, Defendants argue standing is absent because Plaintiffs have failed to adequately plead injury in fact. Specifically, Defendants contend that the Organizational Plaintiffs' allegation that but-for the challenged restrictions, they would sell handguns and handgun ammunition to persons aged 18 to 20, does not identify an injury that is sufficiently concrete and particularized to satisfy standing requirements.[29] Defendants concede the Fifth Circuit rejected these arguments in *NRA*.[30]

In *NRA*, suit was brought challenging the same laws on the same grounds by the same category of persons—*i.e.*, individual plaintiffs between the ages of 18 and 20, and the NRA on behalf of its 18 to 20-year-old members and on behalf of its FFL members.[31] The Fifth Circuit found plaintiffs had standing to sue, reasoning:

> The government is correct that the challenged federal laws do not bar 18–to–20–year–olds from possessing or using handguns. The laws also do not bar 18–to–20–year–olds from receiving handguns from parents or guardians. Yet, by prohibiting FFLs from selling handguns to 18–to–20–year–olds, the laws cause those persons a concrete, particularized injury—i.e., the injury of not being able to purchase handguns from FFLs.
>
> Standing may be satisfied by the presence of at least one individual plaintiff who has demonstrated standing to assert the contested rights as his own. Having established [the individual plaintiff's] standing and the NRA's associational standing on behalf of its 18–to–20–year–olds members, we need not discuss the NRA's associational standing on behalf of its FFL members.[32]

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[28] *Id.* at 15.
[29] *Id.* at 16 (quoting *Lujan*, 504 U.S. at 560). Defendants additionally note Plaintiffs do not identify any member who was allegedly "frustrated from selling any particular handgun to any person," nor do Plaintiffs account for the fact that "parents or others can purchase handguns directly from licensed dealers" as gifts for minors in their care. *Id.*
[30] *Id.* at 14 n.4. Defendants lodge this argument to preserve it for appellate purposes. *Id.*
[31] *NRA*, 700 F.3d at 188.
[32] *Id.* at 191–92 (internal citations, quotation marks, alterations and footnotes omitted); *see also National Rifle Ass'n of America, Inc. v. McCaw*, 719 F.3d 338, 344 n.3 (5th Cir. 2013).

Here, Individual Plaintiffs assert that but for the challenged laws, they would be eligible to purchase handguns from FFLs and would in fact do so.[33] Organizational Plaintiffs submit sworn declarations attesting that their members include the Individual Plaintiffs, as well as FFLs located in Louisiana who would sell handguns to persons under age 21, but are prohibited from doing so due to the challenged restrictions.[34] Defendants do not dispute the forgoing factual allegations. Because the Fifth Circuit has rejected the standing arguments presented in this case, the Court finds Plaintiffs have established standing. Accordingly, Defendants' motion is denied to the extent it seeks dismissal pursuant to Rule 12(b)(1).

II.
STANDARD OF REVIEW

A. Motion to Dismiss—Rule 12(b)(6)

Motions to dismiss for failure to state a claim pursuant to Rule 12(b)(6) are appropriate when a defendant attacks the complaint because it fails to state a legally cognizable clam.[35] Such a motion "admits the facts alleged in the complaint, but challenges plaintiff's rights to relief based upon those facts."[36] To overcome a Rule 12(b)(6) motion, a complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face.[37] The plausibility standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[38] Although a complaint does not need detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-

[33] ECF No. 29 at 7–8, 9–10; *see also* ECF No. 50-1 at 3–4 (Declaration of Emily Naquin).
[34] ECF No. 50-1 at 6, 8, 10.
[35] *Ramming*, 281 F.3d at 161.
[36] *Id.* at 161–62.
[37] *Harold H. Huggins Realty, Inc. v. FNC, Inc*., 634 F.3d 787, 796 (5th Cir. 2011).
[38] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level," and not merely create "a suspicion [of] a legally cognizable right of action.") (quoting 5 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE § 1216, pp. 235-36 (3d ed. 2004)).

harmed-me accusation."[39] A pleading that merely offers "labels and conclusions" or "a formulaic recitation of the elements" will not suffice,[40] nor will a complaint that merely tenders "naked assertions devoid of further factual enhancement."[41] When deciding a Rule 12(b)(6) motion, "[t]he court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff."[42] However, this tenet does not apply to conclusory allegations, unwarranted deductions, or legal conclusions couched as factual allegations, as such assertions do not constitute "well-pleaded facts."[43] In considering a Rule 12(b)(6) motion, the district court generally "must limit itself to the contents of the pleadings, including attachments thereto."[44] One exception to this rule is that district courts "may permissibly refer to matters of public record."[45]

B. Motion for Summary Judgment—Rule 56

A party is entitled to summary judgment if it shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.[46] "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party."[47] As summarized by the Fifth Circuit:

> When seeking summary judgment, the movant bears the initial responsibility of demonstrating the absence of an issue of material fact with respect to those issues on which the movant bears the burden of proof at trial. However, where the nonmovant bears the burden of proof at trial, the movant may merely point to an absence of evidence, thus shifting to the non-movant the burden of demonstrating

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[39] *Id.*
[40] *Twombly*, 550 U.S. at 555.
[41] *Iqbal*, 556 U.S. at 678 (internal quotation marks, alterations omitted) (quoting *Twombly* at 557).
[42] *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotation marks omitted); *see also Iqbal* at 679 ("When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.")
[43] *Twombly* at 555; *Iqbal* at 678.
[44] *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).
[45] *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994); *see also Test Masters Educational Services, Inc. v. Singh*, 428 F.3d 559, 570 n.2 (5th Cir. 2005).
[46] FED. R. CIV. P. 56(a).
[47] *Quality Infusion Care, Inc. v. Health Care Service Corp.*, 628 F.3d 725, 728 (5th Cir. 2010).

> by competent summary judgment proof that there is an issue of material fact warranting trial.[48]

The opposing party may not create a genuine dispute simply by alleging that a dispute exists. Rather, the opponent must cite "to particular parts of materials in the record," or show that "the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact."[49] When reviewing a motion for summary judgment, "the court must disregard all evidence favorable to the moving party that the jury is not required to believe, and should give credence to the evidence favoring the nonmoving party as well as that evidence supporting the moving party that is uncontradicted and unimpeached."[50] Credibility determinations, assessments of the probative value of the evidence, inferences drawn from the facts and the like are not to be considered on summary judgment, as those are matters to be decided by the factfinder at trial.[51]

III.
APPLICABLE LAW

A. Constitutional Framework

The Second Amendment, adopted in 1791, provides: "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."[52] For more than two hundred years after its adoption, scant jurisprudence existed discussing this right.[53] But in 2008 in *District of Columbia v. Heller*, the Supreme Court issued

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[48] *Lindsey v. Sears Roebuck and Co*., 16 F.3d 616, 618 (5th Cir.1994) (internal citations omitted).
[49] FED. R. CIV. P. 56(c)(1); *see also id.* at (c)(3) (the court need only consider the cited materials, although it is permitted to consider other materials in the record as well).
[50] *Roberts v. Cardinal Servs., Inc*., 266 F.3d 368, 373 (5th Cir. 2001).
[51] *See e.g. Man Roland, Inc. v. Kreitz Motor Exp., Inc*., 438 F.3d 476, 478 (5th Cir. 2006); *Int'l Shortstop, Inc. v. Rally's, Inc*., 939 F.2d 1257, 1263 (5th Cir. 1991).
[52] U.S. CONST. amend. II.
[53] *See e.g.* Andrew White, *In Defense of Self and Home: The Problems with Limiting Second Amendment Rights for Young Adults Based on Their Age*, 90 U. Cin. L. Rev. 1241, 1241 (2022); Zachary S. Halpern,

the first of a trilogy of rulings interpreting the Second Amendment.[54] *Heller* determined that the Second Amendment codified a pre-existing, individual right, belonging to "law-abiding, responsible citizens," that encompasses the possession of handguns in the home for self-defense.[55] Based upon this determination, the Supreme Court struck down a D.C. ordinance banning "handgun possession in the home" as unconstitutional.[56] Two years later in *McDonald v. City of Chicago*, the Supreme Court held that "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*" against the States.[57] This year in *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court held that the Second Amendment protects the right of "ordinary, law-abiding, adult citizens" to carry handguns for self-defense outside of the home.[58]

Following the issuance of *Heller*, eleven courts of appeal, including the Fifth Circuit, adopted a two-step framework for evaluating firearms regulations.[59] The first step of that framework required the government to justify a challenged law by showing that it "regulates activity falling outside the scope of the right as originally understood," based upon its "historical meaning."[60] If the government was successful in demonstrating the regulated conduct fell beyond the Amendment's original scope, the analysis ended, as the regulated activity was categorically

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Young Guns: The Constitutionality of Raising the Minimum Purchase Age for Firearms to Twenty-One, 63 B.C. L. Rev. 1421, 1429-30 (2022).

[54] *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

[55] *Id.* at 635.

[56] *Id.*

[57] *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

[58] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2134; *id.* at 2123, 2156 (finding a New York law, which required applicants for public carry permits to demonstrate "proper-cause"—defined by New York authorities as a special need for self-protection distinguishable from that of the general community—before issuance of such permits, violates the constitutional rights of "citizens with ordinary self-defense needs from exercising their right to keep and bear arms.")

[59] *Bruen* at 2127 n.4; *NRA*, 700 F.3d at 194.

[60] *Bruen* at 2126; *see also NRA* at 194 ("[T]he first inquiry is whether the conduct at issue falls within the scope of the Second Amendment right," which is determined by looking to "whether the law harmonizes with the historical tradition associated with the Second Amendment guarantee.")

unprotected.[61] But if the historical evidence was inconclusive or suggested that the regulated activity was not categorically unprotected, the examination proceeded to step two.[62] At step two, courts analyzed whether the challenged law survived the appropriate level of means-end scrutiny.[63] *Bruen* abrogated the two-step inquiry adopted by the courts of appeal. Although *Bruen* found step one of the predominant framework to be "broadly consistent with *Heller*," it found that step two was "one step too many."[64] *Bruen* then "made the constitutional standard endorsed in *Heller* more explicit,"[65] and announced the following standard for evaluating modern firearms regulations:

> [W]hen 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 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."[66]

Thus, if a challenged regulation prohibits conduct that is protected by the Second Amendment, courts must examine whether the regulation is consistent with the Nation's historical tradition of

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[61] *Bruen* at 2126; *see also NRA* at 195.
[62] *Bruen* at 2126.
[63] *Bruen* at 2126–27; *see also NRA* at 195 ("If the law burdens conduct that falls within the Second Amendment's scope, we then proceed to apply the appropriate level of means-ends scrutiny.")
[64] *Bruen* at 2126–27.
[65] *Bruen* at 2134.
[66] *Bruen* at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)); *see also Bruen* at 2129–30. *Bruen* did not state which party bears the burden of showing the Second Amendment's plain text covers an individual's conduct, likely because that issue was not in dispute. *Bruen* at 2134 ("It is undisputed that petitioners . . . —two ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects.") However, it would seem that the challenger of a firearm restriction bears the initial burden of showing the challenged conduct is protected by the Second Amendment. *Bruen* instructed that once it is shown that the conduct is protected by the Second Amendment, the government bears the burden of justifying the regulation by showing it is consistent with the Nation's historical tradition of firearm regulations. It stated that this standard "accords with how we protect other constitutional rights," such as "the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms." *Id.* at 2130. That same analogy would place the initial burden of showing the challenged conduct is covered by the Second Amendment on the challenger. *See e.g. Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 n.5 (1984); *Voting for America, Inc. v. Steen*, 732 F.3d 382, 388 (5th Cir. 2013).

firearm regulation. To accomplish this task, courts are to look to "relevantly similar" historical regulations for a "proper analogue."[67] There need only be "a well-established and representative historical *analogue*, not a historical *twin*."[68] Two of the metrics courts may use in determining whether regulations are relevantly similar are "how and why the regulations burden a law-abiding citizen's right to armed self-defense."[69]

Bruen warned that "not all history is created equal."[70] Because *Heller* determined the Second Amendment codified a pre-existing right "inherited from our English ancestors," both *Heller* and *Bruen* found "English history dating from the late 1600s, along with American colonial views leading up to the founding," to be of particular relevance.[71] *Bruen* additionally found historical tradition post-ratification through the early nineteenth century to be highly relevant to the extent it was not "*inconsistent* with the original meaning of the constitutional text."[72] Finally, while *Bruen* considered historical evidence from Reconstruction through the late nineteenth century, it emphasized evidence from that period was used "as mere confirmation" of the Court's earlier conclusions.[73] The Supreme Court acknowledged that this "historical analysis can be difficult," as it requires "resolving threshold questions, and making nuanced judgments about which evidence to consult and how to interpret it."[74] Accordingly, courts may choose and indeed

[67] *Bruen* at 2132; *see also id.* at 2133 (noting the absence of historical disputes regarding the lawfulness of a firearm prohibition may be evidence of constitutional permissibility).
[68] *Id.* at 2133 ("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.")
[69] *Id.*
[70] *Id.* at 2136.
[71] *Id.* at 2127 (quoting *Heller*, 554 U.S. at 599).
[72] *Id.* at 2137 (quoting *Heller v. D.C.*, 670 F.3d 1244, 1274 n.6 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)).
[73] *Id*.
[74] *Id.* at 2130 (alteration omitted) (quoting *McDonald*, 561 U.S. at 803–04 (Scalia, J., concurring)).

are "entitled to decide a case based on the historical record compiled by the parties," because "in our adversarial system of adjudication, we follow the principle of party presentation."[75]

While the Supreme Court has not yet provided an "exhaustive historical analysis . . . of the full scope of the Second Amendment," *Heller* did discuss some of its outer contours:

> 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. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions of 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.[76]

The Court explained that it identified this list of "presumptively lawful regulatory measures only as examples," and not as an exhaustive list.[77] In his concurring opinion in *Bruen*, Justice Alito reiterated that the Court's holding "decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun," nor does it "expand the categories of people who may lawfully possess a gun, and federal law generally . . . bars the sale of a handgun to anyone under the age of 21, §§ 922(b)(1), (c)(1)."[78]

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[75] *Id.* at 2130 & n.6 (alteration omitted); *see also id.* at 2150 ("Of course, we are not obligated to sift the historical materials for evidence to sustain New York's statute. That is respondents' burden.")
[76] *Heller*, 554 U.S. at 626-27 (internal citations omitted) (additionally noting the Second Amendment "does not extend to all types of weapons, but rather, only those typically possessed by law-abiding citizens for lawful purposes"); *see also Bruen* at 2138 n.9 (indicating the licensing requirements for public carry used by the majority of states likely pass constitutional muster, as those "shall-issue" regimes utilize objective criteria "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." (internal quotation marks omitted)).
[77] *Heller* at 627 n.26; *see also id.* at 627 (additionally noting private ownership of military-style weapons and short-barreled shotguns had long been forbidden).
[78] *Bruen* at 2157–58.

B. The Challenged Firearms Restrictions

Following a multi-year inquiry into violent crime, Congress passed the Omnibus Crime Control and Safe Streets Act of 1968.[79] The preamble declares that "the ease with which any person can acquire firearms other than a rifle or shotgun (including . . . juveniles without the knowledge or consent of their parents or guardians . . .) is a significant factor in the prevalence of lawlessness and violent crime in the United States. . . ."[80] The congressional investigation found that "concealable weapons" had "been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior." [81] Through the Act, Congress sought to address this and other safety issues relating to firearms without placing "any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity."[82] In furtherance of these goals, Congress enacted restrictions prohibiting sales of handguns to persons under age twenty-one by FFLs—*i.e.*, "safety-driven, age-based categorical restrictions on handgun access."[83]

18 U.S.C. § 922(b)(1) makes it unlawful for any federally licensed firearms dealer "to sell or deliver . . . any firearm or ammunition . . . other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age." 18 U.S.C. § 922(c)(1) provides that a federally licensed firearms dealer "may sell a firearm to a person who does not appear in person at the licensee's

[79] *NRA*, 700 F.3d at 198.
[80] Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901(a)(2), 82 Stat. 197, 225 (1968).
[81] *Id.* at § 901(a)(5) and (6), 82 Stat. 197, 225-26. As used in the Act, the term "minor" refers to persons under the age of 21, while the term "juvenile" refers to persons under the age of 18. *NRA* at 199 n.11.
[82] *Id.* at § 901(b), 82 Stat. 197, 226.
[83] *NRA* at 199. At the time of the Act's passage, the age of majority at common law was 21. *Id.* at n.11.

business premises . . . only if . . . the transferee submits to the transferor a sworn statement" attesting that, in the case of a handgun, he or she is 21 or older. The forgoing statutes are implemented by regulations that similarly restrict handgun sales to individuals aged 21 or older.[84] Thus, while federal law prohibits the direct purchase of handguns from FFLs by persons aged 18 to 20, such persons may still possess and use handguns, they may receive handguns as gifts, and they may purchase handguns through unlicensed, private sales.[85] Further, 18 to 20-year-olds enjoy the full scope of rights under the Second Amendment with regard to long guns—*i.e.*, they may possess, use and purchase long guns, and ammunition for long guns, directly from FFLs.[86]

IV.
APPLICATION

A. Facial Challenge—Count I

In light of *Bruen*, the questions this Court must answer are: (1) whether the Second Amendment's plain text protects the ability of 18 to 20-year-olds to directly purchase handguns from FFLs, and if so, then (2) whether the challenged restrictions are consistent with the Nation's historical tradition of firearm regulation. Defendants contend 18 to 20-year-olds do not enjoy the full scope of protection granted by the Second Amendment, relying primarily upon the findings of the Fifth Circuit in *NRA*.[87] Plaintiffs disagree and rely upon the arguments of the dissenting opinion to the denial of en banc review of *NRA* ("*NRA II*").[88] Following the issuance of *Bruen*, Plaintiffs filed a Notice of Supplemental Authority asserting that in light of *Bruen*, their facial challenge "is no longer controlled by *NRA* and the Court can and should grant summary judgment in favor of

[84] *See* 27 C.F.R. §§ 478.99(b)(1), 478.96(b), and 478.124(a), (f).
[85] *NRA* at 189-90.
[86] 18 U.S.C. § 922(b)(1) and (c)(1).
[87] ECF No. 35 at 18, 20–27.
[88] ECF No. 50 at 18–23 (citing *Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives* ("*NRA II*"), 714 F.3d 334, 335 (5th Cir. 2013) (Jones, J., dissenting) (joined by Judges Jolly, Smith, Clement, Owen and Elrod)).

Plaintiffs."[89] Defendants respond that "the Fifth Circuit's conclusions and the relevant historical analogues discussed in *NRA*" satisfy the *Bruen* test, and therefore judgment in their favor remains warranted.[90] Neither party requested leave to file supplemental briefing.

With respect to the first question that the Court must address under *Bruen*, the statute and regulations at issue here do not explicitly restrict the rights of 18 to 20-year-olds to "keep and bear Arms," as they do not restrict this age group from owning, possessing, or carrying handguns for self-defense.[91] Nevertheless, while sales restrictions do not explicitly infringe the right to "keep or bear Arms," a complete restriction on the sale of firearms could effectively gut the right to own or possess firearms by foreclosing the ability of "the people" to legally purchase firearms. The statute and regulations here, in contrast, do not impose a total ban on the sale of firearms. They do not prevent this age group from receiving handguns as gifts from parents or guardians, nor do they prohibit this age group from purchasing handguns in "private sales" from non-FFL sellers. They also do not prohibit this age group from purchasing long-guns from FFLs. On the other hand, the statute and regulations at issue could effectively foreclose certain members of this age group from acquiring handguns if they do not have a parent or guardian available to provide them a handgun, or they do not have access to a private sale. Moreover, the panel decision in *NRA* appears to assume that the restrictions at issue implicate this age group's Second Amendment rights, even though the panel ultimately decided that the regulations did not violate the protections of the Second Amendment. Out of an abundance of caution, the Court will assume that the statute and regulations

[89] ECF No. 62 at 1. As Plaintiffs' motion solely seeks summary judgment on their as-applied challenge (Count II), any grant of summary judgment in Plaintiffs' favor on their facial challenge would necessarily issue *sua sponte*.
[90] ECF No. 63 at 3.
[91] In contrast, the Texas state statute at issue in *Firearms Pol'y Coal., Inc. v. McCraw* prohibited law-abiding 18 to 20-year-olds from carrying handguns for self-defense outside the home. No. 4:21-CV-1245-P, 2022 WL 3656996 (N.D. Tex. Aug. 25, 2022). Applying *Bruen*, the district court held that the conduct proscribed by the Texas statute is protected by the Second Amendment.

at issue proscribe conduct covered by the plain text of the Second Amendment. The Court therefore turns to the historical prong of the *Bruen* analysis: whether the restrictions at issue are "consistent with the Nation's historical tradition of firearm regulation."[92]

Although the Fifth Circuit's opinion in *NRA* was issued before *Bruen* and employs the "two-step" analysis rejected by *Bruen,* the *NRA* court considered and analyzed the historical backdrop of the restrictions at issue here. In *NRA*, the individual and organizational plaintiffs challenged the same laws at issue in this case on the same grounds—*i.e.*, whether § 922(b) and (c) "burden conduct that is protected by the Second Amendment."[93] The Court found that the pre-Revolution and founding-era historical record showed "a variety of gun safety regulations were on the books."[94] One type of such regulations were "laws disarming certain groups and restricting sales to certain groups" for reasons of public safety.[95] For example, laws were enacted "that confiscated weapons owned by persons who refused to swear an oath of allegiance to the state or to the nation," because despite the fact that "these Loyalists were neither criminals nor traitors," American legislators determined that permitting such persons to keep and bear arms posed a potential danger.[96] Other laws confiscated weapons from law-abiding slaves and freedmen.[97] The court discussed that during this era, there existed the "classical republican notion that only those with adequate civic 'virtue' could claim the right to arms," and that "[o]ne implication of this emphasis on the virtuous citizen is that the right to arms does not preclude laws disarming the

[92] *Bruen* at 2126.
[93] *NRA*, 700 F.3d at 200.
[94] *Id.*
[95] *Id.* (additionally identifying "safety laws regulating the storage of gun powder, laws keeping track of who in the community had guns, laws administering gun use in the context of militia service . . . , [and] laws prohibiting the use of firearms on certain occasions and in certain places . . . .") (citations omitted).
[96] *Id.* (citations omitted).
[97] *Id.* (citations omitted); *see also Range v. Attorney Gen. United States*, 53 F.4th 262, 274–81 (3d Cir. 2022).

unvirtuous citizens (i.e., criminals) or those who, like children or the mentally imbalanced, are deemed incapable of virtue."[98] In light of the fact that the age of majority from the founding-era until the 1970s was 21, the court concluded:

> If a representative citizen of the founding era conceived of a "minor" as an individual who was unworthy of the Second Amendment guarantee, and conceived of 18–to–20–year–olds as "minors," then it stands to reason that the citizen would have supported restricting an 18–to–20–year–old's right to keep and bear arms.[99]

The court then examined the historical traditions of the nineteenth century, finding "[a]rms-control legislation intensified" during this period, and that by the end of that century, "nineteen States and the District of Columbia had enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms."[100] It further noted that courts and commentators of this era found such laws "comported with the Second Amendment guarantee."[101]

Like Plaintiffs in this matter, the plaintiffs in *NRA* argued that the right to purchase firearms from FFLs must vest at age 18 because, at the time of the founding, 18 to 20-year-olds were required to serve in the militia, and militia duty necessarily implies the right to purchase firearms.[102] In addressing this argument, the panel, citing *Heller*, reiterated that "the right to arms is not co-extensive with the duty to serve in the militia."[103] It then found that "in some colonies and States, the minimum age of militia service either dipped below age 18 or crept to age 21,

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[98] *Id.* at 201 (alteration in original) (quoting Don B. Kates & Clayton E. Cramer, *Second Amendment Limitations and Criminological Considerations*, 60 Hastings L.J. 1339, 1359–60 (2009)); *see also Range* at 273 & nn. 15, 16.
[99] *Id.* at 201–02.
[100] *Id.* at 202 (internal citation omitted).
[101] *Id.* at 203 (citing Thomas M. Cooley, *Treatise on Constitutional Limitations*, 740 n.4 (5th ed. 1883); *State v. Callicutt*, 69 Tenn. 714 (1878); *Coleman v. State*, 32 Ala. 581, 582-83 (1858)); *see also Range* at 279–81.
[102] ECF No. 50 at 20; *NRA*, 700 F.3d at 204 n.17.
[103] *NRA* at n.17 (citing *Heller*, 554 U.S. at 589-94).

depending on legislative need."[104] It further noted that "the 1792 Militia Act gave States discretion to impose age qualification on service, and several States chose to enroll only persons age 21 or over, or required parental consent for persons under 21."[105] Based upon this historical fluctuation, the panel rejected plaintiffs' "militia-based claim that the right to purchase arms must fully vest precisely at age 18—not earlier or later."[106]

After conducting its survey of historical traditions at step one, the court concluded:

> We have summarized considerable evidence that burdening the conduct at issue—the ability of 18–to–20–year–olds to purchase handguns from FFLs—is consistent with a longstanding, historical tradition which suggests that the conduct at issue falls outside the Second Amendment's protection. At a high level of generality, the present ban is consistent with a longstanding tradition of targeting select groups' ability to access and to use arms for the sake of public safety. More specifically, the present ban appears consistent with a longstanding tradition of age- and safety-based restrictions on the ability to access arms. In conformity with founding-era thinking, and in conformity with the views of various 19th-century legislators and courts, Congress restricted the ability of minors under 21 to purchase handguns because Congress found that they tend to be relatively immature and that denying them easy access to handguns would deter violent crime. . . .
>
> . . . .
>
> To be sure, we are unable to divine the Founders' specific views on whether 18–to–20–year–olds had a stronger claim than 17–year–olds to the Second Amendment guarantee. The Founders may not even have shared a collective view on such a subtle and fine-grained distinction. The important point is that there is considerable historical evidence of age- and safety-based restrictions on the ability to access arms. Modern restrictions on the ability of persons under 21 to purchase handguns . . . seem, to us, to be firmly historically rooted.
>
> Nonetheless, we face institutional challenges in conducting a definitive review of the relevant historical record. Although we are inclined to uphold the challenged federal laws at step one of our analytical framework, in an abundance of caution, we proceed to step two.[107]

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[104] *Id.* The Court acknowledges the dissent in *NRA II* takes issue with this particular statement and contends that "both of the examples offered for this proposition [by the majority] are wrong." *NRA II*, 714 F.3d at 341.
[105] *Id.*
[106] *Id.*
[107] *Id.* at 203–04 (internal citations omitted).

At step two (which, as previously noted, was abrogated by *Bruen*), the Court remained convinced that the challenged laws are constitutional under the Second Amendment.[108]

The dissent in *NRA II* forcefully argues that the challenged laws do not comport with the Second Amendment. The dissent asserts that the panel erred "in rummaging through random 'gun safety regulations' of the 18th century and holding that these justify virtually any limit on gun ownership."[109] In the dissent's view, when "properly relevant historical materials" are consulted, it is indisputable that "the right to keep and bear arms belonged to citizens 18 to 20 years old at the critical period of our nation's history."[110] According to the dissent, in the colonial era, the obligation to serve in the militia and the duty to possess arms generally began at the age of sixteen.[111] "At the time of the Second Amendment's passage, or shortly thereafter, the minimum age for militia service in every state became eighteen."[112] The 1792 Militia Act required 18-year-olds "to be available for service, and militia members were required to furnish their own weapons."[113] In the dissent's view, because "minors were in the militia *and*, *as such*, they were required to own their own weapons," any argument that 18 to 20-year-olds were not considered "to have full rights regarding firearms" is inconceivable.[114]

Like the panel in *NRA*, the Court has been "unable to divine" whether the Founders "shared a collective view" as to the full scope of the Second Amendment guarantee, and more particularly, whether their collective view was that persons between the ages of 18 and 20 enjoyed the full scope of its protection. Therefore, the Court has relied primarily upon the parties' pleadings and

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[108] *Id.* at 204, 211.
[109] *NRA II* at 339 (quoting *NRA* at 200).
[110] *Id.*
[111] *Id.* at 340.
[112] *Id.*
[113] *Id.* at 339.
[114] *Id.* at 342.

briefs in addressing the historical prong of its *Bruen* analysis. As noted, the parties' presentations here essentially involve advocating for the adoption of either the panel opinion in *NRA*, or the dissenting opinion in *NRA II*. Both the panel in *NRA* and the dissent in *NRA II* examined the issue from a historical perspective. The diverging conclusions reached by the opposing camps largely depends upon the level of generality employed. The panel in *NRA* emphasized that "gun safety regulation" was commonplace from colonial times through the nineteenth century; the dissent in *NRA II* focused closely on the minimum age for militia service in the founding era.

While the panel opinion in *NRA* issued pre-*Bruen* and therefore did not employ *Bruen's* exact approach, the Court finds that the panel's discussion of the historical record in *NRA* satisfies the *Bruen* test, as *Bruen* instructs that there need only be "a well-established and representative historical analogue, not a historical twin."[115] The panel cited historical evidence that the Founders likely would not have been of the opinion that minors enjoy the full scope of rights encompassed in the Second Amendment; they cited historical evidence that the Founders believed the Second Amendment did not curtail legislators' ability to disarm or restrict access to firearms by particular groups thought to be without "civic virtue"; and they cited historical evidence that safety-based restrictions were not thought to violate the Second Amendment.[116] The panel confirmed its initial conclusions by looking to nineteenth century laws restricting access to firearms by those under the

[115] *Bruen* at 2133.

[116] Such findings comport not only with the classical republican notion of "civic virtue," but also with the patriarchal model of the family that dominated from colonial times through the end of the nineteenth century, in which children were viewed as the property of the patriarch subject to his absolute authority, and not as persons with full agency. *See e.g.* Barbara Bennett Woodhouse, "*Who Owns the Child?": Meyer and Pierce and the Child as Property*, 33 Wm. & Mary L. Rev. 995, 1037-40 (1992); Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, 40 Yale L. & Pol'y Rev. Inter Alia 1 (2021); Barbara Bennett Woodhouse, *The Constitutionalization of Children's Rights: Incorporating Emerging Human Rights into Constitutional Doctrine*, 2 U. Pa. J. Const. L. 1, 20 (1999); Thomas R. Young, *Historical perspective on children's legal rights*, 1 Leg. Rts. Child. Rev. 3D § 1:2 (3d ed.); *c.f. Morse v. Frederick*, 551 U.S. 393, 418-19 (2007) (Thomas, J. dissenting) ("As originally understood, the Constitution does not afford students a right to free speech in public schools.").

age of 21. The "why" of these historical restrictions was that governing authorities deemed these categories of persons as dangerous to public safety; the "how" was by prohibiting their access to dangerous weapons. Likewise, with regard to the laws challenged in this suit, Congress has deemed unfettered access to handguns by 18 to 20-year-olds to be a danger to public safety, and it has therefore restricted the ability of such persons to independently purchase handguns from FFLs. Essentially then, for these reasons set forth by the Fifth Circuit in *NRA*, the Court holds that the Second Amendment does not protect the ability of 18 to 20-year-olds to purchase handguns from federal firearms licensees, and therefore the Court dismisses Count I.

B. Remaining Claims

In the alternative, Plaintiffs seek a declaratory judgment that the challenged laws are unconstitutional as applied to 18 to 20-year-old women (Count II), solely arguing that the challenged restrictions do not meet means-end scrutiny as applied to this sub-class. As discussed, step two of the former appellate test (*i.e.*, means-end scrutiny) was abrogated by *Bruen*. Rather, the standard announced in *Bruen* for evaluating whether a firearm restriction violates the Second Amendment applies to Plaintiffs' as-applied challenge—if the Second Amendment's plain text protects the ability of 18 to 20-year-old females to directly purchase handguns from FFLs, then the government must show the restriction is consistent with the Nation's historical tradition of firearm regulation.[117] For the reasons already discussed, the Court finds that to the extent the Second Amendment protects the challenged conduct, the government, by relying on the panel decision in *NRA*, has adequately demonstrated that the challenged laws are consistent with the Nation's historical tradition of firearm regulation. Accordingly, the Court dismisses Count II.

[117] *Bruen* at 2126; *Bucklew v. Precythe*, 139 S.Ct. 1112, 1127–28 (2019) (the same substantive constitutional analysis applies to facial and as-applied challenges).

Finally, to the extent Plaintiffs seek "nominal damages for constitutional injuries caused by Defendants Lombardo's and Garland's enforcement of the Handgun Ban," Plaintiffs have waived that claim. Plaintiffs do not address the merits of that claim in the underlying briefing, and in a footnote, they state that they "do not contest dismissal" of their "individual-capacity claims against Defendants for nominal damages."[118] Accordingly, Plaintiffs' claim for nominal damages is dismissed.

V.
CONCLUSION

For the reasons set forth in this Ruling, "Defendants' Motion to Dismiss Plaintiffs' Amended Complaint or for Summary Judgment" is GRANTED IN PART and DENIED IN PART.[119] Specifically, the motion is DENIED to the extent Defendants seek dismissal pursuant to Rule 12(b)(1) for lack of jurisdiction; the motion is GRANTED to the extent Defendants seek dismissal pursuant to Rule 12(b)(6) for failure to state a claim. The Motion for Partial Summary Judgment filed by Plaintiffs is DENIED.[120]

THUS DONE in Chambers on this 21st day of December, 2022.

ROBERT R. SUMMERHAYS
UNITED STATES DISTRICT JUDGE

[118] ECF No. 50 at 10 n.1.
[119] ECF No. 32.
[120] ECF No. 49.