

In the
Supreme Court of the United States

JASON WOLFORD, ET. AL.,

Petitioners,

v.

ANNE LOPEZ,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF AMICI CURIAE SECOND
AMENDMENT FOUNDATION, CITIZENS
COMMITTEE FOR THE RIGHT TO KEEP AND
BEAR ARMS, CONNECTICUT CITIZENS
DEFENSE LEAGUE, AND MINNESOTA GUN
OWNERS CAUCUS IN SUPPORT OF
PETITIONERS AND REVERSAL**

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AMICI CURIAE STATEMENT OF INTEREST

Second Amendment Foundation (“SAF”) is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. SAF is especially interested in the outcome of this case because it is an associational plaintiff in *May v. Bonta*, a case challenging California’s similar “sensitive places” laws, which was consolidated with the *Wolford* matter on appeal in the Ninth Circuit.¹

The Citizens Committee for the Right to Keep and Bear Arms is a non-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code, dedicated to promoting the benefits of the right to bear arms. The Court’s interpretation of the Second Amendment directly impacts the Committee’s organizational interests, as well as the Committee’s members and supporters, who enjoy exercising their Second Amendment rights. The Committee’s substantial expertise in the field of Second Amendment rights would aid the Court in this case.

Connecticut Citizens Defense League, Inc. (“CCDL”) is a non-profit educational foundation, incorporated under the laws of Connecticut, with its

¹ No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

principal place of business in Seymour, Connecticut. Its mission is to preserve the effectiveness of the Second Amendment through legislative and grassroots advocacy, outreach, education, research, publication, legal action, and programs focused on the constitutional right to keep and bear arms. CCDL has over 41,000 members and supporters nationwide, with more than ninety-five percent of its members and supporters being residents of Connecticut. CCDL represents its members and supporters – which include individuals seeking to exercise their right to acquire, possess, and carry firearms for personal protection. CCDL supports this action on behalf of itself, its members, supporters who possess all the indicia of membership, and similarly situated members of the public.

Minnesota Gun Owners Caucus (“MGOC”) is a 501(c)(4) non-profit organization incorporated under the laws of Minnesota with its principal place of business in Shoreview, Minnesota. MGOC seeks to protect and promote the right of citizens to keep and bear arms for all lawful purposes. MGOC serves its members and the public through advocacy, education, elections, legislation, and legal action. MGOC’s members reside both within and outside Minnesota.

SUMMARY OF ARGUMENT

In fiction, vampires could not enter a place unless invited. See Bram Stoker, *Dracula* 287 (Canterbury Classics 2012) (1897) (“He may not enter anywhere at the first, unless there be some one of the household who bid him to come....”). Hawaii, California, and other states hostile to the Second Amendment have adopted a similar approach for the right to carry, requiring that those carrying firearms obtain consent before entering ordinary places held open to the public like gas stations or grocery stores.

That’s why one of the Amici here decided to dub California’s similar law the “Vampire Rule”² in the briefing for its own litigation, which was consolidated with this matter on appeal in the Ninth Circuit. See *May v. Bonta*, 709 F. Supp. 3d 940 (C.D. Cal. 2023), *rev’d in part, aff’d in part*, *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024). It’s an appropriate name, given that *Bruen*-defying states are treating those with carry permits as if they are monsters that must be warded off.

² The term was first coined by Rob Romano on X. See David Muellenhoff, *Supreme Court Will Review Second Amendment Case Challenging the Ninth Circuit’s Concealed-Carry ‘Vampire Rule’*, CEB (Oct. 21, 2025), <https://research.ceb.com/posts/supreme-court-will-review-second-amendment-challenging-the-ninth-circuits> (“The ‘treating concealed-carriers-as-vampires’ concept and ‘vampire rule’ term seem to have originated in a pair of sarcastic tweets about New York’s *Bruen*-response statute by Rob Romano”); Rob Romano (@2Aupdates), Twitter (June 29, 2022, 6:33 PM), <https://x.com/2Aupdates/status/1542275174392860676>.

The Vampire Rule is unconstitutional because presumptively denying those exercising their right to carry from entering almost every relevant place “would eviscerate the general right to publicly carry arms for self-defense”, *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 31 (2022). Under the Ninth Circuit’s ruling, individuals in Hawaii who have gone through the trouble of getting a carry permit will be limited to carrying on some streets and sidewalks, in banks, and in certain parking lots. Everything else is off limits—including 96.4% of the publicly accessible land in Maui County. *Wolford v. Lopez*, 125 F.4th 1230, 1233 (9th Cir. 2025) (VanDyke, Callahan, Ikuta, R. Nelson, Lee, & Bumatay, JJ., dissenting from denial of rehearing en banc).

In this brief, Amici will lay out how the adoption of Vampire Rules in a small handful of states was motivated by the sole intent to undermine the right to carry and not, as Hawaii has argued, a desire to protect private property rights.

Then, Amici will turn to how the Ninth Circuit ignored several of the methodological principles this Court explained in *Bruen* (and reiterated in *Rahimi*) in order to reach its ruling as to the Vampire Rule and various claimed “sensitive places.”

Amici will also discuss how Americans with carry permits are overwhelmingly law abiding. While other amicus briefs will no doubt touch on that topic in far more depth, Amici will explain why that point is also highly relevant to the *Bruen* analysis in ways that the Ninth Circuit should have more seriously considered, given that it marks a major difference in “how” and

“why” the modern law operates compared to historical predecessors.

Finally, the brief concludes with the two actual principles that underlie historical “sensitive places,” but were absent from the Ninth Circuit’s analysis as to the Vampire Rule. Specifically, our historical tradition demonstrates that true sensitive places are those locations where the deliberative business of government is conducted, such as court houses, polling places, and legislative chambers. Because those sorts of places were historically often protected by the government, a second related principle is that the government may restrict carry in places where it provides comprehensive security. If a place held open to the public does not fall within one of these two principles, then carry may not be restricted within it.

By formally adopting this history-backed framework, this Court can provide much-needed clarity to lower courts deciding “sensitive places” cases and mitigate the need for it to weigh in on future cases concerning where carry may be banned.

ARGUMENT

I. The Vampire Rule Was Invented and Adopted to Undermine the Right to Carry and Has Nothing to Do with a Concern for Private Property Rights.

The Vampire Rule was originally conceived as a way to undermine the right to carry. Its main academic proponents have explicitly written that the point of it was to make carry inconvenient, so less people choose to do it. Ian Ayres & Spurthi

Jonnalagadda, *Guests with Guns: Public Support for “No Carry” Defaults on Private Land*, 48 J.L. Med. & Ethics 183, 184 (2020) (“Reducing the number of places available for gun carriers to travel freely with their firearms might have knock-on effects, reducing preferences to carry and possess firearms more generally, as it becomes increasingly inconvenient to do so.”). This malicious strategy attempts to exploit a perceived “constitutional loophole to nullify the practical effect of *Bruen*.” Robert Leider, *Pretextually Eliminating the Right to Bear Arms through Gerrymandered Property Rules*, Duke Ctr. for Firearms Law (Dec. 23, 2022), <https://firearmslaw.duke.edu/2022/12/pretextually-eliminating-the-right-to-bear-arms-through-gerrymandered-property-rules/>.

Politicians adopting Vampire Rules were also very clear that their intention was to undermine the right to carry. New York Governor Kathy Hochul called the *Bruen* ruling “reckless” and “reprehensible.” Anders Hagstrom, *NY Gov. Hochul Defiant After Supreme Court Gun Decision: ‘We’re Just Getting Started’*, Fox News (June 22, 2022), <https://www.foxnews.com/politics/ny-gov-hochul-defiant-supreme-court-handgun-ruling-were-just-getting-started> (last visited Nov. 11, 2025). Within weeks, New York passed the euphemistically named Concealed Carry Improvement Act, a first-of-its-kind law adopted in response to *Bruen* that effectively banned public carry by arbitrarily designating nearly every public place “sensitive.” As its centerpiece, it also included the first implementation of the Vampire rule. When asked where people would still be Governor Hochul herself curtly responded, “probably some streets.” Marcia

Kramer & Dick Brennan, *Fresh Off Primary Win, Gov. Kathy Hochul Dives Right Into Guns—Who Can Get Them and Where They Can Take Them* (Jun. 29, 2022), <https://www.cbsnews.com/newyork/news/fresh-off-primary-win-gov-kathy-hochul-dives-right-into-guns-who-can-get-them-and-where-they-can-take-them/> (last visited Nov. 11, 2025).³

At least one supporter of the Vampire Rule has even acknowledged how burdensome it is, albeit unintentionally. Everytown Law, a gun control organization which has publicly backed the states that have passed laws that include Vampire Rules, signed onto an en banc brief in the Fifth Circuit challenging Texas’s requirement that specified “no guns allowed” signs must be posted if the owner wishes to exclude those carrying firearms. The brief argued that it was no defense that Texas’s “statutory scheme allows property owners wishing to exclude firearms to use alternative means of providing notice” to each entrant

³ The Vampire Rule has been paired with other efforts to undermine the right to carry, including making carry permits much more difficult to obtain through years-long waiting periods or imposing fees in the thousands of dollars. For example, one of the Amici is a plaintiff in a lawsuit challenging Santa Clara County’s total expense of roughly \$2,000 to obtain a carry permit, and another lawsuit challenging Los Angeles County’s two-year wait times. These Jim Crow-style tactics are in direct defiance of this Court’s warning that “lengthy wait times” or “exorbitant fees” are unconstitutional. *Bruen*, 597 U.S. at 38 n.9. See First Amended Complaint for Declaratory and Injunctive Relief, *Blank v. County of Santa Clara*, No. 5:25-cv-08027-EJD (N.D. Cal. Nov. 14, 2025), ECF No. 11; see also Second Amended Complaint for Declaratory and Injunctive Relief, *California Rifle & Pistol Association v. Los Angeles County Sheriff’s Department*, No. 2:23-cv-10169-SPG-ADS (C.D. Cal. Aug. 11, 2025), ECF No. 106.

because individualized notice “is impractical and burdensome . . . it would require dedicating employees’ time to providing notice to all entrants . . .” Plaintiffs-Appellants’ En Banc Brief at 9, *Bay Area Unitarian Universalist Church v. Ogg*, No. 23-20165 (5th Cir. Nov. 6, 2025). But that reasoning applies just as much to business owners who are fine with carry permit holders entering their business, but do not want to have to give consent for each patron to do so. It is no answer to say, as the Ninth Circuit did, that Hawaii’s version of the Vampire Rule is permissible because it allows the business owner to provide consent however they would like to do so.

Hawaii, like other states defending this malicious enactment, has argued it simply seeks to defend private property rights.⁴ But nothing about the arrangement that has existed in this country for all of our history violates property rights. If the owner of a business held open to the public wants to prohibit carry on their private property, they may do so.⁵ But otherwise, businesses held open to the public have

⁴ This sudden concern for the private property rights of business owners is ironic coming from states like Hawaii, New York, California, Maryland, and New Jersey, as they do not otherwise seem especially concerned about such issues. According to the CATO Institute, which has ranked the states based on regulatory freedom, Hawaii is in 44th place, New York is 48th, California is 49th, Maryland is 47th, and New Jersey is dead last at 50th. William P. Ruger & Jason Sorens, *Regulatory Freedom, Freedom in the 50 States* (Cato Inst. 2023), <https://www.freedominthe50states.org/regulatory> (last visited Nov. 11, 2025).

⁵ Private homes or other enclosed areas not held open to the public are not at issue in this case. Indeed, *everyone* needs permission to enter such places, not just those carrying a firearm.

always been “by positive law and social convention, presumed accessible to members of the public unless the owner manifests his intention to exclude them.” *Oliver v. United States*, 466 U.S. 170, 193 (1984) (Marshall, J., dissenting); *see also, e.g.*, Cal. Penal Code § 602 (West 2024) (requiring posted “no trespassing” signs or a verbal order to leave before the elements of a trespass have been satisfied).

This Court should not tolerate such an obvious attack on a constitutional right no matter how Hawaii tries to disguise it. Even the Ninth Circuit itself has previously objected to Vampire Rule-style ordinances in the First Amendment context. *See Project 80s v. Pocatello*, 942 F.2d 635, 639 (9th Cir. 1991) (“Under the Idaho Falls and Pocatello ordinances, residents who wish to receive uninvited door-to-door solicitors must post a ‘Solicitors Welcome’ sign. The government’s imposition of affirmative obligations on the residents’ first amendment rights to receive speech is not permissible.”). That court was right then, and wrong now.

Finally, Amici note that the nomenclature adopted by Hawaii and the other Vampire Rule states is misleading. While they insist on calling their laws property “default rules”, Amici reject that euphemism. The “default” has not changed for anyone except those with carry permits. For example, California Penal Code section 26230’s restricted locations only apply to those with carry permits. Others who carry firearms are exempt from its provisions because they are exempt from California’s carry regime in general, including police officers, *retired* police officers, certain individuals working in the film industry, those going

to hunter safety courses, those going to firing ranges, and many more exempted classes. *See* Cal. Penal Code §§ 25450, 25510, 25520 & 25540 (West 2024). The Hawaii law at issue here operates similarly, applying only to those with carry permits. *See* Haw. Rev. Stat. §§ 134-9; 134-9.5 (West 2024). It is therefore only the ostracized law-abiding citizen with a permit who is treated like a vampire. If the Vampire Rule was truly motivated by some good faith intention for respecting private property rights, then the “default” would change as to everyone, not just those with carry permits.

II. Clear Principles of Second Amendment Analysis Explained in *Bruen* and Reiterated in *Rahimi* Easily Decide this Case.

The Ninth Circuit relied on just two outlier historical laws to uphold Hawaii’s Vampire Rule. In doing so, it violated a number of analytical guidelines established in *Bruen* and reemphasized in *Rahimi*. By more clearly adopting these rules of analysis, this Court can easily decide this case. But just as importantly, it can provide further guidance to lower courts addressing challenges to laws prohibiting carry in several other types of places.

A. Lack of Numerosity: The Ninth Circuit Erred by Relying on Just Two Outlier Historical Laws, One of Which Has Shameful Provenance.

The panel upheld Hawaii’s version of the Vampire Rule based on one colonial anti-poaching law from 1771, and a “Black Code” from 1865. Before even discussing the impropriety of relying on a law meant

to disarm freedmen, it must be noted that a mere two laws, particularly when they are separated by almost a century, cannot form the backbone of any historical tradition.

Bruen instructed that numerosity of historical laws is critical to demonstrating “a well-established and representative historical analogue.” 597 U.S. at 65. Courts may not uphold a modern law just because a few similar laws may be found from the past. *Id.* at 30. Doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” *Id.* (quoting *Drummond v. Robinson Twp.*, 9 F.4th 217, 226 (3rd Cir. 2021)). In fact, this Court explicitly rejected two state laws as insufficient outliers to support New York’s “proper cause” requirement. *Id.* (“But the Texas statute, and the rationales set forth in English and Duke, are outliers. In fact, only one other State, West Virginia, adopted a similar public-carry statute before 1900.”).

Rahimi further entrenched this principle, as both categories of laws it cited, surety regimes and “going armed” laws, were very well-represented in history. For sureties, this Court cited a pre-Colonial, founding era, and post-founding tradition consisting of many laws. It referenced nine total state surety laws from at or after the founding era in addition to extensive pre-Founding history. *United States v. Rahimi*, 602 U.S. 680, 695-697 (2024). For the “going armed” and “affrays” laws, the Court referenced a similarly lengthy history consisting of Blackstone, four state or colonial 18th-century laws, and the common law extending into the 19th century in several states. *Id.* at 697-698.

Even if two laws alone could be used to claim any sort of historical tradition, they may not do so when they go against the clear majority tradition. The Ninth Circuit cited laws from 1715, 1721, 1722, 1763, 1866, and 1893, which all only applied to enclosed private property or plantations that were not open to the public. *Wolford v. Lopez*, 116 F.4th 959, 994-95 (9th Cir. 2024). As the panel itself admitted, “[w]e acknowledge that the first set of laws likely was limited to only a subset of private property; those laws likely did not apply to property that was generally open to the public. Similarly, the primary aim of some of those laws was to prevent poaching.” *Id.* But the panel then inexplicably decided to rely on the clear minority position of the 1771 and 1865 laws to conclude that “the Nation has an established tradition of arranging the default rules that apply specifically to the carrying of firearms onto private property.” *Id.*

It is bad enough to rely on two outliers while ignoring far more numerous historical counterexamples, but that error becomes egregious when one of the two outliers has a shameful provenance. After the Civil War, defeated Confederate states sought to enact racial apartheid. One exemplary enactment is the 1865 Louisiana law on which the panel relied. As another court recognized in discussing this very law, “Louisiana . . . created these laws as part of their discriminatory ‘Black Codes,’ which sought to deprive African Americans of their rights.” *Kipke v. Moore*, 695 F. Supp. 3d 638, 659 (D. Md. 2023) (citing *McDonald v. City of Chicago*, 561 U.S. 742, 850 (2010) (Thomas, J., concurring in the judgment)). The law was never intended to be enforced against white residents. In fact, the former Governor

of Louisiana, who served from 1868-72 later confirmed in his memoir that the law “of course, was aimed at the freedman.” Henry Clay Warmoth, *War, Politics, and Reconstruction: Stormy Days in Louisiana* 278 (2nd ed., Univ. of S. Carolina Press 2006).

The panel mistakenly—or at least Amici hope it was mistaken—characterized this unusual and disputed law as “uncontroversial.” *Wolford*, 116 F.4th at 995.⁶ In fact, it was extremely controversial, and efforts to disarm freedmen were one of the postbellum problems the Freedmen’s Bureau was created to address. See *McDonald*, 561 U.S. at 773. President Grant even lamented to Congress that the Ku Klux Klan’s objectives were “by force and terror, to prevent all political action not in accord with the views of the members, **to deprive colored citizens of the right to bear arms** . . . and to reduce the colored people to a condition closely akin to that of slavery.” H. Journal, 42nd Cong., 2d Sess. 716 (1872) (emphasis added). “Louisiana’s 1865 law is part of *that* invidious tradition and, far from being indicative of the Constitution’s meaning, is ‘probative of what the Constitution does *not* mean.’” *Wolford*, 125 F.4th at 1240 (VanDyke, Callahan, Ikuta, R. Nelson, Lee, &umatay, JJ., dissenting from denial of rehearing en

⁶ This is also an example of why citing Southern laws from immediately after the Civil War, as Hawaii and other states have frequently done in recent Second Amendment cases, is ill-advised. While such laws *may* be a part of a national tradition, it is not a tradition that informs the Second Amendment’s meaning. “[C]ourts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind.” *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring).

banc) (citing *Rahimi*, 602 U.S. at 720 (Kavanaugh, J., concurring)).

In sum, two historical laws are far from sufficiently numerous to be able to claim they are part of any “well-established and representative” historical tradition. *Bruen*, 597 U.S. at 30. But even if that were not so, these particular laws also fail because they go against the weight of other historical evidence, and one of them is part of the racist history that “the Constitution left behind.” *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring).

B. Poor Degree of Fit: The Ninth Circuit Relied on Dissimilar Laws to Uphold the Vampire Rule.

Setting aside that the two laws the Ninth Circuit relied on were outliers that went against the established norm, and assuming *arguendo* that two laws are enough to assume a historical tradition, the specific laws on which the panel relied still fail to justify Hawaii’s law on their own terms because of just how dissimilar they are to it.

Bruen instructs that, when comparing modern laws to potential historical analogues, “how and why the regulations burden a law-abiding citizen’s right to armed self-defense” are critical questions. 597 U.S. at 29 (bold added). And in *Rahimi*, this Court further explained that the “principles that underpin our regulatory tradition,” 602 U.S. at 692, cannot be described so amorphously (e.g., “preventing gun violence”) as to countenance disparate modern regulations. While the historical laws it examined were not identical to the modern law that was

challenged, this Court extensively explained how they were quite similar in both “how” and “why” they operated. *Id.* at 698-700. And that close degree of fit is critical because “[c]ourts must proceed with care in making comparisons to historic firearms regulations, or else they risk gaming away an individual right the people expressly preserved for themselves in the Constitution’s text.” *Id.* at 711 (Gorsuch, J., concurring).

A district court in New York seems to have crystalized the proper analogical analysis best of all: “generally, a historical statute cannot earn the title ‘analogue’ if it is clearly more distinguishable than it is similar to the thing to which it is compared.” *Antonyuk v. Hochul*, 635 F. Supp. 3d 111, 131 (N.D.N.Y. 2022) (citing *Bruen*, 597 U.S. at 30).

So it is with the colonial New Jersey law. Enacted two decades before the Second Amendment was ratified, it refers only to “lands” and not all business premises, and expressly tells us its “why” in the title: “An Act **for the Preservation of Deer**, and other game, and to prevent trespassing with guns.” Charles Nettleton, *Laws of the State of New-Jersey* 26 (1821), available in *The Making of Modern Law: Primary Sources* (2013) (emphasis added). This enactment plainly was not aimed at stopping peaceable armed citizens from entering a public inn, blacksmith’s shop, or tavern, but rather “was an antipoaching and antitrespassing ordinance—not a broad disarmament statute.” *Wolford*, 125 F.4th at 1238 (VanDyke, Callahan, Ikuta, R. Nelson, Lee, & Bumatay, JJ., dissenting from denial of rehearing en banc). Thus, the historical “why” tremendously digresses from the

modern Vampire Rule’s “why,” even if its “how” is similar. The two laws are “not remotely comparable.” *Id.*

As for the Black Code, it differed in both the “how” and the “why.” Louisiana’s “intent was to discriminate, rather than to advance public safety.” *Kipke*, 695 F. Supp. 3d at 659. While the “how” may seem similar at first glance, it too is different given the law was aimed at freedmen and not all citizens. “[L]aws primarily aimed at only one group of people do not have the same impact on the right to bear arms as the private building consent rule, which broadly bans carrying without consent in private buildings for all citizens.” *Id.* As this Court explained, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.” *Bruen*, 597 U.S. at 29. The Black Code was intended to burden one group of citizens, while Hawaii’s law burdens anyone with a carry permit.

It is improper enough to rely on outlier enactments, but the Ninth Circuit’s folly was even worse here by not at least insisting the outliers it relied on be substantially similar to Hawaii’s modern law.

Nor does the material above cover the only ways the laws differed from each other. A final and very significant difference is discussed in section III of this brief.

C. Weak Founding Era Support: The Ninth Circuit Cited Just One Analogue from the Founding Era in Upholding the Vampire Rule.

In *Rahimi*, this Court again declined to definitively settle the “ongoing scholarly debate” regarding whether post-Founding historical laws, particularly from the Reconstruction Era, were relevant to the historical analysis. 602 U.S. at 692 n.1 (citing *Bruen*, 597 U.S. at 37). But the analysis in that case nonetheless pointed to a clear analytical principle: while subsequent history can further support what came before, some founding era roots must be present. This Court relied on two types of laws, sureties and prohibitions on “going armed in terror of the people,” that had at least some substantial anchor in that time period. *See id.* at 696-698 (citing a 1795 Massachusetts surety law, laws from four states and colonies prohibiting “going armed” and affrays, the common law, and Blackstone).

The rest of this Court’s opinion in *Rahimi*, as well as the opinions of several concurring justices, further confirm this focus on the founding era:

- “**Since the founding**, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.” *Rahimi*, 602 U.S. at 690 (emphasis added).
- “[I]f laws **at the founding** regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar

reasons fall within a permissible category of regulations.” *Id.* at 692 (emphasis added).

- “[W]e seek to honor the fact that the Second Amendment ‘codified a pre-existing right’ belonging to the American people, one that carries the same ‘scope’ today that it was ‘understood to have **when the people adopted’ it.”** *Id.* at 709 (Gorsuch, J., concurring) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)) (emphasis added).
- “The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text **according to its ordinary meaning as originally understood.** *Id.* at 715 (Kavanaugh, J., concurring) (emphasis added).
- “[T]he 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 . . . evidence of ‘tradition’ **unmoored from original meaning** is not binding law.” *Id.* at 737 (Barrett, J., concurring) (emphasis added).

In pointing to just one colonial law, while ignoring several others that applied only to enclosed private lands, the Ninth Circuit disregarded this key principle and thereby presented a supposed “historical

tradition” that was totally “unmoored from original meaning.” *Id.*

III. A Proper *Bruen* Analysis Cannot Ignore that Citizens with Carry Permits are Overwhelmingly Law-Abiding.

Up until the 20th century, almost any citizen in any state could carry firearms openly in public without government vetting or licensing. While some towns and cities had permitting requirements in the late 19th century, those usually only applied to *concealed* carry, while open carry was almost always an option without a permit ever being required. Today, by contrast, Hawaii does not allow for open carry in most instances, so concealed carry with a permit is the only real way for regular citizens to exercise their rights.

While most states (29 in total) have adopted some form of permitless or “constitutional” carry under which anyone who may legally possess a firearm may also carry it without a permit, Hawaii has not done so. Like 20 other states, it only allows carry if the individual has gone through the process to get a concealed handgun license. Applicants for a carry permit are extensively vetted. They must attend a police interview, pass a background check, take a firearms safety training course, submit personal references, and more.

This sort of vetting leads to an unsurprising result: Americans with carry permits are exceptionally law-abiding, much more so than the general population as

a whole.⁷ In their own litigation challenging California’s law, Amici presented extensive data from several states to that effect, and the district court acknowledged it in its ruling: “[s]imply put, CCW permit holders are not the gun wielders legislators should fear.” *May*, 709 F. Supp. 3d at 969, *aff’d in part, rev’d in part sub nom. Wolford*, 116 F.4th at 959.⁸

So law-abiding are those with permits that several major police organizations in California submitted an amicus brief in support of Amici in their case challenging California’s law, writing that “[i]n California, CCW permit holders are some of the most highly vetted, trained, responsible and law-abiding citizens, who do not jeopardize public safety.” See Amicus Brief of Peace Officers Research Association of California, et al. at 6, *May v. Bonta*, No. 23-4356 (9th Cir. Feb. 23, 2024), ECF No. 57.1. At least one

⁷ This should not be taken to mean permitless states have significant violent crime problems. In fact, in the last five years several more states have adopted permitless carry, including large ones like Texas and Florida. Yet our national homicide rate has dropped precipitously. See Olivier Knox, *The U.S. Is on Track for Its Lowest Murder Rate Ever*, U.S. News & World Rep. (Sept. 29, 2025), <https://www.usnews.com/news/u-s-news-decision-points/articles/2025-09-29/the-u-s-is-on-track-for-its-lowest-murder-rate-ever>.

⁸ Other courts have found the same, including the *Wolford* district court and another district court in New Jersey. “[T]he vast majority of conceal carry permit holders are law abiding.” *Wolford v. Lopez*, 686 F. Supp. 3d 1034, 1076 (D. Haw. 2023), *aff’d in part, rev’d in part*, 116 F.4th 959 (9th Cir. 2024); “[D]espite ample opportunity for an evidentiary hearing, the State has failed to offer any evidence that law-abiding responsible citizens who carry firearms in public for self-defense are responsible for an increase in gun violence.” *Koons v. Platkin*, 673 F. Supp. 3d 515, 577 (D.N.J. 2023).

research organization that typically argues for more gun control, RAND, has recognized the same: “[E]vidence generally shows that, as a group, license holders are particularly law abiding and rarely are convicted for violent crimes.” Rosanna Smart, et al., *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effect of Gun Policies in the United States*, at 427 (4th ed. 2024), available online at https://www.rand.org/pubs/research_reports/RRA243-9.html.⁹

Other amicus briefs are likely to expand on this topic and provide extensive data to this Court confirming the same. But Amici do not raise it here to make some sort of interest-balancing policy argument in favor of Petitioners, as that would be irrelevant under *Bruen* anyway. Rather, Amici want to highlight that the vetting of carry permit applicants as well as their ultra-low crime rates is itself highly relevant to

⁹ In the Ninth Circuit, Hawaii tried to capitalize on suicide victims to disparage Americans with carry permits, relying on the website *Concealed Carry Killers*, a project of the anti-gun Violence Policy Center. A prior amicus brief filed in the Ninth Circuit thoroughly rebutted the Violence Policy Center’s arguments and demonstrated how the *Concealed Carry Killers* data inadvertently proved how law-abiding people with carry permits are. “In other words, according to the Concealed Carry Killers data, Americans who legally carry firearms are about 20 times less likely to commit homicide than the general population. This hardly supports Hawaii’s claim that such persons are uniquely dangerous that they must be disarmed in public.” Brief for Gun Owners of America, Inc. et al. as Amici Curiae Supporting Appellees at 26–29, *Wolford v. Lopez*, No. 23-16164 (9th Cir. Nov. 9, 2023). Should Hawaii return to Concealed Carry Killers again, Amici encourage this Court to review the rebuttal in that amicus brief.

the **historical** analysis of *Bruen*. Before anyone can carry in Hawaii, the state gets to vet them to ensure they are law-abiding citizens. That means the modern law operates very differently than “sensitive places” laws of the 18th and 19th centuries, which existed under a legal regime which allowed almost any citizen—even violent criminals released from prison—to carry arms.

The Ninth Circuit disregarded this critical difference in “how” the modern laws at issue operate compared to proposed historical analogues, ruling that “[i]f a particular place is a ‘sensitive place’ such that firearms may be banned, then firearms may be banned—for everyone, including permit holders—consistent with the Second Amendment.” *Wolford*, 116 F.4th at 981. But that conclusion skips the *Bruen* analysis altogether. This Court instructed that “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.” *Bruen*, 597 U.S. at 29.

Considering the extensive vetting burden on permitholders in present-day Hawaii that was absent before 1900, the modern location restrictions and the proposed historical analogues are plainly not “comparably justified.” Moreover, “our Nation’s tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not.” *Rahimi*, 602 U.S. at 700. Hawaii has not shown (because it cannot) that the people it grants carry permits to are in any way dangerous. It is just the

opposite; their most distinct shared characteristic is that they do not pose any notable criminal threat, as Hawaii is allowed to confirm before even issuing any individual a permit.

In summary, the “how” is not the same because unlike its historical predecessors, Hawaii extensively vets each citizen before they can exercise their right to carry, a major difference from the right to carry of the 19th century. And the “why” is also different because given that vetting, Hawaii has no legitimate reason to fear those legally carrying are likely to commit violent crimes. Its real “why” for the Vampire Rule and other location restrictions is an obvious intention to undermine the right to carry. By refusing to take this major distinction into consideration, the Ninth Circuit expressly ignored *Bruen*.

IV. The True Principles That Underpin the “Sensitive Places” Tradition.

In response to the preceding section of this brief, Hawaii may argue that *Amici* make it sound like location restrictions are never permissible for those with carry permits, and that cannot possibly be right.

But certain specific location restrictions are permissible even to those with carry permits. To understand why, one must zero in on the true “principles that underpin our regulatory tradition” as it pertains to the sensitive places doctrine. *Rahimi*, 602 U.S. at 692. As the Court has confirmed, the historical record supports “relatively few” places where carry could be prohibited, but the three examples it provided were legislative assemblies, polling places, and courthouses. *Bruen*, 597 U.S. at 30;

see also D. Kopel & J. Greenlee, *The “Sensitive Places” Doctrine*, 13 Charleston L. Rev. 205, 233, 242, 245, 251, 253 (2018) (citing carry restrictions at polling places, legislative assemblies, and courthouses from English history, the colonial era, the founding era, and the 19th century). In its haste to try to ban carry in as many places as possible, Hawaii ignored the real “why” behind those historical restrictions.

The primary shared principle is a limitation on carrying arms *where the deliberative business of governance is conducted*. That is what legislative assemblies, polling places, and courthouses all have in common under *Rahimi*’s approach, and what the sorts of places covered by Hawaii’s Vampire Rule generally do not. The fear was not the typical criminal violence that carry permit vetting requirements are meant to guard against, but rather the heightened passions and political intimidation that could arise if armed men could enter a polling place or courthouse (particularly in an era where arms were carried openly). In sum, our history supports that “governments may restrict firearms possession in places where important and legally definitive governmental decisions are regularly made.” *United States v. Ayala*, 711 F. Supp. 3d 1333, 1347 (M.D. Fla. 2024). Modern analogues might include places like city council chambers or voter registration centers, but they would not include the sorts of places people go to as part of their daily lives, such as run-of-the-mill parks or restaurants.

A second principle is rooted in this same history: if the government takes it upon itself to secure a location, it may be permissible to restrict arms at that location. As has been extensively argued in a separate

cert petition backed by one of the Amici in this case, “if the government could be permitted to disarm its citizens anywhere, it can only be in locations where it takes steps to ensure it is providing for their protection . . .” Petition for a Writ of Certiorari at 19, *Schoenthal v. Raoul*, No. 25-541 (Oct. 31, 2025).¹⁰ In the founding era, Rhode Island, Delaware, Pennsylvania, South Carolina, New York, Georgia, New Jersey, Virginia, and Vermont all enacted statutes providing for security at legislatures. *See id.* at 13 n. 1 (citing historical laws securing legislatures). Polling places were likewise protected in several states, as were courthouses. *Id.* at 14-15 n. 5-6 (citing historical laws securing polling places and courthouses).

Amici will not delve further into this history here as it is covered extensively in the *Schoenthal* petition. But suffice it to say the related principles Amici propose here have much more historical support than the Ninth Circuit used to uphold the Vampire Rule. More importantly, they square with not just the constitution, but also common sense: the government can restrict carry in places where the important decisions of governance are made. And because such

¹⁰ Providing comprehensive security also confirms that the government truly believes a place is truly sensitive (as opposed to designating a place “sensitive”, without securing it, solely to undermine the right to carry). “[W]hen a building, such as a courthouse, is protected by metal detectors and guards, the government shows the seriousness of the government’s belief that the building is sensitive Conversely, when the government provides no security at all . . . the government’s behavior shows that the location is probably not sensitive.” Kopel & Greenlee, *supra*, at 290.

places were secured by the government historically, the government may also sometimes be able to prohibit carry at places it comprehensively secures, such as airport sterile areas or military bases.

This Court’s dicta in *Heller* as to schools does not seriously challenge these two principles. The earliest provision barring carry in schools came in 1824, and it was a school rule, not a law. More importantly, like similar rules of the time, it applied only to students, not adults, as at least one court has noted: “these early university bans . . . were not regulations on carrying weapons in ‘sensitive places.’ Rather, they banned certain persons—students—from carrying weapons.” *United States v. Metcalf*, No. CR 23-103-BLG-SPW, 2024 U.S. Dist. LEXIS 17275, at *18 (D. Mont. Jan. 31, 2024). They did not apply to teachers or other adults. *Id.* The first state-enacted bans on carrying in school buildings would mostly only start to arise towards the end of the 19th century in just a handful of states and western territories. *Id.* at *18-19 (discussing six laws ranging from 1871 to 1903), *but see Bruen*, 597 U.S. at 61 (describing “a teacher from a Freedmen’s school in Maryland” who carried a revolver for his protection).

But that later history, even if it could establish any historical tradition despite having no founding era anchor, is still not supportive of Hawaii’s arguments. School buildings are not generally held open to the public, and children in them are entrusted *in loco parentis* to the teachers and other faculty. That is very different than a citizen having to seek permission to enter a coffee shop, grocery store, or other routine places held open to the general public. K-12 schools

are not usually open to the public and are thus more akin to enclosed private property.

To summarize, our historical tradition tells us that “sensitive places” are limited to those places where the deliberative business of government is conducted, as well as those places where the government provides comprehensive security. Otherwise, the government may not prohibit carry in places that are held open to the public.

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CONCLUSION

Bruen was meant to vindicate the right to bear arms. Instead, that right has been under siege by Hawaii and a handful of other states ever since that landmark ruling. Amici hope this Court begins to reverse that trend by ruling for the Petitioners here and driving a stake through the heart of the Vampire Rule. In doing so, it should also expressly recognize that our historical tradition only supports barring carry in locations held open to the public if they are places where the deliberative business of government is conducted, or they are places which the government comprehensively secures.

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