

No. 24-1046

IN THE
Supreme Court of the United States

JASON WOLFORD, *et al.*,

Petitioners,

v.

ANNE E. LOPEZ,
ATTORNEY GENERAL OF HAWAII,

Respondent.

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

**BRIEF OF NATIONAL ASSOCIATION FOR
GUN RIGHTS AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONERS AND REVERSAL**

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INTEREST OF AMICUS

The right to keep and bear arms is a fundamental right that existed prior to the Constitution. The right is not in any sense granted by the Constitution. Nor does it depend on the Constitution for its existence. Rather, the Second Amendment declares that the pre-existing “right of the people to keep and bear Arms shall not be infringed.” The National Association for Gun Rights (“NAGR”)¹ is a nonprofit membership and donor-supported organization with hundreds of thousands of members nationwide. The sole reason for NAGR’s existence is to defend American citizens’ right to keep and bear arms. In pursuit of this goal, NAGR has filed numerous lawsuits seeking to uphold Americans’ Second Amendment rights. NAGR has a strong interest in this case because the guidance the Court will provide in its resolution of this matter will have a major impact on NAGR’s ongoing litigation efforts in support of Americans’ fundamental right to keep and bear arms.

SUMMARY OF ARGUMENT

All five of this Court’s recent Second Amendment precedents have noted that the Second Amendment is analogous to the First Amendment. The central holding of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), is that law-abiding citizens have a “constitutional right to bear arms in public for self-

1. No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

defense.” *Id.* at 70. Hawaii’s “Vampire Rule” relies on the inherent “stickiness” of default rules of law to implement a de facto ban on public carry. The challenged statute is thus an obvious attempt to suppress the exercise of the right recognized in *Bruen*. Contrary to this Court’s recent precedents, Hawaii believes the “the Second Amendment should be singled out for special—and specially unfavorable—treatment,”² as compared to the First Amendment. We know this because it is literally unthinkable that Hawaii would enact a similar Vampire Rule establishing a de facto ban on public *speech* in the same way it has established a de facto ban on public carry.

In addition, the Vampire Rule requires business owners to take a public stand on a highly controversial issue. A business owner who supports the constitutional right to carry arms for self-defense faces a Hobson’s choice. He can make his views public and risk offending many of his would-be customers, or he can suppress his preference to allow people to exercise their right to carry on his property. Obviously, he would almost certainly prefer to remain silent, but Hawaii compels him to speak if he wants to achieve his pro-carry preferences. This is exactly the sort of choice this Court’s compelled speech precedents say the State cannot impose on its citizens.

2. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 778-79 (2010) (plurality opinion).

ARGUMENT

A. The Second Amendment is Closely Analogous to the First Amendment

“The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Bruen*, 597 U.S. at 70, quoting *McDonald*, 561 U.S. at 742. Moreover, the Court’s precedents make clear that the protections afforded to the right to keep and bear arms by the Second Amendment are particularly analogous to the First Amendment’s speech protections. Indeed, this theme runs through all five of the Court’s recent Second Amendment cases.

1. *Heller*

- “Just as the First Amendment protects modern forms of communications . . . the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *D.C. v. Heller*, 554 U.S. 570, 582 (2008).
- The First Amendment protection of the ‘right’ [singular] of the people peaceably to assemble and to petition the Government for a redress of grievances is analogous to the Second Amendment’s protection of the ‘right’ [singular] to keep and bear arms. *Id.* at 591.
- “Of course the right [to keep and bear arms was] not unlimited, just as the First Amendment’s right of free

speech was not . . . Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose. *Id.* at 595.

- “The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong headed views. The Second Amendment is no different. Like the First, it is the very product of an interest balancing by the people . . . And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Id.* at 634-35.

2. *McDonald*

- “[M]unicipal respondents can hardly mean that § 1 [of the Fourteenth Amendment] does no more than prohibit discrimination. If that were so, then the First Amendment, as applied to the States, would not prohibit nondiscriminatory abridgments of the rights to freedom of speech . . . We assume that this is not municipal respondents’ view, so what they must mean is that the Second Amendment should be singled out for special—and specially unfavorable—treatment. *We reject that suggestion.*” *McDonald*, 561 U.S. at 778–79 (emphasis added).
- “Justice Stevens next argues that even if the right to keep and bear arms is ‘deeply rooted in some

important senses,’ the roots of States’ efforts to regulate guns run just as deep. . . . But this too is true of other rights we have held incorporated. No fundamental right—not even the First Amendment—is absolute. The traditional restrictions go to show the scope of the right, not its lack of fundamental character.” *Id.* at 801-02 (Scalia, J., concurring).

3. *Caetano*

- “Electronic stun guns are no more exempt from the Second Amendment’s protections, simply because they were unknown to the First Congress, than electronic communications are exempt from the First Amendment . . .” *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring).

4. *Bruen*

- “This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, *to which Heller repeatedly compared the right to keep and bear arms*. In that context, when the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *Bruen*, 597 U.S. at 24 (citations omitted; cleaned up; emphasis added).
- In some cases, [the government’s] burden includes showing whether the expressive conduct falls outside of the category of protected speech. And to carry that burden, the government must generally point to historical evidence about the reach of the First

Amendment’s protections.” *Id.* at 24-25 (internal citations and quotation marks omitted).

- “‘Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.’” . . . Thus, even though the Second Amendment’s definition of ‘arms’ is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense.” *Id.* at 28 (quoting *Heller*, 554 U.S. at 582).
- “[W]e have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791. See, e.g., . . . *Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 122–125, 131 S.Ct. 2343, 180 L.Ed.2d 150 (2011) (First Amendment).” *Id.* at 37.
- “We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech . . . And it is not how the Second Amendment works when it comes to public carry for self-defense.” *Id.* at 70-71.

5. *Rahimi*

- With respect to the First Amendment, for example, this Court’s jurisprudence over the past 216—now 233—years has rejected an absolutist interpretation. From 1791 to the present, the First Amendment has permitted restrictions upon the content of speech in a few limited areas—including obscenity, defamation, fraud, and incitement. So too with respect to the Second Amendment . . .” *United States v. Rahimi*, 602 U.S. 680, 716–17 (2024) (Kavanaugh, J., concurring) (internal citations and quotation marks omitted; cleaned up).

B. The “Stickiness” of Hawaii’s “Vampire Rule”

Hawaii has established a de facto public carry ban by implementing what has come to be known as the “Vampire Rule.”³ The State’s Vampire Rule dictates that all private property—even in those locations open to members of the public—is presumptively off-limits for purposes of exercising the right to bear arms in public, and this presumption may be overcome only by obtaining the property owner’s express authorization to carry.⁴

3. Rob Romano is widely credited with coining the term “Vampire Rule” in this context. Rob Romano (@2Aupdates) X Profile, <https://x.com/2Aupdates>. The term alludes to fictional vampires whom, we are told, could enter a place only if they were first 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, though afterwards he can come as he please.”).

4. “A person carrying a firearm . . . shall not . . . enter or remain on private property of another person . . . *unless the*

The Vampire Rule establishes a “default rule” of interaction between property owners and their guests or customers. Such “default rules” are inherently “sticky.” See generally Omri Ben-Shahar, John A. E. Pottow, *On the Stickiness of Default Rules*, 33 Fla. St. U. L. Rev. 651 (2006). By “sticky,” legal scholars mean that individuals have a well-known tendency to stick by a default rule even when they would otherwise take a different position. *Id.* at 651–54. See Joseph Blocher & Darrell A. H. Miller, *What is Gun Control? Direct Burdens Incidental Burdens, and the Boundaries of the Second Amendment*, 83 University of Chicago Law Review 295,316 (2016) (Rules like the Vampire Rule, “almost certainly result in less gun carrying overall due to the inevitable stickiness of default rules.”).

Hawaii was obviously counting on the stickiness of default rules when it enacted the Vampire Rule. Indeed, the Ninth Circuit admitted that the stickiness of default rules is the only reason the Vampire Rule makes sense in the first place. See *Wolford v. Lopez*, 116 F.4th 959, 993 (9th Cir. 2024). In summary, Hawaii feels free to deputize private property owners to implement a de facto carry ban through their indifference or acquiescence to the Vampire Rule’s presumption against public carry.

person has been given express authorization to carry a firearm on the property by the owner, lessee, operator, or manager of the property.” Haw. Rev. Stat. § 134-9.5(a) (emphasis added).

C. Hawaii’s Vampire Rule Says “the Second Amendment Should be Singled out for Special—and Specially Unfavorable—Treatment” as Compared to the First Amendment

Bruen’s central holding is that law-abiding citizens have a “constitutional right to bear arms in public for self-defense.” *Id.* at 70. In defiance of this Court’s precedents, Hawaii believes the “the Second Amendment should be singled out for special—and specially unfavorable—treatment,” *McDonald*, 561 U.S. at 778–79, as compared to the First Amendment. We know this because we can be certain that it is literally unthinkable that Hawaii would enact a Vampire Rule establishing a de facto ban on public speech in the same way it has established a de facto ban on public carry. Moreover, the Ninth Circuit would prevent it from doing so if it tried. *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.”). Suppose a family sits down for a meal at Mama’s Fish House in Maui and the conversation turns to politics. Perhaps they want to discuss the Hawaii legislature’s ongoing efforts to stifle Hawaiians’ ability to exercise their right to keep and bear arms. Could the State enact a Vampire Rule forbidding them from discussing political topics unless they first obtained the restaurant manager’s express authorization? Of course not. The very idea is absurd. Could the State require them to ask the manager’s permission to say grace over their meal? Obviously not.⁵

5. The “First Amendment doubly protects religious speech,” and the Free Exercise Clause “does perhaps its most important

Just as a property owner may be able to independently decide to bar invitees from carrying firearms, the Constitution poses no obstacle to a property owner establishing rules of conduct for his premises. Indeed, the Constitution specifically protects his right to do that. But the State may not presume to make the property owner's decision for them and place a thumb on the scale against the exercise of constitutional rights.

The key distinction here is between the rights of a property owner and the rights of the government. Property owners generally have the right to determine whether someone may or may not carry firearms on their property. But honoring this right of property owners does not justify the government in establishing a default rule that all private property is off-limits for persons carrying firearms. That impermissibly burdens the exercise of a constitutional right. *Cf. Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 795 n.3 (2011) (reasoning that although it “perhaps follows” from parents’ authority over minor children “that the state has the power to enforce parental prohibitions,” “it does not follow that the state has the power to prevent children from saying or hearing anything without their parents’ prior consent”).

Far from honoring the Second Amendment as the Supreme Court instructed in *Bruen*, the State's Vampire Rule broadly sweeps away the Second Amendment rights of the people of Hawaii by effectively shutting off most

work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523–24 (2022) (internal citations and quotation marks omitted).

public areas from carrying for self-defense. The Second Circuit was surely correct when it invalidated an identical law in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024).

D. The Vampire Rule Constitutes Impermissible Compelled Speech

As we have seen, a hypothetical Vampire Rule in the context of speech would be unthinkable under the First Amendment’s speech protections. Moreover, Hawaii’s actual Vampire Rule violates the First Amendment because it constitutes impermissible compelled speech regarding a controversial political issue.

This Court has “held time and again that freedom of speech includes both the right to speak freely and the right to refrain from speaking at all.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) (internal citation and quotation marks omitted). The government simply cannot compel a person to speak when he would prefer to remain silent. *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). See also *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (Freedom of speech applies “equally to statements of fact the speaker would rather avoid.”).

Imagine a hypothetical private business owner in Hawaii who is enthusiastically in favor of the constitutional right to bear arms in public for self-defense. It is not difficult to imagine how that stance would be highly controversial in the State, perhaps even a minority view. If the business owner wants to allow carry on his premises, the Vampire Rule forces him to take a public stance on this highly controversial issue. It forces him

to alert his customers that he is swimming against that cultural current. The owner knows this will inevitably make some (perhaps many) of his customers very unhappy. Thus, the Vampire Rule imposes a Hobson's choice on our hypothetical business owner. He can make his views public and risk offending many of his would-be customers, or he can suppress his preference to allow people to exercise their right to carry on his property. Obviously, he would almost certainly prefer to remain silent, but Hawaii compels him to speak if he wants to achieve his pro-carry preferences. This is exactly the sort of choice this Court's compelled speech precedents say the State cannot impose on its citizens.

The district court in *Antonyuk*⁶ addressed this issue when it enjoined New York's Vampire Rule:

But the [Vampire Rule] appears to compel Plaintiffs' speech another way: by *coercing* them, as busy store owners, to conspicuously speak the state's controversial message (visible to neighbors and passersby on the sidewalk or street) if (1) they want to welcome onto their property all license-holding visitors who the State has spooked with a felony charge, but (2) they are otherwise unable to give express consent to those visitors for some reason (say,

6. *Antonyuk v. Hochul*, 639 F. Supp. 3d 232, 344 (N.D.N.Y. 2022), aff'd in part, vacated in part, remanded sub nom. *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023), cert. granted, judgment vacated sub nom. *Antonyuk v. James*, 144 S. Ct. 2709 (2024), and reinstated in part by *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), and aff'd in part, vacated in part, remanded sub nom. *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024).

because as small-business owners they do not enjoy the luxury, or possess the superhuman endurance, of being able to sit at the front entrance to their property twenty-four hours a day, seven days a week, twelve months a year).

Id., 639 F. Supp. 3d at 345 (emphasis in the original).⁷ Business owner plaintiffs in similar litigation challenging California’s iteration of the Vampire Rule likewise objected to having to post a sign that may alienate some of their customers. Complaint ¶ 100, *May v. Bonta*, No. 8:23-cv-01696 (C.D. Cal. filed Sept. 12, 2023), ECF No. 1 (“As business owners, Plaintiffs Flores and Dr. Hough are compelled to put up a sign if they want to welcome people with CCW permits to carry into their places of business. They are forced to choose between supporting their customers’ rights to carry and taking a very public stance on what is a controversial issue in California, which may alienate other customers. [The Vampire Rule] compels them to speak if they want to continue to allow customers with CCW permits to carry in their businesses.”).

The *Antonyuk* district court’s reasoning was unpersuasive to the Ninth Circuit. Indeed, the ability to give customers individual oral authorization on a one-by-one basis was a crucial feature of the Hawaii law that differentiated it from the California law in the circuit court’s view. *Wolford v. Lopez*, 116 F.4th 959, 995-96 (9th

7. The Second Circuit affirmed the district court’s injunction prohibiting enforcement of the Vampire Rule on private property open to the public on Second Amendment grounds. *Antonyuk v. James*, 120 F.4th 941, 1047 (2d Cir. 2024), cert. denied, 145 S. Ct. 1900 (2025). It did not address the district court’s analysis of the rule under the compelled speech doctrine.

Cir. 2024). Apparently, the Ninth Circuit has no problem with requiring small-business owners to sit at the front entrance to their property twenty-four hours a day, seven days a week, twelve months a year as an alternative to posting signage.

Ironically, the anti-Second Amendment advocacy organization Everytown for Gun Safety⁸ recently made a practically identical argument in a case challenging firearms signage for businesses mandated by Texas:

To be sure, the statutory scheme allows property owners wishing to exclude firearms to use alternative means of providing notice: individualized oral or written notice to each entrant. But individualized notice—personally informing everyone who enters the Church or Antidote about the no firearms policy—is impractical and burdensome for obvious reasons: among other things, it would require dedicating employees’ time to providing notice to all entrants, and it would require those employees to engage in uncomfortable and potentially dangerous confrontations with armed individuals. And beyond the impracticality, both the Church and Antidote believe that providing individualized notice would distort and detract from the experience they wish to offer their congregants and customers, respectively. In other words, the

8. Everytown Law appeared on the brief. Everytown Law is the litigation arm of the Everytown for Gun Safety Support Fund.

alternative means of notice are equally or more burdensome. . . .

Brief for Appellant, *Bay Area Unitarian Universalist Church v. Ogg*; October 29, 2025, Case No. 23-20165 (5th Cir.), 9-10 (citations omitted)

The Ninth Circuit’s reasoning makes no sense. Without the slightest doubt, Hawaii has compelled pro-public carry business owners to express their view on a controversial political topic. The Ninth Circuit never explained why the compelled speech doctrine does not apply so long as the speech that is compelled is oral as opposed to written. This Court’s “precedents . . . apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content. *Laws that compel speakers to utter or distribute speech bearing a particular message are subject to the same rigorous scrutiny.* *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) (internal citations omitted; emphasis added). Hawaii’s law, whose overriding purpose is to suppress the exercise of constitutional rights, surely cannot survive such scrutiny.

CONCLUSION

For the reasons set forth herein, NAGR respectfully requests the Court to reverse the decision of the Ninth Circuit.

Respectfully submitted this 24th day of November
2025

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