No. 24-1046

IN THE

Supreme Court of the United States

JASON WOLFORD, *ET AL.*,

Petitioners,

v.

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAI'I,

Respondent.

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

BRIEF OF GLOBAL ACTION ON GUN VIOLENCE, AS *AMICI CURIAE* SUPPORTING RESPONDENT

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Interests of *Amicus Curiae*[*]

Amicus curiae Global Action on Gun Violence ("GAGV") is a non-profit organization dedicated to reducing gun violence throughout the world using litigation, human-rights advocacy, and messaging, with a focus on stopping cross-border gun trafficking. GAGV has presented reports and testimony at the Organization of the American States, the Inter-American Commission for Human Rights, United Nations bodies, and numerous international conferences, and has previously submitted briefs to this Court as *amicus curae*.

Introduction and Statement

The Second Amendment uniquely states its "well-regulated militia" purpose in its text, and, for over two centuries, courts faithfully and consistently interpreted it in light of that text and purpose. In modern parlance, it was read, logically, as its author, James Madison, intended; essentially, "Because a well-regulated militia is necessary to the security of a free State, the right of the people to keep and bear arms in state militias shall not be infringed."[1] The history surrounding the Second

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[*] No counsel for any party authored this brief in whole or in part. No person or entity—other than *amici*, their members, or their counsel—made a monetary contribution specifically for the preparation or submission of this brief.

[1] U.S. CONST. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.").

Amendment's drafting and ratification make clear that Madison and the other Framers were animated only by anti-federalist concerns that the new federal government could neuter state military forces. Whatever the Framers believed about private or self-defense gun use, it was unmentioned in the Amendment's text and the history surrounding it, and Madison pointedly did not include language from other proposals and state constitutions that might support something more than this anti-federalist purpose. The Amendment's intended militia focus does not mean that there should be a general gun ban as a matter of policy, or that the Framers would have wanted one. Many important rights and activities are protected by laws, as they should be, even if they do not fall within the protection of the Constitution as it was written and intended. But policy preferences and fears should not color historical and textual constitutional interpretation.

The Court in *District of Columbia v. Heller*[2] replaced Madison's vision with an ahistorical, atextual reading of the Second Amendment that renders its first half an inconvenient irrelevancy and injects a modern purpose of private, armed self-defense with handguns that was nowhere mentioned in the Amendment's text or history. After *Heller*, the courts have been required to interpret the Second Amendment essentially (and nonsensically) as:

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[2] 554 U.S. 570 (2008).

"Because a well-regulated militia is necessary to the security of a free State, the right of the people (including those who have nothing to do with the militia and may even oppose the state) to possess arms for private self-defense (wholly unrelated to militias) shall not be infringed." That interpretation is wrong.

Even as (mis)interpreted by *Heller*, the right enshrined in the Second Amendment, like other rights enumerated in the Bill of Rights, is not absolute. The *Heller* Court acknowledged that the Second Amendment's reach is not "unlimited" and does not confer a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[3] The Second Amendment is not a "super right" that entitles people to bring firearms into the property of other people without permission. The Hawaii statute at issue here seeks to protect that "sacred" right to private property.[4]

Where the Second Amendment conflicts with the right to private property, the law requires the safest course be pursued, with all rights respected, consistent with the government's central role to protect the rights to "life, liberty and the pursuit of happiness." The analytical framework for evaluating Second Amendment challenges established in *Heller* and *New York State Rifle &*

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[3] *Id.* at 626.

[4] *Wilkinson v. Leland*, 27 U.S. 627, 657 (1829).

Pistol Assoc., Inc. v. Bruen[5] eliminates this Court's ability to properly balance the core right to private property with the asserted infringement of Second Amendment rights and therefore forces courts to improperly view the Second Amendment as a super right above all others. For this and other reasons, both precedents should be overturned.

The Second Amendment (even as recognized in *Heller*) can and does allow the government to implement reasonable regulations in the interest of protecting public safety and private property rights. Courts have been clear that private property is its own sacred sphere where the government generally cannot encroach. Owning private property comes with a bundle of rights that, important to this case, includes the right to exclude. Between a property owner who has the unquestioned right to exclude firearms from her property, and a person who has no right to bring his firearm into another's property without permission, the property owner must prevail. Allowing courts under *Heller* and *Bruen* to dictate to private property owners what and whom they can and cannot exclude from their property, or how they must exclude them, contravenes centuries of precedent respecting private property rights. Only seven years ago, this Court disregarded allegations of unconstitutional discrimination in favor of a business owner's choice to exclude a

[5] 597 U.S. 1 (2022).

segment of the population from its customer base.[6] Rather than acting as guardrails for gun regulation, *Heller* and *Bruen* employ an unworkable, history-based analysis that, in the instant case, may allow Second Amendment rights to encroach on the rights of private property owners and prevent effective firearm regulation for public safety notwithstanding Hawaii's longstanding tradition of similar legislation.

Although *Heller*'s ahistorical, atextual reading of the Second Amendment is wildly incorrect, if it were constrained to its ruling and prohibited sweeping gun bans while allowing reasonable regulation, its policy implications would be acceptable—at least to amicus and many Americans. But *Bruen* expanded *Heller's* faulty framework—extending the invented constitutional right to public spaces and adding a requirement to tie regulations back to analogous historical laws. Beyond misreading the historical record to establish a Second Amendment right to armed self-defense in public, *Bruen* forces courts to become amateur historians and look back to a historical period when guns were far less dangerous than they are today to find analogous laws, though the same problems and considerations did not exist in that era. This leaves no space for courts to consider that in an age of mass shootings, random gun violence, and consequent premises liability,

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[6] *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617 (2018).

modern-day property owners now more than ever may be concerned about keeping guns off their properties. Yet courts must now disregard what should be their focus: countervailing rights, and the fundamental, long-recognized interest of governments to protect public safety, including the police power authority of states to craft new solutions to the pressing new problem of epidemic levels of gun violence. Shifting the intention behind the Second Amendment away from its original militia purpose and toward a private super right to self-defense via handguns is misguided, prevents reasonable gun regulation in the interest of public safety, and unduly limits the rights of private property owners.

The challenged Hawaii statute should be upheld even under *Heller* and *Bruen*,[7] and the very reasons for upholding it underscore why those precedents should be abandoned. Under *Bruen*, the Court must either invoke the decision's vague carveout for laws addressing modern dangers with no historical analogue or recognize the nation's longstanding tradition of protecting private property rights. The first path implicitly concedes the impracticality of chaining a 21st-century nation confronting unprecedented gun violence to 18th- and 19th-century conditions, when firearms were markedly less lethal and gun violence far less pervasive. The second path, which relies on the historical tradition of allowing landowners to regulate their properties,

[7] *See* Respondent's Brief, Section II.

considers history at a higher level of generality than the *Bruen* majority did, exposing the methodological flaw at the core of *Bruen*.

Heller and *Bruen* should be overturned, and the Court should return to the tradition in Second Amendment law of means-end scrutiny. By following this approach, the Court can return to its longstanding recognition that the exercise of certain constitutional rights may give way not only to sacred property rights, but also to the most fundamental of rights—the right to live.

Argument

I. *Heller* and *Bruen* Should Be Overturned.

Heller and *Bruen* conflict with the text and original intent of the Second Amendment. They create a dangerous rule that the government is hamstrung in protecting the public from one of the greatest threats to safety today: gun violence. These decisions are riddled with logical and practical problems and should be overturned.

A. *Heller* Was Wrongly Decided and Should Be Overturned.

In *District of Columbia v. Heller*, the Supreme Court decided a case involving the District of Columbia's ban on handguns and requirement that other types of guns be kept unloaded.[8] The Court found the D.C. statute unconstitutional and, in

[8] 554 U.S. 570 (2008).

doing so, upended over two centuries of settled law to hold for the first time that the Second Amendment protection is not limited to firearm usage in "well regulated" state militias and instead concerns an individual's right to bear arms for personal use. While largely disregarding the militia purpose at the center of the Amendment's text and the Framers' intent, the Court recognized a novel "self-defense" purpose underlying the Second Amendment that was unmentioned in the text or the history. Indeed, James Madison pointedly refused to employ the language of other proposals and state constitutions that could support a private or self-defense right.[9]

Heller's introduction of an individual right to possess a handgun for purposes of self-defense was untethered to the text of the Second Amendment and the intent of the Framers, and was antithetical to more than two hundred years of precedent.

The *Heller* decision disregards the textual limitation within the Second Amendment, rendering superfluous the entire first clause, which specifies that the right to bear arms is tied to the need for a "well regulated Militia." Justice Stevens aptly described in the *Heller* dissent that the invented

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[9] *See* THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES AND ORIGINS 169 (Neil H. Cogan ed. 1997); THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 623-24 (Merrill Jensen et al. eds. 1976); Dru Stevenson, *Revisiting the Original Congressional Debates About the Second Amendment*, 88 MO. L. REV. 455 (2023); CARL T. BOGUS, MADISON'S MILITIA: THE HIDDEN HISTORY OF THE SECOND AMENDMENT 110-12 (2023).

individual right to possess a firearm has no basis in the Constitution:

> Indeed, not a word in the constitutional text even arguably supports the Court's overwrought and novel description of the Second Amendment as "elevat[ing] above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."[10]

There is also no indication that the Framers intended to prevent legislatures from regulating private citizens' use of firearms.[11] In the congressional debates regarding the Second Amendment, there was no discussion of an individual right to possession of firearms or of a self-defense purpose.[12] And numerous historians and linguists have analyzed the meaning of "keep and bear arms" as it was used during the period of enactment—that phrase was used in a military context; non-military uses of the phrase were virtually nonexistent.[13]

Moreover, centuries of prior Supreme Court precedent interpreted the Second Amendment

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[10] *Heller* at 652 (Stevens, J., dissenting).

[11] *See id.* at 637 (Stevens, J., dissenting).

[12] *See* Stevenson, *supra* note 9.

[13] *E.g.*, Dennis Baron, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 HASTINGS CONST. L.Q. 509, 510 (2019); Nathan Kozuskanich, *Originalism in a Digital Age: An Inquiry into the Right to Bear Arms*, 29 J. EARLY REPUBLIC 585, 589 (2009).

consistent with its text and historical purpose. Indeed, in *Miller v. United States*, in a decision discussed extensively in *Heller*, the Court unanimously held that the Second Amendment was made "with obvious purpose to assure the continuation and render possible the effectiveness of [a militia]" and that the Second Amendment "must be interpreted and applied with that end in view."[14] *Heller* departs not only from the text and original intent of the Amendment, but from the Court's own interpretation in *Miller*.

The shift in constitutional construction did not result from newly found historical evidence, but from relatively recent advocacy from special interest groups—predominantly articles authored or supported by pro-gun organizations such as the National Rifle Association—that make the case for private gun rights and a self-defense purpose purportedly inherent in the Second Amendment.[15] In 1991, former Chief Justice Warren Burger accurately described the idea that the Second Amendment establishes an individual, non-militia-focused right to bear arms as "a fraud" and rightly observed that the modern Second Amendment construction "has been the subject of one of the greatest pieces of fraud, I repeat the word fraud, on

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[14] *Miller v. United States*, 307 U.S. 174, 178 (1939).

[15] Carl T. Bogus, *The History and Politics of Second Amendment Scholarship: A Primer*, 76 CHI.-KENT L. REV. 3, 4 (2004).

the American public by special interest groups that I have ever seen in my lifetime."[16]

Plainly, the intent of the Framers was not to elevate private gun rights above all others, including private property rights.[17] Indeed, while the Framers never uttered a word about a constitutional right to possess a firearm for self-defense, they considered individual property rights to be essential to the

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[16] Nina Totenberg, *From 'Fraud' to Individual Right, Where Does the Supreme Court Stand on Guns?* NPR (Mar. 5, 2018, 2:55 P.M.) https://www.npr.org/2018/03/05/590920670/from-fraud-to-individual-right-where-does-the-supreme-court-stand-on-guns.

[17] *See* Ryan L. Card, *An Opinion Without Standards: The Supreme Court's Refusal to Adopt A Standard of Constitutional Review in* District of Columbia v. Heller *Will Likely Cause Headaches for Future Judicial Review of Gun-Control Regulations*, 23 BYU J. PUB. L. 259 (2009) ("Unfortunately, the only thing made clear by the majority opinion in *Heller* regarding the future review of gun-control regulations is that the situation remains extremely unclear."); David Thomas Konig, Heller*, Guns, and History: The Judicial Invention of Tradition*, 3 NE. U.L.J. 175 (2011) (arguing that *Heller* and other landmark cases relying on historical tradition share the same flaw of "overreaching and inventing traditions that have more impact on the future than they had on the reality of the past."); Allen Rostron, *Protecting Gun Rights and Improving Gun Control After* District of Columbia v. Heller, 13 LEWIS & CLARK L. REV. 383 (2009) ("The most striking passages of the opinion, however, are those in which Scalia suddenly strays from his efforts to divine the provision's original meaning. Tossing aside his chosen methodology when it does not suit his purposes, Scalia makes a series of crucial assertions for which he conspicuously neglects to offer any real support or evidence about original understandings of the constitutional text.").

functioning of civil society.[18] Equally, other rights should not in all cases trump Second Amendment rights.

Historical analysis and textual interpretation should be guided by principle, not shaped to fit policy preferences. *Heller*, however, turns the Framers' intent on its head and leaves open the possibility that individual citizens who have nothing to do with a militia, or who may even pose a threat to the security of a free State, have a right to use guns in ways completely antithetical to the Framers' vision. *Heller*'s invention of a right out of whole cloth should be corrected and that decision overturned.

B. *Bruen* Was Wrongly Decided and Should Be Overturned.

New York State Rifle & Pistol Assoc., Inc. v. Bruen compounded *Heller's* erroneous holding. After ignoring the historical record to establish an ahistorical private self-defense right in the Second Amendment, *Bruen* requires governments to identify a "special need" grounded in "historical analogue" if they seek to regulate firearm use or possession, establishing an unworkable standard that is too vague to consistently apply and that results in unnecessarily constrained public safety legislation. In so doing, the Court essentially established a "super right" whereby the right of a private individual to own a weapon for the purpose

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[18] *See infra* pp. 32-34.

of engaging in armed self-defense trumps all other rights.

1. *Bruen* Elevates *Heller's* Invented Right to a Super Right.

Bruen holds that the Second Amendment guarantees a "right to bear arms in public for self-defense" that can only be limited if one can identify a historical analogue to the regulation in question.[19] Accordingly, under *Bruen*, courts may not balance the Second Amendment right against other rights or other government and public interests. To the extent that regulations protect against modern dangers not readily identifiable in the historical literature, *Bruen* generally would invalidate the restriction. Perversely, under the *Bruen* framework, the right to own or possess lethal weaponry supersedes the exercise of other rights due solely to a lack of historical precedent for regulations designed to solve uniquely modern problems resulting from the ever-increasing prevalence of gun violence and lethality of firearms. Other rights—such as the right to life, the right to regulate one's own property, and the rights to assemble, speak, and exist safely in public spaces—fall away in favor of the invented individual right to possess firearms.

And because of the nature of the gun rights provided for in *Bruen*, its sweeping language is uniquely poised to infringe on other constitutional rights. Guns may deprive people of their right to

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[19] 597 U.S. at 38-39.

live, chill speech, disrupt peaceable assemblies,[20] threaten democratic participation,[21] and limit all manner of other activities. *Bruen* fails to account for the circumstances that make guns and their regulation different from other types of legislation. Thus, these other core rights the Framers actually protected in the Constitution are effectively relegated to second-class rights.

By focusing on history instead of practicality, the *Bruen* decision rejects the balancing of the public interest against the Second Amendment right. But constitutional rights are not absolute.[22] Even the First Amendment is subject to balancing against the public interest, including the need for safety in public spaces. Surely the Framers did not value the right to shoot more than the right to speak. *Bruen's* rejection of any balancing of public interests against (invented) Second Amendment rights squarely conflicts with the government's longstanding authority to protect public safety and private property rights. As Justice Breyer noted in dissent, "I believe the Amendment allows States to take account of the serious problems posed by gun violence. . . . I fear that the Court's interpretation

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[20] *See, e.g.*, Gregory P. Magarian, *Conflicting Reports: When Gun Rights Threaten Free Speech*, 83 L. & CONTEMP. PROBS. 169 (2020).

[21] Joseph Blocher & Reva B. Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller*, 116 NW. U. L. REV. 139, 161 (2021).

[22] *See* Jonathan Lowy & Kelly Sampson, *The Right Not to Be Shot: Public Safety, Private Guns and the Constellation of Constitutional Liberties*, 14 GEO. J. L. & PUB. POL'Y 187 (2016).

ignores these significant dangers and leaves States without the ability to address them."[23]

2. *Bruen* Is Unworkable.

Bruen requires that any modern regulation governing protected firearm-related conduct must have a "historical analogue" to be constitutional, requiring every judge to play amateur historian.[24] To determine if such a "historical analogue" exists, judges must comb through available historical records in an attempt to determine whether an analogue exists that would justify the constitutionality (or lack thereof) of a modern-day firearm law. But judges are not historians. As Justice Breyer explained,

> The Court's near-exclusive reliance on history is not only unnecessary, it is deeply impractical. It imposes a task on the lower courts that judges cannot easily accomplish. Judges understand well how to weigh a law's objectives (its "ends") against the methods used to achieve those objectives (its "means"). Judges are far less accustomed to resolving difficult historical questions. Courts are, after all, staffed by lawyers, not historians. Legal experts typically have little experience answering contested historical questions or

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[23] *Bruen*, 596 U.S. at 91 (Breyer, J., dissenting).

[24] *Id.* at 107.

> applying those answers to resolve contemporary problems.[25]

In just the few years since *Bruen* was decided, district courts confronting this difficulty have generated a significant volume of cases that higher courts reverse, in whole or in part.[26]

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[25] *Id.* (Breyer, J., dissenting).

[26] *See, e.g.*, *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422 (W.D.N.Y. 2022), aff'd in part, vacated in part by *Antonyuk v. Chiumento*, 89 F. 4th 271 (2d Cir. 2023), vacated by *Antonyuk v. James*, 144 S. Ct. 2709 (2024); *Christian v. Nigrelli*, 642 F. Supp. 3d 393 (W.D.N.Y. 2022), vacated by *Antonyuk v. James*, 144 S. Ct. 2709 (2024); *Spencer v. Nigrelli*, 648 F. Supp. 3d 451 (W.D.N.Y. 2022), vacated by *Antonyuk v. James*, 144 S. Ct. 2709 (2024); *Giambalvo v. Suffolk County, New York*, 656 F. Supp. 3d 374 (E.D.N.Y. 2023), aff'd in part, vacated in part by *Giambalvo v. Suffolk County, New York*, 155 F. 4th 163 (2d Cir. 2025); *Srour v. New York City, New York*, 699 F. Supp. 3d 258 (S.D.N.Y. 2023), vacated in part by *Srour v. New York City, New York*, 117 F. 4th 72 (2d Cir. 2024); *Springer v. Grisham*, 704 F. Supp. 3d 1206 (D.N.M. 2023), aff'd in part, rev'd in part by *Springer v. Grisham*, Nos. 23-2192 & 23-2194, 2025 WL 2793787 (10th Cir. 2025); *Ortega v. Lujan Grisham*, 741 F. Supp. 3d 1027 (D.N.M. 2024), rev'd by *Ortega v. Grisham*, 148 F. 4th 1134 (10th Cir. 2025); *Koons v. Platkin*, 673 F. Supp. 3d 515 (D.N.J. 2023), aff'd in part, vacated in part by *Koons v. Attorney General New Jersey*, 156 F. 4th 210 (3d Cir. 2025); *United States v. Daniels*, 610 F. Supp. 3d 892 (S.D. Miss. 2022), rev'd by *United States v. Daniels*, 124 F. 4th 967 (5th Cir. 2025); *United States v. Bullock*, 679 F. Supp. 3d 501 (S.D. Miss. 2023), rev'd by *United States v. Bullock*, 123 F. 4th 183 (5th Cir. 2024); *United States v. Benito*, 739 F. Supp. 3d 486 (S.D. Miss. 2024), rev'd by *United States v. Munoz Benito*, No. 24-60346, 2025 WL 1626170 (5th Cir. 2025); *United States v. Williams*, 718 F. Supp. 3d 651 (E.D. Mich. 2024), rev'd by *United States v. Williams*, No. 24-1244, 2025 WL 1089531 (6th Cir. 2025); *Reese*

Moreover, relying on the available historical record to assess today's problems impedes the government's public safety function, particularly

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v. Bureau of Alcohol Tobacco Firearms & Explosives, 647 F. Supp. 3d 508 (W.D. La. 2022), rev'd by *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F. 4th 583 (2025); *United States v. Leblanc*, 707 F. Supp. 3d 617 (M.D. La. 2023), rev'd by *United States v. Leblanc*, No. 24-30036, 2025 WL 2218881 (5th Cir. 2025); *United States v. Combs*, 654 F. Supp. 3d 612 (E.D. Ky. 2023), rev'd by *United States v. Combs*, No. 23-5121, 2024 WL 4512533 (6th Cir. 2024); *United States v. Lindsey*, 661 F. Supp. 3d 866 (S.D. Iowa 2023), vacated by *Lindsey v. United States*, 145 S. Ct. 431 (2024); *United States v. Grubb*, 699 F. Supp. 3d 747 (N.D. Iowa 2023), rev'd by *United States v. Grubb*, 135 F. 4th 604 (8th Cir. 2025); *United States v. Holden*, 638 F. Supp. 3d 931 (N.D. Ind. 2022), rev'd by *United States v. Holden*, 70 F. 4th 1015 (7th Cir. 2023); *Barnett v. Raoul*, 671 F. Supp. 3d 928 (S.D. Ill. 2023), vacated by *Bevis v. City of Naperville, Illinois*, 85 F. 4th 1175 (7th Cir. 2023); *United States v. Carbajal-Flores*, 720 F. Supp. 3d 595 (N.D. Ill. 2024), rev'd by *United States v. Carbajal-Flores*, 143 F. 4th 877 (7th Cir. 2025); *Fried v. Garland*, 640 F. Supp. 3d 1252 (N.D. Fla. 2022), vacated by *Florida Commissioner of Agriculture v. Attorney General of United States*, 148 F. 4th 1307 (11th Cir. 2025); *Rocky Mountain Gun Owners v. Polis*, 685 F. Supp. 3d 1033 (D. Colo. 2023), rev'd by *Rocky Mountain Gun Owners v. Polis*, 121 F. 4th 96 (10th Cir. 2024); *B&L Prods., Inc. v Newsom*, 700 F. Supp. 3d 894 (C.D. Cal. 2023), vacated by *B&L Prods., Inc. v. Newsom*, 104 F. 4th 108 (9th Cir. 2024); *May v. Bonta*, 709 F. Supp. 3d 940 (C.D. Cal. 2023), aff'd in part, rev'd in part by *Wolford v. Lopez*, 116 F. 4th 959 (9th Cir. 2024); *Baird v. Bonta*, 644 F. Supp. 3d 726 (E.D. Cal. 2022), rev'd by *Baird v. Bonta*, 81 F. 4th 1036 (9th Cir. 2023); *United States v. Connelly*, 668 F. Supp. 3d 662 (W.D. Tex. 2023), aff'd in part, rev'd in part by *United States v. Connelly*, 117 F. 4th 269 (5th Cir. 2024); *Duncan v. Bonta*, 695 F. Supp. 3d 1206 (S.D. Cal. 2023), rev'd by *Duncan v. Bonta*, 133 F. 4th 852 (9th Cir. 2025); *United States v. Harper*, 689 F. Supp. 3d 16 (M.D. Pa. 2023), rev'd by *United States v. Quailes*, 126 F. 4th 215 (3d Cir. 2025).

"when it comes to 'modern-day circumstances that [the Framers] could not have anticipated.'"[27] Laws that were unnecessary in the past may be needed now, as firearms have become more lethal,[28] and societal changes have made guns and gun violence far more serious problems today than in past centuries.[29]

Bruen itself acknowledges that "historical analysis can be difficult."[30] Judge Carlton Reeves aptly described the difficulty courts face when forced to rely on 18th- or 19th-century material to resolve 21st-century gun issues:

> This Court is not a trained historian. The Justices of the Supreme Court, distinguished as they may be, are not trained historians. We lack both the methodological and substantive knowledge that historians possess. . . . And we are not experts in what white, wealthy, and male property owners thought about firearms regulation in 1791. Yet we are now expected to play historian in the name of constitutional adjudication.[31]

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[27] *Bruen*, 597 U.S. at 113 (Breyer, J., dissenting) (quoting *Heller*, 554 U.S. at 721-22).

[28] *See* RANDOLPH ROTH, AMERICAN HOMICIDE 108 (2009).

[29] *See Bruen*, 597 U.S. at 113.

[30] *Id.* at 25 (brackets omitted).

[31] *United States v. Bullock*, No. 18-CR-165, 2022 WL 16649175, at *1 (S.D. Miss. Oct. 27, 2022).

3. *Bruen* Is Unclear in Practice.

Not only does *Bruen* require courts, untrained as historians, to examine regulations and laws, but its application of history also diminishes confidence in the Court. As Judge Reeves noted: "an increasingly common attack" on *Bruen* is "that the Court simply 'cherry-picked' the historical record to arrive at its ideologically-preferred outcome."[32] Largely for this reason, *Bruen* is a widely criticized decision.[33] Although *Bruen* instructs judges "to employ 'analogical reasoning,'" it fails to "provide clear guidance on how to apply such reasoning."[34] This

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[32] *Id.* at *2 (citing Mark Joseph Stern, *Clarence Thomas' Maximalist Second Amendment Ruling Is a Nightmare for Gun Control*, SLATE (June 23, 2022); *see* Saul Cornell, *Cherry-picked History and Ideology-driven Outcome:* Bruen's *originalist distortions*, SCOTUSBLOG (June 27, 2022) (referring to the Court's historical analysis as "an ideological fantasy")).

[33] Mark W. Smith, *Dangerous, but Not Unusual: Mistakes Commonly Made by Courts in Post-Bruen Litigation*, 22 GEO. J.L. & PUB. POL'Y 599 (2024) (particularly Part V: Common Mistakes Made by Lower Courts after *Heller* and *Bruen*); Frederick Schauer & Barbara A. Spellman, *Guns, Analogies, and Constitutional Interpretation Across Centuries*, 99 NOTRE DAME L. REV. 1565 (2024) (arguing that the *Bruen* court's faith in analogical reasoning is misplaced); Joseph Blocher, Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 YALE L.J. 99 (2023) (calling the caselaw following Bruen "increasingly erratic and unprincipled"); Jacob D. Charles, *The Dead Hand of A Silent Past:* Bruen*, Gun Rights, and the Shackles of History*, 73 DUKE L.J. 67 (2023) ("*Bruen* hands historical silence a megaphone to limit regulatory authority today with no real explanation as to why.").

[34] *Bruen*, 597 U.S. at 114 (Breyer, J., dissenting).

lack of clarity has already resulted in lower courts applying varying levels of generality and analogy, permitting purported historical traditions to be "cherry-picked" to justify dangerous outcomes: "post-*Bruen* cases reveal an erratic, unprincipled jurisprudence, leading courts to strike down gun laws on the basis of thin historical discussion and no meaningful explanation of historical analysis . . . the new approach has generated wildly manipulable and unpredictable case outcomes."[35]

As Justice Sotomayor explained in her concurring opinion in *United States v. Rahimi*, *Bruen*'s vagueness has already led to problematic implementation:

> This case highlights the apparent difficulty faced by judges on the ground. Make no mistake: Today's effort to clear up the "misunderst[andings]," is a tacit admission that lower courts are struggling. In my view the blame may lie with us, not with them.[36]

Even in its own application of the framework it created, the *Bruen* Court failed to use a methodology that could be followed and repeated by lower courts. Indeed, the *Bruen* Court discounted certain historical analogues and focused heavily on others

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[35] Joseph Blocher & Eric Ruben, *Originalism-By-Analogy and Second Amendment Adjudication*, 133 YALE L.J. 1, 5-6 (2023).

[36] *Rahimi*, 602 U.S. at 741 (Sotomayor, J., concurring).

while providing no uniform reasoning for how it determined what is relevant.[37]

To find the challenged statute unconstitutional, the *Bruen* Court minimized a litany of evidence supporting New York's authority to regulate the manner of public carry as a matter of public safety, ultimately holding that this historical tradition was insufficient to uphold New York's law.[38] *Bruen* itself stated that numerous courts had previously held that concealed carry regulations were permissible because firearms typically are concealed by criminals.[39] *Bruen* also notes that some courts held that concealed carry bans were constitutional.[40] The Court even acknowledged that "the majority of the 19th-century courts to consider the question held that [these] prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."[41] The Court further referenced statutes prohibiting concealed-carry of weapons, demonstrating that concealed-carry prohibitions existed at least as early as 1813 (in Kentucky) and expanded to six additional states by 1846.[42] *Bruen* also cited the Georgia Supreme Court's holding in

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[37] *Bruen*, 597 U.S. at 112 (Breyer, J., dissenting).

[38] *Id.* at 38-39 (majority opinion).

[39] *Id.* at 52-53.

[40] *Id.*

[41] *Id.* at 124-25 (Breyer, J., dissenting).

[42] *Id.* at 52.

Nunn v. State (1846), which affirmed the constitutionality of a statute that prohibited "carrying certain weapons secretly."[43] Reviewing courts upheld these prohibitions as a necessary "measure of police, prohibiting only a particular mode of bearing arms which is found dangerous to the peace of society."[44]

Despite the weight of the historical evidence to the contrary, the *Bruen* Court inexplicably ruled *against* this historical precedent. *Bruen* found that three colonial-era regulations were insufficient to show a tradition of public-carry regulation.[45] But how many colonial-era regulations would have been persuasive to the Court? How is a lower court to be guided? Similarly, *Bruen* dismissed one Texas law and two Texas court decisions as mere "outliers."[46] What makes them outliers? *Bruen* even discounted several territorial laws proffered as evidence because the laws governed small populations in territories not yet part of the Union, notwithstanding the fact that, unlike states during that time, territories conformed their laws to the Second Amendment—but the Amendment was not

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[43] *Id.* at 54 (majority opinion).

[44] *Id.* at 53.

[45] *Id.* at 46.

[46] *Id.* at 45.

incorporated until 2010.[47] Despite acknowledging the tradition reflected by all of these historical sources, *Bruen* nevertheless determined that none, either alone or in combination, were sufficient to uphold New York's challenged statute.

Instead, *Bruen* relied on only a pair of statutes from Maryland as sufficient historical analogues to allow for the designation of legislative assemblies as "sensitive places" where guns could be banned.[48] It also found that one Delaware law and one New York law combined were sufficient to justify the prohibition of arms at polling places.[49] *Bruen* does not provide any framework for reconciling why some of these laws and regulations supported a finding of a historical tradition while others did not. What is a lower court to do with this?

The Court's application of the *Bruen* test in *United States v. Rahimi*[50] only underscores that

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[47] *See* Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 UC Davis Law Review at 82 n.53 (2021) ("[T]erritorial laws would have had to be consistent with [the] Second Amendment irrespective of any interpretation of the Fourteenth Amendment and the issue of incorporation") (citing JOSEPH STORY, 3 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1319 (1833)).

[48] *Id.* at 29.

[49] *Id.*

[50] *Rahimi*, 602 U.S. 680 (noting that five Justices issued concurrences, while Justice Thomas, the author of the *Bruen* majority opinion, issued a dissent, suggesting further efforts by the Court to clarify the test's application); *See* Joshua Handell, *Bruen Discontent: The Rahimi Recalibration and its Initial*

Bruen imposes a practical challenge on lower courts and compounds their confusion.[51] In *Rahimi*, the Court upheld a statute prohibiting possession of firearms by domestic violence offenders, finding that a sufficient historical basis for the law existed under the *Bruen* test.[52] To so hold, the Court identified historical analogues for a statute regarding domestic violence from historical periods when domestic violence was not statutorily recognized as a crime, much less as a basis for restricting the possession of firearms.[53] Accordingly, the historical analogues cited in *Rahimi* consisted of surety and "going armed" laws, which generally addressed temporarily disarming dangerous individuals.[54] Far from providing additional clarity, however, these purported historical analogues only added to the confusion surrounding *Bruen*'s application, because none of the analogues was as directly on-point as the historical statutes found wanting in the *Bruen* decision.

Implementation in the Lower Courts, 72 DOJ J. Fed. L. & Prac. 3 (2024).

[51] *Rahimi* acknowledged the confusion among lower courts attempting to apply the *Bruen* test, writing: "[n]evertheless, some courts have misunderstood the methodology of our recent Second Amendment cases. These precedents were not meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 690.

[52] *Id.*

[53] *Rahimi*, 602 U.S. at 680 (Thomas, J., dissenting).

[54] *Rahimi*, 602 U.S. at 697.

II. The *Bruen* Test Should Be Replaced by Means-End Scrutiny.

This Court should overturn *Heller* and return to the construction of the Second Amendment reflected in its text and intended by the Framers: protective of participation in state militias, not private self-defense rights. But at minimum, this Court should jettison *Bruen's* rejection of means-end scrutiny.[55] *Bruen*'s history-only test is particularly ill-suited to determining which firearms laws are permissible today, where the lethality of firearms, the prevalence of gun violence, and the nature of crime and suicide are far different than in 1791 or 1868. Nor did the Framers intend that governments be shackled to the past.

A far better test would be the means-end scrutiny routinely applied by lower courts between this Court's decisions in *Heller* and *Bruen*.[56] Under that analytical framework, after determining that the regulated activity in question fell within the protection of the Second Amendment, courts then analyzed "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right."[57] Where a regulation

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[55] *Bruen*, 597 U.S. at 17.

[56] *Id.* ("In the years since [*Heller* and *McDonald*], the Courts of Appeals have coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.").

[57] *Id.* at 18.

burdened a "core" Second Amendment right—typically cabined to self-defense within the home—courts applied strict scrutiny to determine whether the law in question was "narrowly tailored" to serve a "compelling governmental interest."[58] If the regulated activity was not a "core" Second Amendment right, courts applied intermediate scrutiny to determine whether the regulation was "substantially related to the achievement of an important government interest."[59] As Justice Breyer explained, means-end scrutiny properly permitted courts "to consider the State's interest in preventing gun violence, the effectiveness of the contested law in achieving that interest, the degree to which the law burdens the Second Amendment right, and, if appropriate, any less restrictive alternatives."[60]

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[58] *Id.*

[59] *Id.* at 19 n.4 (citing *Association of N. J. Rifle & Pistol Clubs, Inc. v. Attorney General N. J.*, 910 F. 3d 106, 117 (3d Cir. 2018)); *accord Worman v. Healey*, 922 F. 3d 26, 33, 36-39 (1st Cir. 2019); *Libertarian Party of Erie Cty. v. Cuomo*, 970 F. 3d 106, 127-128 (2d Cir. 2020); *Harley v. Wilkinson*, 988 F. 3d 766, 769 (4th Cir. 2021); *Nat'l Rifle Assn. of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 194-195 (5th Cir. 2012); *United States v. Greeno*, 679 F. 3d 510, 518 (6th Cir. 2012); *Kanter v. Barr*, 919 F. 3d 437, 442 (7th Cir. 2019); *Young v. Hawaii*, 992 F. 3d 765, 783 (9th Cir. 2021) (en banc); *United States v. Reese*, 627 F. 3d 792, 800-801 (10th Cir. 2010); *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F. 3d 1244, 1260, n.34 (11th Cir. 2012); *United States v. Class*, 930 F. 3d 460, 463 (D.C. Cir. 2019).

[60] *Id.* at 130 (Breyer, J., dissenting).

That common-sense approach is especially relevant to the right to keep and bear arms, which, more than any other right, implicates an ever-evolving technological landscape with immediate and serious public safety consequences.[61] As technology advances, government regulations must continuously evolve to meet the munitions of the moment. Means-end scrutiny allows just that without overburdening protected activity.[62] In contrast, the *Bruen* test—in which the presence or absence of a historical analogue is dispositive—is ill-suited to a changing world in which government

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[61] *See* Samatha Barrera, *Unreason by Analogy: Principle over Pedanticism and the Nuanced Approach to Bruen*, 67 Ariz. L. Rev. 517 (2025) ("As courts are faced with challenges to modern firearm regulations that implicate 'unprecedented societal concerns' and 'dramatic technological changes,' it will become increasingly difficult to identify a historical analog as plainly as in *Rahimi*, and the 'nuanced approach' becomes increasingly necessary.").

[62] Means-end scrutiny of regulations implicating the Second Amendment is also consistent with the treatment of regulations impacting other rights. For example, under First Amendment jurisprudence, courts evaluating speech restrictions look to the nature of the burden imposed by the law and the nature of the speech at issue to determine whether the regulation is content-neutral. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). If the regulation at issue is content-based, it may only be justified if the government establishes that the regulation is narrowly tailored to serve compelling government interests. *Id.* If the law only incidentally burdens protected speech, it is subject to intermediate scrutiny. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642 (1997).

must balance public safety and private property rights against the right to keep and bear arms.

III. The Hawaii Statute Should Be Upheld.

A. Hawaii's Statute Survives Regardless of the Level of Scrutiny Applied.

Hawaii's "default-property rule" statute (the "Hawaii Statute") restricts individuals from carrying concealed firearms onto private property without the property owner's express permission.[63] The question of the Hawaii Statute's constitutionality exposes fault lines in this Court's recent Second Amendment jurisprudence: (1) it pits this Court's invented Second Amendment "super right" against the core right to private property upon which this country was founded; (2) it results in the possibility that property owners will inadvertently fail to exclude individuals whom they believe threaten their and their guests' safety with concealed lethal weaponry; and (3) it requires examination of the statute under the "historical analogue" test that allows for results-driven, cherry-picked rationales that cannot be followed by lower courts. These problems are alleviated if the Court evaluates the statute using means-end analysis. The Court should examine the Hawaii Statute under an intermediate scrutiny standard and find it constitutional. But, even if the Court were to apply

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[63] Haw. Rev. Stat. § 134-9.5.

a strict scrutiny standard, the Hawaii Statute still would survive constitutional challenge.

As explained above, before *Bruen*, the Courts of Appeals applied intermediate scrutiny to regulations touching upon the Second Amendment where those regulations did not overburden a "core" Second Amendment right. Typically, courts considered the "core" Second Amendment right to involve "defense of hearth and home."[64] The challenged Hawaii Statute does not burden this core Second Amendment right: it applies specifically to private property owned by others.[65] Accordingly, in a means-end scrutiny regime, the Hawaii Statute should be evaluated under intermediate scrutiny.[66]

Intermediate scrutiny requires only that the regulation serve a "significant, substantial, or important" government objective and that the challenged law demonstrate a "reasonable fit" with

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[64] *Young v. Hawaii*, 992 F.3d 765, 813 (9th Cir. 2021), *vacated* 142 S. Ct. 2895 (2022) (citing *Heller*, 554 U.S. at 635, 128 S. Ct. at 2783); *see also Duncan v. Bonta*, 19 F.4th 1087, 1103 (9th Cir. 2021) (describing "the core Second Amendment right of self-defense in the home").

[65] Haw. Rev. Stat. § 134-9.5(a) ("A person carrying a firearm pursuant to a license. . . shall not intentionally, knowingly, or recklessly ***enter or remain on private property of another person*** while carrying a loaded or unloaded firearm . . . unless the person has been given express authorization to carry a firearm on the property by the owner, lessee, operator, or manager of the property") (emphasis added).

[66] *See Young*, 992 F.3d at 784 (intermediate scrutiny applies to "cases in which Second Amendment rights are affected in some lesser way").

that objective.[67] Ample authority provides that the aim of mitigating gun violence is "undoubtedly" an important government interest.[68] The same is true of the government aim of vindicating private property rights.[69] To demonstrate a reasonable fit with those important government objectives, the Hawaii Statute "need not utilize the least restrictive means" of promoting the interest, which otherwise "would be achieved less effectively."[70] The Hawaii Statute at issue is a reasonable fit for both objectives: it allows private property owners to determine the limits of the conduct they will tolerate on their property by simply requiring that a gun owner seek and receive permission to carry a gun on that property.[71] The statute does not require

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[67] *Duncan*, 19 F.4th at 1108.

[68] *Id.*; *see also, e.g., Worman v. Healey*, 922 F.3d 26, 39 (1st Cir. 2019) ("[F]ew interests are more central to a state government than protecting the safety and well-being of its citizens"); *Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017) (acknowledging parties' agreement that the state "has a compelling interest in protecting the public"); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 261 (2nd Cir. 2015) ("It is beyond cavil that . . . states have substantial, indeed compelling, governmental interests in public safety and crime prevention.").

[69] *See Jobe v. City of Catlettsburg*, 409 F.3d 261, 268 (6th Cir. 2005) ("Allowing individuals to decide for themselves how, when or whether their private property is used. . . is a legitimate, if not compelling, government interest.") (citing *Lloyd Corp. v. Tanner*, 407 U.S. 551, 570 (1972) ("[T]he Fifth and Fourteenth Amendment rights of private property owners . . . must be respected and protected.").

[70] *U.S. v. Torres*, 911 F.3d 1253, 1263 (9th Cir. 2019).

[71] Haw. Rev. Stat. § 134-9.5(a).

permission in any special or burdensome form: it may be written, oral, or posted.[72] Any burden on gun owners imposed by the Hawaii Statute is therefore relatively *de minimis* and is a reasonable fit to the government interests underlying the regulation.

The same rationale supports the Hawaii Statute even if evaluated under a strict scrutiny standard: the government's compelling interests in safety and enforcing private property rights are served by the narrowly tailored statute, which allows property owners to assert for themselves their own limitations on gun use on their properties and to do so in the most convenient and effective way available to them.

B. Property Rights Must Be Balanced Against the Second Amendment.

Means-end scrutiny is effective, in part, because it permits this Court to balance the Second Amendment protection against governmental interests, including the "sacred" right to private property.[73]

The Second Amendment recognized in *Heller* is a strong right, but it is not so strong as to remove all considerations for other fundamental rights. "An individual's right to bear arms as enshrined in the Second Amendment, whatever its full scope, certainly must be limited by the equally

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[72] *Id.*

[73] *Wilkinson v. Leland*, 27 U.S. 627, 657 (1829).

fundamental right of a private property owner to exercise exclusive dominion and control over its land."[74] And, as the Ninth Circuit properly recognized, the right of a private property owner to exclude others from their land, including those bearing arms, is universally held to be a fundamental element of the property right.[75] Moreover, the "safety of the people is the supreme law,"[76] and there is no stronger rationale than safety for allowing property owners the right to exclude guns from their property. To ensure that the private property right is itself protected, protection granted pursuant to the Second Amendment must be flexible. Further, because human life is at stake in any regulation involving firearms, "the law requires the highest degree of care …. In all cases of doubt the safest course should be pursued remembering that it is infinitely better to do too much than run the risk of doing too little."[77]

Where *Heller* and *Bruen* had to strain to find evidence of a private right to possess guns for self-defense, the fundamental right of a private property owner to exclude is backed by an extensive record of history and tradition. Historically, there is considerable evidence that the Founders viewed the

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[74] *Georgiacarry.Org Inc. v. State*, 764 F. Supp.2d 1306 (M.D. Ga. 2011).

[75] *Wolford v. Lopez*, 116 F.4th 959, 994 (9th Cir. 2024), *cert. granted in part,* No. 24-1046, 2025 WL 2808808 (U.S. Oct. 3, 2025).

[76] *Seavey v. Preble*, 64 Me. 120, 121 (Me. 1874).

[77] *Id.* at 122.

protection of property as vital to a civil society. This concept was memorialized in the Virginia Declaration of Rights, wherein George Mason wrote:

> All men have certain inherent natural rights of which they cannot, by any compact, deprive or divest their posterity, among which are the enjoyment of life and liberty, *with the means of acquiring and possessing property*, and pursuing and obtaining happiness and safety.[78]

The Framers later recognized these rights,[79] which formed the basis for the Fourth Amendment. Indeed, "the right to exclude is the first right to emerge in primitive property rights systems."[80] Similarly, the Fourth Amendment

> provides strong historical support that the right to exclude was historically an *in rem* property right designed to protect rights not only in property, but also in privacy . . . .

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[78] Virginia Declaration of Rights of 1776 (emphasis added); *see also* Arthur Lee, *An Appeal to the Justice and Interests of the People of Great Britain, in the Present Disputes with America* 29 (1775) ("The right of property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty.").

[79] *See, e.g.*, Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* 17 (1985) ("The classical liberal tradition of the founding generation prized the protection of liberty and private property under a system of limited government.").

[80] Thomas W. Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 745 (1998).

> Thus, historically, in order to violate the Fourth Amendment there needed to be some sort of physical intrusion or trespass by the government on property belonging to another. . . . The use of trespass as the driving force behind Fourth Amendment protection is clearly evidenced throughout the Fourth Amendment's doctrinal history.[81]

The right of private property owners to exclude from their premises, including those who possess firearms, is rooted in American tradition and enshrined in the country's foundational principles. Indeed, these concepts predate the adoption of the Second Amendment. There is, therefore, no principled basis in constitutional law to subordinate those fundamental property rights to the Second Amendment.

IV. There Is a Global Impact Felt on Private Property Open to the Public.

In 2023, 46,728 people died from gun violence in the United States.[82] That number does not take into account the number of people who were shot and injured, shot at but not injured, or witness to gun

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[81] Jace C. Gatewood, *The Evolution of the Right to Exclude – more than a Property Right, a Privacy Right*, 32 Miss. C. L. Rev. 447, 454 (2013-2014).

[82] Rose Kim *et al.*, *Gun Violence in the United States 2023: Examining the Gun Suicide Epidemic*, Johns Hopkins Bloomberg School of Public Health (June 2025).

violence.[83] Firearms are the leading cause of death for American young people aged 1 to 17.[84]

Gun violence in America does not take place only in publicly owned spaces; rather, it often occurs on private property open to the public, including grocery stores, restaurants, and nightclubs. And in this globalized society, the impact of national shootings is not constrained to domestic residents. Increasingly, foreign nationals are victims of these attacks, too.

The 2016 shooting at Pulse nightclub saw Dominican and Mexican nationals among the forty-nine lives lost.[85] In 2019 in El Paso, Texas, there was a mass shooting at a Walmart that left twenty-three people dead, eight of them Mexican and one German; the gunman admitted to officers that he had specifically been targeting Mexican people and had released a manifesto claiming his attack was meant to stop "the Hispanic invasion of Texas."[86] In

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[83] *Id.*

[84] *Id.*

[85] Nick Madigan, Benjamin Mueller & Sheryl Gay Stolberg, *49 Lives Lost to Horror in Orlando: Mostly Young, Gay and Latino*, N.Y. TIMES (June 13, 2016) https://www.nytimes.com/2016/06/14/us/orlando-shooting-victims-updates.html.

[86] Tim Archuleta, *El Paso Walmart Mass Shooting: 6 Minutes of Horror; Racist Motives and 23 Lives Lost*, EL PASO TIMES (Apr. 20, 2025, 6:32 A.M.) https://www.elpasotimes.com/story/news/local/community/2025/04/20/el-paso-walmart-mass-shooting-horror-racist-motive-23-lives-lost/83136451007/.

2021, shootings occurred at several spas around Atlanta, Georgia, killing eight people, including Chinese, Guatemalan, and South Korean victims.[87] In 2023, a white supremacist committed a mass shooting at a mall in Allen, Texas, that killed eight, including Indian and Venezuelan nationals.[88] These shootings are not isolated incidents but part of a broader pattern in which foreign nationals have been killed alongside Americans. U.S. gun violence reverberates far beyond our borders, leaving families and communities worldwide to bear the consequences. America's longstanding commitment to international human rights obliges us to take this issue seriously. By acting now, and by at least allowing individual states to act, we can enact measures that strengthen public safety for everyone on U.S. soil—protecting not only American citizens, but also the foreign nationals who visit, live, and work in our communities. Upholding these principles is both a legal responsibility and a reflection of our national values.

The Hawaii Statute should be upheld because it imposes a narrow, constitutionally valid restriction on firearm users and empowers property owners to protect their occupants and guests from the ever-

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[87] *Atlanta Spa Shootings: Who Are the Victims?* BBC (Mar. 22, 2021) https://www.bbc.com/news/world-us-canada-56446771.

[88] Ashley A. Mattheis et al., *The Allen, Texas, Attack: Ideological Fuzziness and the Contemporary Nature of Far-Right Violence*, COMBATING TERRORISM CENTER (June 2023) https://ctc.westpoint.edu/the-allen-texas-attack-ideological-fuzziness-and-the-contemporary-nature-of-far-right-violence/?utm_source.

more-frequent and ever-more-lethal gun violence plaguing the United States.

Conclusion

This Court should overturn *Heller* and *Bruen* or, at minimum, return to applying means-end scrutiny in Second Amendment cases. In the present case, the Court should assess the Hawaii Statute through an intermediate scrutiny lens. If the Court believes that strict scrutiny is the appropriate test, the Hawaii Statute still should be upheld.

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