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 THE DISTRICT OF COLUMBIA, ILLINOIS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON AS AMICI CURIAE IN SUPPORT OF RESPONDENT

KWAME RAOUL
Attorney General for the State of Illinois
JANE ELINOR NOTZ
Solicitor General
SARAH A. HUNGER
Deputy Solicitor General
BRIANNA YANG
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376
jane.notz@ilag.gov

BRIAN L. SCHWALB
Attorney General for the District of Columbia
CAROLINE S. VAN ZILE*
Solicitor General
ASHWIN P. PHATAK
Principal Deputy Solicitor General
PERRY R. CAO
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
400 6th Street, NW
Suite 8100
Washington, D.C. 20001
(202) 724-6609
caroline.vanzile@dc.gov

** Counsel of Record*

QUESTION PRESENTED

Whether the Ninth Circuit erred in holding, in direct conflict with the Second Circuit, that Hawaii may presumptively prohibit the carry of handguns by licensed concealed carry permit holders on private property open to the public unless the property owner affirmatively gives express permission to the handgun carrier?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION AND INTEREST OF *AMICI CURIAE*

In exercising their police power, states often set default rules that presumptively govern the conduct at issue but allow individuals to deviate from the baseline standard. Such rules are widespread, governing everything from property transactions to contracts to rental agreements. The activities governed by these rules, as well as the presumptions codified therein, vary across states and reflect the norms and preferences of each state's residents. At the same time, default rules respect individual rights by allowing parties to deviate from them as they wish. And because they are adopted by state and local actors, default rules are subject to democratic accountability and periodic revision.

Here, Hawaii followed its own democratic process in enacting a no-carry default for private property. Under that rule, individuals are presumptively barred from bringing firearms onto private property open to the public unless they receive express permission from the property owner. Haw. Rev. Stat. § 134-9.5.

In light of states' experience crafting a variety of default rules, including in the context of firearms regulations, *Amici* States—the District of Columbia, Illinois, California, Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington—submit this brief in support of respondent Anne E. Lopez. *Amici* States recognize that Hawaii's regulatory

choice, which caters to its constituents' preferences while respecting fundamental property rights—does not violate the Second Amendment.

SUMMARY OF ARGUMENT

1. Default rules are ubiquitous because they promote efficiency and can be tailored to the needs of specific communities. From contract law to property rights, such rules reduce transaction costs and streamline communication between stakeholders. At the same time, the simple fact that a baseline expectation exists does not deprive any party of the freedom to depart from the default. Although default rules are never binding, they can be immensely beneficial—especially when they align with majoritarian preferences. Here, most Americans (and a supermajority of Hawaii residents) prefer a default rule that requires a property owner's permission before carrying firearms onto his or her private property. Hawaii's rule thus aligns with that preference and captures Hawaii residents' particular expectations and cultural norms. That democratically adopted, flexible rule creates clarity without trammeling property or gun-owners' rights.

2. Hawaii's default rule does not violate the Second Amendment. There is no dispute that a private property owner possesses the "unquestioned" authority to prohibit others from carrying firearms onto his or her property. Pet'rs' Br. 17. After all, "[t]he right to exclude is 'one of the most treasured' rights of property ownership." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419,

435 (1982)). As even petitioners recognize, the Second Amendment does not permit guests to veto that authority. Hawaii's default rule—which simply codifies a rebuttable, preexisting societal presumption that property owners wish to exclude firearm carriage on their property unless they expressly say otherwise—thus does not interfere with Second Amendment rights. This result, moreover, is consistent with this Court's precedents in First Amendment cases. Time and again, the Court has held that affirmative constitutional rights generally have "no part to play" when crossing the private property line. *Hudgens v. NLRB*, 424 U.S. 507, 521 (1976). The Court should hold the same here.

ARGUMENT

I. Default Rules Are Widespread, Promote Efficiency, And Effectuate Democratically Supported Preferences.

A. Default rules allow governments to reflect the preferences of their constituents.

1. Default rules play a valuable societal role by "fill[ing] in the gaps" when parties neglect to expressly agree on certain terms. Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 Yale L.J. 87, 87 (1989). This reduces the need for individuals to spend energy negotiating over issues covered by default rules. *See* Cass Sunstein, *Deciding By Default*, 162 U. Pa. L. Rev. 1, 46-47 (2013). But while default rules set baseline expectations for behavior and generally align with majoritarian preferences, parties are always "free to change" them. Alan Schwartz, *The*

Default Rule Paradigm and the Limits of Contract Law, 3 S. Cal. Interdisc. L.J. 389, 390 (1993).

Although default rules feature most prominently in contract law, they play an important role in other contexts as well. In the realm of property rights, for instance, default rules can be effective tools for reflecting democratic preferences while retaining each citizen's freedom to choose a different path for their property. How each government employs that tool depends heavily on the characteristics of the community it serves. *See* Alan Schwartz & Robert E. Scott, *The Common Law of Contract and the Default Rule Project*, 102 Va. L. Rev. 1523, 1527-28 (2016) (explaining that default rules naturally vary from context to context). In that sense, default rules are part and parcel of our federalist system.

Indeed, adopting default rules for private property that align with community norms is well within the purview of states and localities. Regulating private property has always been "a core police power traditionally left to the States." Ian Ayres & Frederick Vars, *Tell Me What You Want: An Affirmative-Choice Answer to the Constitutional Concern About Concealed-Carry on Private Property*, J. Legal Analysis, vol. 17, 10540 (2025). As this Court has repeatedly recognized, it is "well established" that a state may use its authority to "adopt reasonable restrictions on private property." *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980); *Chi., B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561, 594 (1906) (recognizing that the state possesses "general power over private property which is necessary for the orderly existence of all governments"). By exercising

that power to align default rules with what constituents prefer, states can create efficiencies that benefit most of their residents.

Moreover, default rules are naturally flexible. Governments can "conform [them] to the evolving expectations and preferences of private owners so as to reduce opt-out costs and produce more efficient arrangements." Ayres & Vars, *Tell Me What You Want*, *supra*, at 111. By setting defaults to align with what most citizens prefer, governments reduce overall friction in social bargaining. Default rules can also limit misunderstandings and promote clarity by inducing property owners and guests alike to communicate their preferences. And if local preferences evolve to a point where a majority of constituents would rather flip the default rule, their elected representatives possess the power to do so. This ensures that the rules are tailored to solve "social problems" in ways that "suit local needs and values." *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010).

2. Because default rules are so effective at maximizing efficiency and reducing friction, it is no surprise that they are "omnipresent." Sunstein, *Deciding By Default*, *supra*, at 56. Default rules "establish settings for many activities and goods, including cell phones, rental car agreements, computers, savings plans, health insurance, and energy use." *Id.* They are also, of course, useful in property transactions.

Start with contract law, where default rules are readily familiar. In fact, "[c]ontract law is largely comprised of default rules," which are "widely

celebrated for allowing private, made-to-order lawmaking." George S. Geis, *An Experiment in the Optimal Precision of Contract Default Rules*, 80 Tul. L. Rev. 1109, 1110 (2006). These default rules have a lengthy pedigree, *see, e.g.*, *Paradine v. Jane*, 82 Eng. Rep. 897, 897 (1647) (a promisor assumes the risks associated with performance), and are common across a variety of jurisdictions and contexts, *Beals v. Hirsch*, 211 N.Y.S. 293, 300 (N.Y. App. Div. 1925) (seller must provide perfect tender); *Shepard v. Carpenter*, 55 N.W. 906, 906 (Minn. 1893) (parties must agree to definite terms). Default rules are particularly plentiful in the realm of offer and acceptance, as well as other core contract principles like damages. *See, e.g.*, *Adams v. Lindsell*, 106 Eng. Rep. 250, 251 (1818) (default mailbox rule for acceptance); *Fitzhugh v. Jones*, 20 Va. (6 Munf.) 83, 86 (1818) (a party's acceptance of the "terms proposed" consummates a contract even if the party requests additional terms afterward); *Hadley v. Baxendale*, 156 Eng. Rep. 145, 145 (1854) (nonbreaching party is only entitled to damages "arising naturally" from the breach or those that "may reasonably be supposed to have been in the contemplation of both parties[] at the time they made the contract").

These rules serve a common purpose: to codify what a state's residents would want or expect absent express agreement. In the contract-law context, many of these rules were judicially created to "further the great object of . . . fulfil[ling] the intention of those

who entered into the contract." *Taylor v. Caldwell*, 122 Eng. Rep. 309, 312 (1863).[1]

Beyond contracts, default rules are also helpful in property law. For example, many states have implemented default rules for rental leases, which suit the needs of constituents by protecting both landlords and tenants. How these rules balance landlords' and tenants' interests depends on the norms and values of the relevant jurisdiction. *See, e.g.*, Va. Code §§ 55.11410, 55.11253 (providing a default 30-day notice requirement to terminate a month-to-month tenancy, "unless the rental agreement provides for a different notice period"); N.J. Stat. § 46:810 (providing that a tenant who holds over past the end of a lease term with the landlord's permission enters a month-to-month tenancy by default); Utah Code § 57223 (requiring a landlord to give 24-hour advance notice before entering the premises unless the rental agreement states otherwise); Fla. Stat. § 83.51 (listing various obligations owed by the landlord unless the rental agreement provides otherwise). Similarly, many states set default rules regarding whether and when solicitors can enter private property. *Breard v. City of Alexandria*, 341 U.S. 622, 639 (1951) (describing so-called "Green River" ordinances, named after *Town of Green River v. Bunger*, 58 P.2d 456 (1936)). These legislatively created default rules are "adapt[ed] to the needs of the many communities that . . . enacted

[1] Legislatures often create contract-related default rules, too. *See, e.g.*, *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 29 (2004) (explaining that, when Congress passed the Carriage of Goods by Sea Act, it enacted a default liability rule capping a carrier's potential damages liability in the event of loss).

[them]." *Id.* at 639. Although the parties can modify these rules if they wish, each reflects a local preference for a particular baseline, whether it benefits property owners, occupants, or both.

B. The public supports a default rule that requires a property owner's consent to carry firearms on private property.

One broadly accepted premise of default rules is that states should "enact the rules that the fewest parties would change." Schwartz, *The Default Rule Paradigm*, *supra*, at 399. In the context of carrying firearms on private property, most Americans (and a supermajority of Hawaii residents) prefer a rule that requires express consent by the property owner. Hawaii's law therefore does exactly what any default rule should: it accurately captures community norms without locking property owners into any particular choice.

Based on recent survey data, most Americans believe that a guest should acquire the property owner's permission before bringing firearms onto the owner's property, although preferences vary geographically. *See* Ian Ayres & Spurthi Jonnalagadda, *Guests With Guns: Public Support for "No Carry" Defaults on Private Land*, 48 J.L. Med. & Ethics 183, 185 (2020). Support for a no-carry default grows as the property becomes more "private" in nature, with roughly 68% of Americans responding that a friend should not be permitted to bring a firearm into a residence without the property owner's permission. *Id.* When asked whether professionals like plumbers should be able to bring a firearm into a residence without permission, that proportion

increases to 72%. *Id.* And when asked whether employees should be able to bring firearms to the workplace without express permission, the percentage of respondents answering "no" increases to 75% nationally. *Id.*

These trends are even stronger in Hawaii, where 78% of residents believe that loaded firearms should not be permitted in businesses open to the public. Ward Research, *Public Opinion of Gun Safety Laws (Online Survey of Hawai'i Residents)*, at 11 (Feb. 2023), https://tinyurl.com/yc2vpbrh. Even among Hawaii's gun owners, 64% of respondents agree. *Id.* at 14.

The behavior of major retailers, who own large swaths of private property open to the public, aligns with these preferences. Some of the country's biggest chains—including Walmart, Costco, Kroger, Walgreens, CVS, and Target—generally prohibit their customers from carrying firearms inside their stores. *See* Alex Gangitano & Scott Wong, *Here Are the Gun Policies for America's Largest Retailers*, The Hill (Sept. 7, 2019), https://tinyurl.com/49a5v5p3. The same goes for many movie theaters, like AMC, Cinemark, and Regal. *Frequently Asked Questions*, AMC Theatres, https://tinyurl.com/38k9ank3 (accessed Dec. 7, 2025); *Cinemark Policies*, Cinemark, https://tinyurl.com/3favsnyz (accessed Dec. 7, 2025); *Admittance Procedures*, Regal, https://tinyurl.com/ymjd9r9r (accessed Dec. 7, 2025).

In short, survey data reflects a preference for a "no-carry" default on private property open to the public. A default rule aligning with that preference thus reflects baseline community expectations

without prohibiting property owners from allowing carriage on their property. For Hawaii in particular, it would make little sense to require businesses and private property owners to post signs prohibiting firearm carriage. Indeed, it would require almost four out of every five Hawaii residents to incur additional costs to exercise an exclusionary right they inherently possess. *See* Ward Research, *supra*, at 11. Hawaii's law thus furthers the quintessential purpose of default rules: to capture community norms and reduce unnecessary costs. And Hawaii's ability to modify its default rules when clear community preferences emerge also reflects the core promise of federalism. Although no two states have identical preferences, each state is able to govern in a way that honors the values of its residents.

II. Hawaii's Default Property Rule Does Not Implicate Second Amendment Rights.

The right to exclude lies at the core of property ownership. Indeed, "[t]he right to exclude is 'universally held to be a fundamental element of the property right,' and is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Cedar Point Nursery*, 594 U.S. at 150 (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). As even petitioners recognize, Pet'rs' Br. 17, the Second Amendment does not permit any individual to override that exclusionary power by carrying a firearm on another's property without their consent. *See* 2 William Blackstone, Commentaries on the Laws of England 2 (1766) (explaining that property entails "that sole and despotic dominion which one man claims and

exercises over the external things of the world, *in total exclusion of the right of any other individual in the universe*" (emphasis added)). In other words, property owners possess the authority to prohibit the carrying of firearms on their property without violating anyone's right to bear arms.

Because one person's right to carry stops at another person's property line, Hawaii's default rule does not interfere with the Second Amendment right to carry firearms. If a property owner wishes to prohibit firearms while a patron wishes to carry one, all agree that the property owner's decision prevails. *See GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1264 (11th Cir. 2012) ("An individual's right to bear arms as enshrined in the Second Amendment, whatever its full scope, certainly must be limited by the equally fundamental right of a private property owner to exercise exclusive dominion and control over its land."), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). That decision does not "curtail" the patron's right because the patron's right does not extend that far in the first place. Any other conclusion violates the fundamental principle that a person's property is his or her domain, to the "total exclusion of the right of any other individual." 2 Blackstone, Commentaries 2.

"Quite simply, there is no constitutional infirmity when a private property owner exercises his, her, or its . . . right to control who may enter, and whether that invited guest can be armed, and the State vindicates that right." *GeorgiaCarry.Org, Inc.*, 687 F.3d at 1264. The Second Amendment cannot "abrogate[] the well established property law, tort

law, and criminal law that embodies a private property owner's exclusive right to be king of his own castle." *Id.* Hawaii's default rule merely creates a rebuttable standard that effectuates a property owner's right to exclude firearm carriage from his or her property. And it reflects the local preferences of property owners, the public, and gun owners alike.

This Court has said as much in the context of the First Amendment. Starting with *Breard*, this Court made clear that constitutional rights "have never been treated as absolutes" when it comes to conduct on private property. 341 U.S. at 642. In *Breard*, this Court heard a challenge to an ordinance prohibiting solicitors from entering private property unless expressly invited or permitted by the property owner. *Id.* at 644-45. A solicitor fined pursuant to the ordinance appealed his conviction as violating the First Amendment. *Id.* at 625. Even though solicitation normally carries free speech protections, the Court upheld the conviction. It explained that individuals "cannot be permitted to arm themselves with an acceptable principle, such as that of a right to . . . a free press, and proceed to use it as an iron standard" to trespass on the property rights of others. *Id.* at 625-26. While any property owner remained free to invite solicitors onto their premises, the default rule enabled the municipality to protect its citizens' "desire for privacy." *Id.* at 644.

The *Breard* ordinance was not an anomaly. Many other localities had enacted similar provisions "adapt[ed] to the needs of [their own] communities." *Id.* at 639 (comparing the *Breard* ordinance to similar "Green River" ordinances). In blessing it, this Court

made clear that the "[f]reedom of speech or press does not mean that one can talk or distribute where, when[,] and how one chooses." *Id.* For that reason, the city's ordinance barring solicitors from entering private property without express permission did not constitute an "abridgment of the principles of the First Amendment." *Id.* at 645.[2]

That decision comports with a broader principle: that the First Amendment does not permit any and all speech on private property against the will of the property owner. For instance, in *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), the Court upheld a private mall owner's right to "enforce a restriction against handbilling on [his] premises," even if it is open to the public. *Id.* at 564. It soundly rejected the plaintiffs' First Amendment arguments to the contrary, explaining that a general invitation to shop at the mall was not an "open-ended invitation to the public to use the [mall] for any and all purposes." *Id.* at 565. When a similar question arose in *Hudgens v. NLRB*, 424 U.S. 507 (1976), this Court reaffirmed *Tanner* and explained that "the constitutional guarantee of free expression *has no part to play in a case such as this*." *Id.* at 521 (emphasis added). *Id.*

---

[2] By contrast, in *Martin v. City of Struthers*, 319 U.S. 141 (1943), the Court struck down an ordinance that prohibited the distribution of leaflets at private residences under all circumstances, *regardless* of whether any individual property owners wished to receive them. *Id.* at 143-44 (noting that the ordinance in question "submit[ted] the distributer to criminal punishment for annoying the person on whom he calls, *even though the recipient of the literature distributed is in fact glad to receive it*" (emphasis added)).

The same holds true here. Hawaii's default rule does not infringe on petitioners' Second Amendment rights because petitioners lack such rights in the face of a private property owner's exclusion. Like with *Breard*, *Tanner*, and *Hudgens*, the claimed right "has no part to play." *Hudgens*, 424 U.S. at 521. Hawaii's rule, which merely vindicates the property owner's undisputed authority to keep firearms off his or her property, therefore does not implicate Second Amendment rights. Rather, without telling property owners how they *must* act, it sets the baseline standard for how property owners convey their exclusionary wishes. The simple existence of this default rule inflicts no constitutional harm.

CONCLUSION

The Court should affirm the Ninth Circuit's judgment.

Respectfully submitted,

KWAME RAOUL
Attorney General for the State of Illinois

JANE ELINOR NOTZ
Solicitor General

SARAH A. HUNGER
Deputy Solicitor General

BRIANNA YANG
Assistant Attorney General

115 South LaSalle St.
Chicago, Illinois 60603
(312) 814-5376
jane.notz@ilag.gov

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE*
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

PERRY R. CAO
Assistant Attorney General

400 6th Street, NW
Suite 8100
Washington, D.C. 20001
(202) 724-6609
caroline.vanzile@dc.gov

* *Counsel of Record*

December 2025

On behalf of:

ROB BONTA
Attorney General
State of California

PHILIP J. WEISER
Attorney General
State of Colorado

WILLIAM TONG
Attorney General
State of Connecticut

KATHLEEN JENNINGS
Attorney General
State of Delaware

AARON M. FREY
Attorney General
State of Maine

ANTHONY G. BROWN
Attorney General
State of Maryland

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts

DANA NESSEL
Attorney General
State of Michigan

KEITH ELLISON
Attorney General
State of Minnesota

AARON D. FORD
Attorney General
State of Nevada

MATTHEW J. PLATKIN
Attorney General
State of New Jersey

LETITIA JAMES
Attorney General
State of New York

DAN RAYFIELD
Attorney General
State of Oregon

PETER F. NERONHA
Attorney General
State of Rhode Island

CHARITY R. CLARK
Attorney General
State of Vermont

NICHOLAS W. BROWN
Attorney General
State of Washington