

No. 24-1046

In the
Supreme Court of the United States

JASON WOLFORD, ALISON WOLFORD, ATOM KASPRZYCKI,
AND THE HAWAII FIREARMS COALITION, et al.,
Petitioners,

v.

ANNE E. LOPEZ, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF HAWAII,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit*

**BRIEF OF CALIFORNIA GUN RIGHTS
FOUNDATION AND CENTER FOR HUMAN
LIBERTY AS AMICI CURIAE IN SUPPORT OF
PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

California Guns Rights Foundation (“CGF”) is a non-profit organization that serves its members, supporters, and the public through educational, cultural, and judicial efforts to advance Second Amendment and related rights. CGF conducts research, promotes constitutionally-sound public policy, engages in litigation, educates the public about federal, state, and local laws, and performs other charitable programs. This Court’s interpretation of statutes and administrative law principles directly impacts CGF’s organizational interests and the rights of CGF’s members and supporters, particularly when it comes to the Second Amendment’s protection of the “general right to publicly carry arms for self-defense.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 31 (2022). CGF is actively litigating many of California’s statutory restrictions on the right to carry in *Carralero v. Bonta*, C.D. Cal. No. 8:23-cv-1798, 9th Cir. No. 23-4354 (consolidated with *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024)). That case includes a challenge to California’s law that, like the Hawaii law at issue here, flips the default rule to prohibit carrying on private property open to the public unless the owner provides express consent.

The Center for Human Liberty is a nonprofit organization dedicated to defending and advancing individual liberty and freedom, including the rights and liberties

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6.

protected by the Constitution. Consistent with this purpose, the Center for Human Liberty engages in legal efforts, including the submission of amicus briefs, to promote the protection of liberty. The Center is interested in this case to ensure that the government’s regulation of firearm ranges is consistent with the original meaning of the Second Amendment as the Framers understood it.

SUMMARY OF ARGUMENT

When States take the extraordinary step of changing longstanding default rules about whether affirmative consent is required to allow carrying firearms on private property open to the public, they are not agnostic as to whether citizens will carry more or less under the new regime. Indeed, the *entire point* of changing the default rule is to significantly *reduce* opportunities for carrying in public. As such, this is simply a new innovation in the Massive Resistance to Second Amendment protected rights that has persisted since the Court decided *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Section I of this brief recounts how prominent gun control scholars encouraged States to switch their default rules in pursuit of “disarmament.” Because social science teaches that default rules are “sticky” in the sense that people tend to adhere to the default (whatever it may be), these scholars predicted that requiring affirmative consent for carrying would have a powerful disarming effect. Indeed, the stated goal was not just to reduce carrying in these public spaces, but also to make carrying so inconvenient that many would be deterred from bothering to own a firearm at all.

This section also surveys prominent studies explaining some of the reasons why human behavior makes default rules so “sticky.” Most prominent for these purposes is the powerful force of inertia. Remarkably, studies consistently demonstrate that humans prefer to stick with the default rule even when it changes, regardless of whether the new rule is more or less favorable to them than the old rule.

Section II explains that, to the extent there is any doubt in light of the social science, other circumstances demonstrate that the five States changing their default rules did so to thwart this Court’s recognition that “the Second Amendment guarantees a general right to public carry.” *Bruen*, 597 U.S. at 33. Each of these States included their default rule changes in their so-called “*Bruen* response” bills soon after that case was decided. And each State likewise decided that, after *Bruen*, huge portions of their States suddenly needed (for the first time) to be treated as “sensitive places” where carrying must be criminalized. In short, it is simply not plausible for Hawaii to contend, as it did in opposing certiorari, that the point of switching the default rule was vindicating private property rights.

Finally, Section III addresses California’s many efforts at the vanguard of Second Amendment resistance. It has imposed a host of statutory roadblocks to prevent Californians from exercising their fundamental right to keep and bear arms. Amicus CGF has been on the front lines fighting back against these unconstitutional incursions: burdensome locational carry restrictions, onerous waiting periods, prohibitions on the purchase-and-sale of the Nation’s most popular handguns and rifles, bans on

the possession of common magazines, and even punitive tactics to chill firearms litigation. That States are willing to go so far to defy this Court’s rulings demonstrates the urgency of consistent and plain direction for lower courts considering Second Amendment challenges to recalcitrant States’ laws.

The Court should reverse.

ARGUMENT

I. Because Default Rules Are “Sticky,” States That Switch The Customary Private Property Default Rule Do So In Hopes Of Drastically Reducing The Exercise Of Second Amendment Protected Rights.

States like Hawaii that flip their default rules about carrying firearms on private property are following a playbook written by opponents of Second Amendment rights.

A. Before *Bruen*, Gun Control Advocates Called For Flipping Default Carry Rules To “Radically” Reduce The Opportunities To Carry And, They Hoped, To Deter Gun Ownership Generally.

Two years before *Bruen* was decided, Professors Ian Ayres and Fredrick Vars authored *Weapon of Choice: Fighting Gun Violence While Respecting Gun Rights* (Harvard Univ. Press 2020), in which they offered a “to-do list” of gun-control proposals. *Weapon of Choice* at 2. While some of their proposals involved convincing people to disarm themselves, they advocated for different legislative changes on the premise that “other people’s choices can also lead to disarmament.” *Id.* at 3–4.

One such “easy fix” toward disarmament involved “flip[ping] the default” rule governing carrying firearms on private property open to the public. *Weapon of Choice* at 5. In their view, “our laws have not sufficiently empowered private property owners to render their homes and businesses gun free,” so “[c]arrying a firearm onto someone else’s property should be criminal trespass unless the property owner explicitly consents.” *Id.*

The authors cited and built upon the theory expressed by Professors Blocher and Miller that “neutral laws of general applicability in property law, just like in negligence or intentional tort, set baselines that impact the keeping and bearing of arms.” *What is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment*, 83 U. CHI. L. REV. 295, 315 (2016). “For example, requiring gun owners to seek permission to carry their guns on another person’s land, rather than requiring private property owners to identify and exclude guns, would set a default rule that might well be outcome determinative.” *Id.*

While Blocher and Miller considered it a difficult question whether changing such rules implicated the Second Amendment, *id.* at 323–47, Ayers and Vars had no such concerns. Writing before the Court stressed in *Bruen* that “the Second Amendment guarantees a general right to public carry,” 597 U.S. at 33, they asserted that “[n]othing in the Constitution gives people a right to bear arms on someone else’s property.” *Weapon of Choice* at 83. As such, the authors analogized flipping firearm-carry default rules to rules governing nonprotected activity like smoking. In a chapter titled “Privatizing Gun-Free Zones,” they predicted that changing default rules would

not just reduce the number of places where Americans would carry firearms, they would probably lead to a reduction in *gun ownership*.

Reducing the availability of spaces in which smoking is allowed has made being a smoker more difficult and inconvenient, which has contributed to a decrease in smoking rates. A similar effect is likely with gun ownership. If enlightened policy can lead landowners to ban guns from their property, **this can vastly cut down on the geographic areas where individuals can bear arms. This can make bearing guns more inconvenient, which reduces the incentive to possess firearms**, just as place restrictions did with smoking.

Weapon of Choice at 83 (emphasis added).

Professor Ayres wrote separately to counsel lawmakers that, even if a majority of citizens did not support setting default rules to prohibit carrying on private property, such “minoritarian defaults might be justified by externality or paternalism concerns.” Ayres & Jonnalagadda, *Guests with Guns: Public Support for “No Carry” Defaults on Private Land*, 48 J.L. MED. & ETHICS 183, 183 (2020). And he reiterated his hope that changing the private property default rules would have the “knock-on effects [of] reducing preferences to carry and possess firearms more generally”:

Since many defaults are never altered, “no carry” defaults are public-regarding by **radically expanding the areas that are de jure gun free**. Restricting the places where guns can be possessed can not only reduce the likelihood of impulsive misuse of

firearms ..., **such restrictions might also on the margin, reduce overall demand for gun ownership.** While some people purchase guns solely to defend their homes, others may purchase in part for use in other contexts. As these contexts for use decrease, so too might the demand for guns.

Id. at 184, 190 (emphasis added).

The theory, in short, is that “[e]xtending the no-carry default to cover places of business would preserve property owner rights to permit or exclude guns from their premises while simultaneously nudging those owners toward a public-regarding outcome.” *Weapon of Choice* at 88. “Public regarding” in this theory, of course, means lower regard for the *individual* right to bear arms protected by the Second Amendment, despite this Court’s rejection of such public-policy interest-balancing in *Heller*, 554 U.S. at 634–35, and *Bruen*, 597 U.S. at 18–23.

B. Social Science Confirms That Changing Default Rules Will Prompt Changes In Outcomes Due To The Behavioral Tendency To Favor The Default, Regardless Of Its Content.

The idea that switching default rules will have a “nudging” effect on human behavior is strongly supported by social science. Indeed, in *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Penguin Books 2008), Professors Thaler and Sunstein synthesized a host of studies about the “powerful” effects of default rules. *Id.* at 85.

Thaler and Sunstein advocated for using “libertarian paternalism” to structure defaults in a variety of policy

contexts, *e.g.*, financial investment, health care, school choice, and environmental policy, but they did not touch on setting rules for firearms.² Nevertheless, their insights about how “choice architecture” (the construction of rules that influence choices) should “reflect a good understanding of how humans behave,” *id.* at 85, underscore why States like Hawaii and California would flip the carry default rule to enlist property owners to ban carry for them. Namely, just as Ayres hypothesized, Thaler and Sunstein confirm that, when presented with a default condition, “many people will take whatever option requires the least effort, or the path of least resistance. ... [I]f, for a given choice, there is a default option—an option that will obtain if the chooser does nothing—then we can expect a large number of people to end up with that option, whether or not it is good for them.” *Id.*³

Importantly, in this context the person choosing the path of least resistance is the property owner that invites members of the public onto their property, *not* the individual members of the public that may wish to exercise their Second Amendment protected right to carry in pub-

² Ayers and Vars made the similarly paradoxical claim that their “choice-enhancing proposals are thus deeply libertarian,” *Weapon of Choice* at 2, while also celebrating that property owners’ choices in the new regime would disarm members of the public hoping to exercise their own freedom to carry.

³ Indeed, Thaler and Sunstein emphasize that many successful businesses and organizations “have discovered the immense power of default options,” and leverage such defaults to their benefit, highlighting as examples automatic product renewals and default settings on software installation. *Nudge* at 87.

lic. Indeed, Ayres and Vars emphasize that business inviting members of the public often don't want to be forced to choose, so, to the extent they think about the issue at all, they simply say their policy is to "follow the law." *Weapon of Choice* at 89. Yet the outcome is not in doubt when the underlying default is changed to disallow carry in the absence of affirmative consent:

[I]t is unclear what it means to follow the law in a jurisdiction that gives landowners the right to either prohibit or allow patrons to carry firearms. The law gives landowners final say over whether or not their properties will be gun-free zones. By stating that they follow state and local laws, these businesses are not offering any specific answer to what their actual policy is. ... But in practice, **these businesses prefer to stick with the default rule, regardless of what that rule is.** Accordingly, there is every reason to believe that only a small minority of businesses and employers would actively contract around a no-carry default and allow patrons to carry concealed weapons onto the premises.

Weapon of Choice at 89 (emphasis added).

There is also the matter of potentially upsetting customers by actually taking a position on whether carry will be allowed, which further reinforces the inertial tendency to do nothing: "Retailers may fear customer backlash if they erect signs restricting or permitting gun carry in their stores and may be inclined to abide by a state's default rule regardless of their preferences. Thus, establishments may not be well situated to contract around the right-to-carry default effectively and efficiently, even if

they wish to.” *Guests with Guns*, 48 J.L. MED. & ETHICS at 188–89.⁴

Social scientists thus refer to defaults having “sticky” qualities for precisely these (and other) reasons. *See* Ben-Shahar & Pottow, *On the Stickiness of Default Rules*, 33 FLA. ST. U. L. REV. 651, 655–60 (2006) (summarizing various explanations offered by scholars for stickiness of legal default rules in contracts).

The explanation for stickiness most relevant here is the so-called “status quo bias” resulting from the powerful force of inertia. Professor Korobkin, for example, tested the impact of default contract rules (prescribed by the state) to determine whether “contracting parties view default terms as part of the status quo, and they prefer the status quo to alternative states, all other things equal.” Korobkin, *The Status Quo Bias and Contract Default Rules*, 83 CORNELL L. REV. 608, 612 (1998). In a series of experiments (looking at consequential damages limitations, commercial risk-allocation, and attorney fee recovery) Korobkin found that status-quo-bias exhibited strong effects even as the default rules themselves were altered

⁴ Professor Ayres has written extensively about the effect of default rules in a variety of contexts. *See, e.g.*, Ayres & Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L.J. 87 (1989); Ayres & Gertner, *Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules*, 101 YALE L.J. 729 (1992); Ayres, *Preliminary Thoughts on Optimal Tailoring of Contractual Rules*, 3 S. CAL. INTERDISC. L.J. 1 (1993); Ayres & Gertner, *Majoritarian vs. Minoritarian Defaults*, 51 STAN. L. REV. 1591 (1999); Ayres, *Ya-HUH: There Are and Should Be Penalty Defaults*, 33 FLA. ST. U. L. REV. 589 (2006); Ayres, *Regulating Opt-Out: An Economic Theory of Altering Rules*, 121 YALE L.J. 2032 (2012).

in each scenario. *Id.* at 633–47. In other words, “human beings are cognitively disposed to prefer a default legal rule in contractual negotiations, irrespective of the content of that legal rule.” Ben-Shahar & Pottow, 33 FLA. ST. U. L. REV. at 655.

Korobkin summed up his conclusion: “[C]ontracting parties are less likely to bargain around background—or ‘default’—contract terms established by the law than the Coase Theorem would predict because the parties are likely to view default terms as a constituent part of the status quo, much like an entitlement.” Korobkin, *Inertia and Preference in Contract Negotiation: The Psychological Power of Default Rules and Form Terms*, 51 VAND. L. REV. 1583, 1585 (1998). After analyzing his experiments in greater detail and evaluating alternative explanations for the phenomenon, Korobkin concluded that a driving factor is individual bias in favor of inertia: a general preference for “inaction (which parties generally prefer)” over “action (which parties prefer to avoid).” *Id.* at 1586; see generally *id.* at 1587–1609.

These conclusions are replicated in multiple studies and observations. See, e.g., Madrian & Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q.J. ECON. 1149 (2001); Choi, et al., *For Better or for Worse: Default Effects and 401(k) Savings Behavior*, in PERSPECTIVES ON THE ECONOMICS OF AGING, pages 81–126 (2004); Johnson & Goldstein, *Do Defaults Save Lives?*, 302 SCIENCE 1338 (2003) (looking at the impact of default rules on organ donation agreement rates); Sunstein, *Switching the Default Rule*, 77 N.Y.U. L. REV. 106, 108–09 (2002) (reviewing application of default

rules in various employment settings); Korobkin, *The Endowment Effect and Legal Analysis*, 97 NW. U. L. REV. 1227 (2003) (collecting examples of how default rules shape behavior and legal analysis).

In short, changing default legal rules is a potent opportunity for the government to guide behavior by leveraging the powerful force of inertia. These tendencies guarantee that flipping the longstanding default rule will significantly reduce opportunities to carry firearms on property open to the public.

II. The Five States That Flipped Their Default Rules Did So To Defy *Bruen*, Not To Vindicate Property Rights.

Hawaii has contended in opposition to the petition for certiorari that its default-flipping law was merely designed to “protect[] private property,” Br. in Opp. 1, and “protect its citizens’ right to exclude,” *id.* at 20. Yet Hawaii offers no explanation why its interest in protecting property rights suddenly manifested itself soon after *Bruen* was decided.

Four states in addition to Hawaii (California, New York, New Jersey, and Maryland) followed Ayres’ suggestion and enacted laws that switched their default rules to now provide that carry was disallowed on all private property, including property open to the public, unless the property owner consented in some fashion. Cal. Penal Code § 26230(a)(26); N.Y. Penal Law § 265.01-d(1); N.J. Stat. § 2C:58-4.6(a)(24); Md. Code Crim. Law § 6-411(d). There can be no question that all of these new laws were designed to significantly limit carry in response to *Bruen*. Multiple signs in addition to those discussed in Section I demonstrate that these changes are just a new front in the

Massive Resistance to Second Amendment protected rights following *Heller*.

A. The States Express Distaste For *Bruen* And Overhaul Their Concealed-Carry Regimes.

Each of these five states were “may issue” states before *Bruen* established a general right to carry, *see Bruen*, 597 U.S. at 15 (listing states in addition to New York that had “analogues to the ‘proper cause’ standard”). They were not happy that *Bruen* upended their restrictive regimes. Some of them openly celebrated that their legislative changes, including alteration of their private property default carry rules, were being enacted to resist *Bruen*.

For example, California adopted a new private-property default rule—currently subject to a preliminary injunction after the Ninth Circuit’s decision in *Carralero* (the companion case to *Wolford*), 116 F.4th at 995–96—in 2023’s Senate Bill 2. The bill acknowledged *Bruen* and then listed a host of legislative “findings” to the effect that allowing “more people [to] carry firearms in public places” would, in the Legislature’s view, lead to more crime, violence, and other problems. Cal. Stat. 2023, ch. 249, § 1(a)–(m). At a press conference announcing the bill, Governor Newsom called *Bruen* a “bad ruling,” an “absurdity,” and mocked the right to carry firearms outside the home.⁵

⁵ *See* Gov. Gavin Newsom (@CAgovernor), Press Conference on SB2, TWITTER [X], <https://bit.ly/46qMATf> (last accessed Nov. 13, 2025) (timestamps: called *Bruen* an absurdity at 41:08; used air quotes while discussing “right” to carry outside home at 41:20; called *Bruen* a bad ruling at 1:01:44).

New York included its private-property prohibition within its so-called “Concealed Carry Improvement Act” adopted barely a week after *Bruen* was issued. 2022 N.Y. Sess. Laws ch. 371 (approved July 1, 2022). On June 23, 2022—the day *Bruen* was published—Governor Hochul decried the Court’s ruling as “not just reckless [but] reprehensible,” and she vowed “to call the legislature back into session to deal with this.” Pilkington & Pengelly, *US supreme court overturns New York handgun law in bitter blow to gun-control push*, *The Guardian* (June 23, 2022).

New Jersey likewise included its private-property restriction in legislation explicitly labeled as a “response” to *Bruen*,⁶ which Governor Murphy referred to as a “mockery” and a “failure[] of the nation’s highest court.” *Press Release*, State of New Jersey Governor Phil Murphy, *Governor Murphy Signs Executive Order Directing State Departments and Agencies to Identify Gun Violence Prevention Measures* (June 24, 2022).

Maryland enacted a new private-property default rule in its so-called Gun Safety Act of 2023, which Governor Moore signed into law in May 2023. 2023 Md. Laws, ch. 680 (S. Bill 1). This law, too, was prompted by *Bruen*. *See* Maryland Gen. Assem., Dep’t of Legis. Servs., *Fiscal and Policy Note* (S.B. 1, 2023 Sess.) at 6, 9 (reviewing impact of *Bruen* on Maryland’s then-existing concealed carry li-

⁶ *Press Release*, State of New Jersey Governor Phil Murphy, *Governor Murphy Signs Gun Safety Bill Strengthening Concealed Carry Laws in New Jersey in Response to Bruen Decision* (Dec. 12, 2022).

censing scheme); *see also* Ford, *Gun bill receives preliminary approval in the Senate*, Maryland Matters (March 9, 2023).

Hawaii was the last of the five States to act. Governor Green signed Senate Bill 1230 (Act 52) on June 3, 2023. Governor Green’s office explained that the law “[wa]s intended to mitigate the harm arising from the Supreme Court decision [in *Bruen*], in accordance with the U.S. Constitution.” News Release, Office of the Governor, *Gov. Green Signs Firearms Legislation* (June 2, 2023); *cf.* Br. in Opp. at 5 (asserting that “Act 52 was designed to bring Hawaii’s laws into compliance with *Bruen*’s limits”).

* * *

It is worth emphasizing how far these rules, operating as bans, will reach if they are upheld. In the likely absence of consent by property owners, every person that works at a privately-owned office building or retail establishment would not only be barred from carrying a firearm to protect themselves in their workplace; they could not even bring their firearm in their car to the parking lot. And outside of work, they would be stripped of a means to protect themselves at ordinary (and often dangerous) private properties like gas stations, grocery store parking lots, and dimly lit ATMs. That is the goal of these laws—to undermine *Bruen*’s protection of the “general right” to carry.

B. At The Same Time, These States Designated Huge Portions Of Their Physical Spaces As “Sensitive” Places Where Carrying Firearms Has Been Criminalized.

The legislative changes enacted along with switching the default rules solidify the conclusion that the overall effort was aimed at reducing opportunities to carry firearms in places open to the public. All five States also designated a host of new “sensitive places” where carry would now become a crime.

It is impossible to take seriously the notion that all of these places suddenly became “sensitive” only after *Bruen* was decided, since carry had been allowed in all of these places before *Bruen*. The only thing that changed was the number of people (potentially) eligible to carry there given the Court’s explicit recognition that the Second Amendment protects the “general right to publicly carry arms for self-defense.” *Bruen*, 597 U.S. at 31. This, of course, does not change the “sensitive” nature of a location. *Cf. id.* (warning that “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not isolated from law enforcement defines the category of ‘sensitive places’ far too broadly”).

Yet these states have now cordoned off so many new locations as “sensitive” that, when combined with the inevitable effects of changing the default private property rule, nearly every location where ordinary people might travel on a day-to-day basis would now be a new gun-free zone. This effort is a blatant rebuke to the Court’s warning that “there is no historical basis for New York to effectively declare the island of Manhattan a ‘sensitive

place’ simply because it is crowded” *Bruen*, 597 U.S. at 31.

1. California’s Senate Bill 2 designated a host of new “sensitive places” where carry had been allowed before *Bruen*. Cal. Penal Code § 26230(a)(1)–(29). California’s sweeping ban, for example, covers huge swaths of private property every “building, real party, and parking area” connected to private medical facilities ((a)(7)); every “building, real party, and parking area” where a private business sells “intoxicating liquor ... for consumption on the premises,” including breweries, wineries, and restaurants ((a)(9)); any “building, real property, or parking area that is or would be used for gambling or gaming of any kind whatsoever” ((a)(15)); any property or parking area connected to a stadium or arena ((a)(16)), public library ((a)(17)), amusement park ((a)(19)), or zoo or museum ((a)(20)); every bank or “financial institution” along with its parking area ((a)(23)); and every place of worship and its parking area unless—as with the private property default—the operator posts a uniform State-approved sign permitting carry on the premises ((a)(22)).

The ban also covers all modes of public transportation and every public transportation facility (subd. (8)), all public gatherings open to the public that require a permit, and every non-federal park (big and small) up and down the State (subds. (10), (12), and (13)).⁷

⁷ All of these provisions are the subject of ongoing litigation. *Carralero v. Bonta*, C.D. Cal. No. 8:23-cv-1798; *May v. Bonta*, C.D. Cal. No. 8:23-cv-1696. In the companion case to *Wolford*, the Ninth Circuit

2. Hawaii followed suit, banning carry at property and parking areas connected to public and private medical facilities; bars or restaurants that serve alcohol; sporting and entertainment events; public libraries; all public beaches, playgrounds, parks, recreation areas; financial institutions; public transportation; amusement parks, aquariums, carnivals, circuses, fairs, museums, water parks, and zoos; and all public gatherings that require a permit, along with the adjoining sidewalks. Haw. Stat. § 134-9.1(a)(2), (4), (5), (6), (9), (12), (13), (14), (15).

3. The rest of the states took a similar approach. New York defined 20 “sensitive places” where carry was banned. N.Y. Penal Law § 265.01-e(2)(a)–(t). These include all places of worship (e(2)(c)); libraries, public playgrounds, public parks, and zoos (e(2)(d)); public transit (e(2)(n)); every business licensed for on-premises alcohol consumption (e(2)(o)); all places where art, entertainment, gaming, sporting, gaming, or similar events take place, including theaters, stadiums, racetracks, museums, amusement parks, concert venues, conference centers, banquet halls, and similar venues (e(2)(p)); and public gatherings that require a permit (e(2)(r)).⁸

upheld a preliminary injunction barring enforcement of the restrictions on carrying in medical facilities, on public transit, at public gatherings that require a permit, at places of worship, and in financial institutions. 116 F.4th at 1003.

⁸ Many of these provisions are subject to an ongoing challenge. *See Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), cert. denied, 145 S. Ct. 1900 (2025).

New Jersey banned firearms at 25 designated locations. N.J. Stat. § 2C:58-4.6(a)(1)–(25). These places overlap substantially with California’s and New York’s approach: public gatherings that require a permit ((a)(6)); every public park, beach, recreation facility, or playground ((a)(10)); public libraries and museums ((a)(12)); every place where alcohol is sold for on-site consumption, including all bars and restaurants ((a)(15)); all private and public entertainment facilities ((a)(17)); all casino property, including any associated hotels, retail premises, restaurants, bars, and entertainment and recreational spaces ((a)(18)); public transit facilities ((a)(20)); and all health care facilities ((a)(21)).⁹

Maryland designated locations licenses to sell alcohol, stadiums, museums, amusement park, racetracks, and lottery facilities as “special purposes area[s]” and banned carry in such locations. Md. Code Crim. Law § 4-111(a)(8), (e).¹⁰

* * *

It is also worth mentioning that, as detailed above, many of these new alleged “sensitive places” include private businesses. Thus, rather than vindicating property owners’ rights to choose whether members of the public

⁹ Several of New Jersey’s locational restrictions are likewise being challenged. *See Koons v. Att’y Gen. New Jersey*, 156 F.4th 210 (3d Cir. 2025).

¹⁰ The constitutionality of Maryland’s carry bans is currently on appeal before the Fourth Circuit. *Kipke v. Moore*, No. 23-1293, 2024 WL 3638025 (D. Md. Aug. 2, 2024), lead appeal pending, No. 24-1799 (4th Cir.).

may exercise Second Amendment rights on their property, these States have taken that decision out of the property owners' hands. Any carry on their property is now a crime, regardless of their preferences.

III. California Bears Special Mention For Leading The Massive Resistance To *Heller* and *Bruen*.

It is little secret that California is one of the most hostile regulatory environments in the Nation for the Second Amendment. The State's elected leaders have made it a point of pride to restrict, delay, prohibit, ban, tax, fine, register, choke out, or otherwise frustrate nearly every conceivable activity involving a firearm within California's borders. Amicus California Gun Rights Foundation knows all about the State's disregard of its citizens' fundamental right to keep and bear arms: It has been fighting back for well over a decade. Consider just a few prominent examples:

The 10-Day Waiting Period. California imposes a ten-day waiting period on all firearm purchases. Cal. Penal Code §§ 26815(a), 27540. California is among the small minority of States that impose a waiting period on firearm transactions, and the State's 10-day waiting period is the third-longest in the country; only Hawaii (14 days) and Minnesota (30 days) impose longer delays. After *Heller*, CGF spent most of a decade litigating the constitutionality of the waiting period, winning at trial (*Silvester v. Harris*, 41 F. Supp. 3d 927 (E.D. Cal. 2014)), before the Ninth Circuit reversed (*Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016)), with this Court ultimately denying a petition for a writ of certiorari over Justice Thomas' dissent (*Silvester v. Becerra*, 583 U.S. 1139 (2018)). CGF is a plaintiff

in a post-*Bruen* challenge to those same waiting-period laws as applied to current firearm owners whose eligibility information is already in the California Department of Justice’s firearm registry and those who are “auto approved” within minutes by the State’s electronic background check system; this case is currently pending at the trial court. *Curtin v. Bonta*, S.D. Cal. No. 3:23-cv-793.

Constricting The Handgun Market Through A “Roster.” California imposes a draconian prohibition on the purchase of modern semiautomatic handguns through its process of maintaining a “roster” of handguns that are approved for sale in the State by prescribing a series of rare (and, in some cases, literally unavailable) features. *See* Cal. Penal Code §§ 32015(a), 32000, 31900. The net effect of the roster is to freeze the State’s commercial market for handguns to what was available on the market in 2013, thus depriving Californians of the ability to benefit from advances in safety and other features associated with newer models. After *Heller*, CGF litigated the constitutionality of California’s handgun roster in a case stretching over a decade, culminating in this Court’s denial of a petition for a writ of certiorari in 2020. *Pena v. Lindley*, 898 F.3d 969 (9th Cir. 2018), cert. denied sub nom. *Pena v. Horan*, 141 S. Ct. 108 (2020). Following *Bruen*, CGF re-instituted a constitutional challenge to the roster and successfully obtained a preliminary injunction, which is currently on appeal. *Renna v. Bonta*, 667 F. Supp. 3d 1048 (S.D. Cal. 2023), appeal pending, No. 23-55367 (9th Cir.).

Banning So-Called “Large-Capacity” Magazines. In 2016, California banned the possession of magazines that hold more than ten rounds of ammunition. Cal. Penal

Code §§ 16740, 32310. CGF has litigated the constitutionality of that ban since 2017. *Wiese v. Bonta*, E.D. Cal. No. 2:17-cv-903. The Ninth Circuit’s *en banc* decision upholding the magazine ban’s constitutionality is the subject of a pending petition for a writ of certiorari. *Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025), pet. for cert. docketed, No. 25-198.

Banning So-Called “Assault” Weapons. California generally bans the manufacture, distribution, transportation, importation, sale, lending, and possession of certain firearms it designates “assault weapon[s].” Cal. Penal Code §§ 30600(a), 30605(a). These prohibitions apply to a wide variety of commonly possessed semiautomatic firearms, most notably modern AR-style semiautomatic rifles. CGF is among the plaintiffs challenging this ban. The district court held that California’s ban violated the Second Amendment and entered a permanent injunction against its enforcement. *Miller v. Bonta*, 699 F. Supp. 3d 956 (S.D. Cal. 2023). That judgment remains on appeal. No. 23-2979 (9th Cir.).

Imposing One-Way Fee-Shifting On Plaintiffs Bringing Firearms Cases. In 2022, California enacted an unconstitutional scheme to suppress firearms litigation by imposing a one-way fee-shifting penalty that applies only to those bringing challenges to state or local firearms regulations. Cal. Code Civ. Proc. § 1021.11. Under that statute, if a plaintiff challenging a firearm regulation loses a single claim—even if every other claim is successful and all the relief sought is obtained—the plaintiff and the plaintiff’s attorneys would be liable for the government’s attorney fees. CGF was among the plaintiffs who challenged this

onerous device. After the California Attorney General declined to defend the law, Governor Newsom intervened to see that the matter was fully litigated. Ultimately, the district court held that Section 1021.11 violated the First Amendment right to petition, the Supremacy Clause, and the Fourteenth Amendment rights to due process and equal protection. *Miller v. Bonta*, 646 F. Supp. 3d 1218 (S.D. Cal. 2022) (*Miller II*). The trial court entered a permanent injunction enjoining State officials from relying on the fee-shifting law, and California declined to appeal.

Prohibiting 18-to-20-Year-Old Adults From Purchasing Firearms. California generally restricts 18-to-20-year olds’ right to purchase firearms and entirely prohibits their ability to purchase handguns or semiautomatic rifles. Cal. Penal Code § 27510. CGF is a plaintiff in ongoing litigation challenging the constitutionality of the age ban. As this Court has explained, the “right to possess and carry weapons in case of confrontation” presumptively “belongs to all Americans,” not “an unspecified subset.” *Heller*, 554 U.S. at 580–81, 592. The district court upheld the law last spring, and that judgment is currently on appeal. *Chavez v. Bonta*, 773 F. Supp. 3d 1028 (S.D. Cal. 2025), appeal pending sub nom. *PWGG, L.P. v. Bonta*, No. 25-2509 (9th Cir.).

Banning All Glock-Style Semiautomatic Handguns. Earlier this year California enacted a law banning any semiautomatic pistol with a “cruciform trigger bar”—effectively banning all Glock and Glock-style semiautomatic handguns, which are among the most popular handguns in the Nation. Cal. Penal Code §§ 27595(a), 16885(b). This ban is flagrantly unconstitutional: The Second Amendment “protects the possession and use of weapons that are

‘in common use at the time.’” *Bruen*, 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 627). A law that bans the sale of—and correspondingly prevents citizens from acquiring—a weapon in common use violates the Second Amendment. CGF has joined a group of plaintiffs to challenge this ban. *Jaymes v. Bonta*, S.D. Cal. No. 3:25-cv-2711.

* * *

Any list of California’s anti-gun laws could not be exhaustive. But CGF’s experience attests to the State’s unwavering defiance of “the Second Amendment’s ‘unqualified command.’” *Bruen*, 597 U.S. at 17 (citation omitted). This case is an important opportunity for the Court to reiterate that the “very enumeration of the [Second Amendment] right takes out of the hands of government ... the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 544 U.S. at 634.

CONCLUSION

States like Hawaii and California must not be allowed to evade the Second Amendment’s protection by enlisting private property owners to ban the carrying of firearms in spaces open to the public. The Court should reverse.

Respectfully submitted,

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