No. 24-1185

IN THE
SUPREME COURT OF THE UNITED STATES

NATIONAL RIFLE ASSOCIATION OF AMERICA, INCORPORATED,

Petitioner,

v.

MARK GLASS, Commissioner of the Florida Department of Law Enforcement,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF *AMICUS CURIAE* THE SECOND AMENDMENT FOUNDATION IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Second Amendment Foundation ("SAF"), is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every State of the Union, including Florida. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. *Amicus Curiae* has an intense interest in this case because FLA. STAT. § 790.065 ("the age ban") prevents many law-abiding adult members of SAF from exercising their fundamental constitutional right to keep and bear arms in a manner that does not comport with "the Second Amendment's text, as informed by history." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 2 (2022).

SUMMARY OF ARGUMENT

The Eleventh Circuit relied on the voidability rule as historical evidence in support of its holding that a Florida Statute banning the sale of firearms to adults younger than twenty-one (the "age ban") was constitutionally permissible. However, because firearms were widely regarded as "necessaries" during the Founding Era, and were therefore exempt, the

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[1] No counsel for any party authored the brief in whole or in part. Only *amicus curiae* funded its preparation and submission. All parties received timely notice of this submission.

voidability rule cannot provide support for a modern firearm ban.

Review of "founding-era historical precedent," *District of Columbia v. Heller*, 554 U.S. 570, 631 (2008) reveals that the age ban lacks *any* "well-established and representative historical *analogue*" from the Founding Era or prior. *Bruen*, 597 U.S. 1 (emphasis in original). To the extent any laws adopted during or immediately leading up to the Founding prevented purchase of firearms by individuals younger than the age of majority, these laws only allowed for a minor to rescind the contract if the firearm was not a "necessary."

This brief explores the contractual common law during the Founding Era and explains why the voidability rule is not analogous to the age ban. Since firearms in general were basic necessities for early American family life, the voidability rule did not enjoin minors from entering into contracts for their purchase. To the extent the voidability rule applied to contracts involving firearms, it only limited the minor's liability for non-necessary goods that were purchased on credit, assuming the minor was willing to return the goods and rescinded the contract before they reached the age of majority. *Supra,* § II(A). And so, the voidability rule is not part of "this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 18. Accordingly, the age ban violates the Second Amendment right of the people to keep and bear arms as set forth in *Heller*, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Bruen*.

ARGUMENT

I. The Proper Framework For Assessing the Age Ban

A. The Proper Standards

"*Heller* . . . demands a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 2. Consistent with this demand, and because "the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms," *Heller*, 554 U.S. at 582,"the government must affirmatively prove that its firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19. To carry its burden, the government must point to "historical precedent . . . [that] evinces a comparable tradition of regulation." *Id.* at 2131-32 (internal quotation marks omitted).

The government need not identify a "historical *twin*"; rather, a "well-established and representative historical *analogue*" suffices. *Bruen*, 597 U.S. at 30 (emphasis in original). In *Bruen*, this Court identified two metrics for comparison of analogues proffered by the government against the challenged law: "*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* (citing *McDonald*, 561 U.S. at 767, and *Heller*, 544 U.S. at 599) (emphasis added). "[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably

justified are central considerations when engaging in an analogical inquiry." *Id.* (internal quotation marks and emphasis omitted). The key question is whether the challenged law and proffered analogue are at least "relevantly similar." *Bruen*, 597 U.S. at 29.

Here, the relevant questions are how the age ban burdens the right to armed self-defense, why it burdens that right, and whether it is relevantly similar to any historical analogue. The necessities exception to the common law voidability doctrine, coupled with historical information relating to firearms possession during the Founding Era, is instructive in answering these questions.

B. The Proper Timeframe for Historical Support

Beyond identification of appropriate analogues, it is also imperative that this Court look to the proper historical period to ascertain what similar laws, or historical analogues, were in existence that the Government may rely upon to justify the age ban. The Founding Era is the proper historical period for the *Bruen* analysis. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Bruen*, 142. S. Ct. at 2136 (quoting *Heller*, 554 U.S. at 634-35) (emphasis added). The Second Amendment was adopted in 1791. This Court has explained that 1791 is the controlling time for interpreting the Second Amendment. *See*, *e.g.*, *Heller*, 554 U.S. at 625 (concluding with "our adoption of the original understanding of the Second

Amendment"); *Gamble v. United States*, 139 S. Ct. 1960, 1975-76 (2019) (explaining *Heller* sought to determine "the public understanding in 1791 of the right codified by the Second Amendment"); *Bruen*, 597 U.S. at 28 (Second Amendment's "meaning is fixed according to the understandings of those who ratified it").

The government may prefer that this Court look to the ratification of the Fourteenth Amendment in 1868, or some or all of the rest of the 19th century, as the controlling time for interpretations of the relevant history. But that is improper because "when it comes to interpreting the Constitution, *not all history is created equal*." *Bruen*, 597 U.S. at 4 (emphasis added). Therefore, this Court has "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."[2] *Id.*

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[2] In *Bruen*, this Court acknowledged "an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868" or when the Second Amendment was adopted in 1791. 597 U.S. at 38. But the Court, importantly, did not question its own precedent that adopted the "original understanding of the Second Amendment, *Heller*, 554 U.S.at 625, and "the public understanding in 1791 of the right codified by the Second Amendment," *Gamble*, 139 S. Ct. at 1975; *see also* Mark W. Smith, *Attention Originalists: The Second Amendment was adopted in 1791, not 1868*, HARV. J. L. & PUB. POL'Y PER CURIAM (Dec. 7, 2022).

Here, since the "necessaries" exception to the voidability rule was extensively applied by Courts during the Founding Era, they fall within the appropriate time period under the *Bruen* analysis.

II. Because Firearms Were "Necessaries" in the Founding Era, They Were Exempt From the Voidability Rule

A. The Voidability Rule and the Necessaries Exception

The age-old contractual voidability rule allows a child to void certain contracts made before they reach the age of majority. *See* 5 RICHARD A. LORD, WILLISTON ON CONTRACTS § 9:1, at 2 (4th ed. 2009) ("Formation of contracts requires that the contracting parties have the capacity to do so, and this capacity is presumed "unless he falls within one of the classes of persons who are held by the law to have no capacity, or only a limited capacity to contract. Infants comprise one of these classes."). Critically, minors were not permitted to disaffirm contracts for necessities. *Id., see also Rainwater vs. Durham*, 2 Nott & McCord, 524. ("An infant, (says Judge Brevard, in the case of *Bouchell vs. Clary*, at Columbia, 1815) may bind himself, or contract for necessary meat, drink, apparel, physic, schooling, and the like; suitable to the circumstances and situation of the infant in life, *and the society in which he moves.* The articles in such case, ought to appear to be *necessary for him*, and plainly and clearly so, and to be furnished at reasonable prices.")(emphasis in original); *O'Leary*

Estate, 256, 42 A. 2d 624 (1945) ("Of course, it is hornbook law that, generally, save as to necessaries, the contract of a minor is voidable."); William Blackstone, *Commentaries on the Laws of England: in Four Books*, 3rd ed., (Chicago Callaghan and Co. ed. 1884 at 767 (available at https://repository.law.umich.edu/books/97) ("an infant can owe nothing but for necessaries").

Scholars agree that "society wants to allow minors to obtain items necessary for their survival by assuring merchants that minors' contracts for necessities will be binding." Juanda Lowder Daniel, *Virtually Mature: Examining the Policy of Minors' Incapacity to Contract Through the Cyberscope*, 43 GONZ. L. REV. 239, 255 (2008) (*citing* E. ALLAN FARNSWORTH, CONTRACTS § 4.5 (4th ed. 2004)). The determination of "necessary" status is based on the need of the infant at the time of contracting, rather than on the nature of the item contracted for. RICHARD A. LORD, 5 WILLISTON ON CONTRACTS § 9:21 (4th ed. 2010) . The ability to purchase by an agreement to pay in the future was binding so long as one "needed" the item that was purchased: "[i]f an infant at the years of discretion make a bond for his necessary meat and drink, or for his necessary apparel, or his schooling, he shall not avoid the same." Usually only the child could avoid the promise, and only within a narrow window. Some scholars recognized an exception to the voidability rule "when exchange was immediate" and also when the contract was "for necessities." Holly Brewer, BY BIRTH OR CONSENT: CHILDREN, LAW, AND

THE ANGLO-AMERICAN REVOLUTION IN AUTHORITY 241 (1964).

Founding Era legal commentators observed that "no one but the infant himself, or his legal representatives, can avoid his voidable deed or contract; for while living, *he ought to be the exclusive judge of the propriety of the exercise of a personal privilege intended for his benefit*; and when dead, those alone should interfere who legally represent him." James Kent, COMMENTARIES ON AMERICAN LAW Lect. 31 (1826-30) (citing *Keane v. Boycott*, 2 H. Blacks. 511; *Van Bramer v. Cooper,* 2 Johns. Rep. 279; *Jackson v. Todd* 6 *ibid*. 257; *Oliver v. Houdlet* 13 Mass. Rep. 237; *Roberts v. Wiggin* 1 N.H. Rep. 73.) (emphasis added).

As the vagueness of the term implies, "necessities" could have meant both everything and nothing, depending on the judge, jury, and circumstances of the contract. P.S. Atiyah, THE RISE AND FALL OF FREEDOM OF CONTRACT 183 (Oxford, 1979) (Describing the "reasonably free hand" that courts had to determine whether goods were necessaries.). But, over time, the term began to include less. Blackstone and Coke defined necessaries to include "meat, drink, apparel, necessary physic, and other such necessaries, and likewise… good Teaching and Instruction." THE AMERICAN DIGEST: A COMPLETE DIGEST OF ALL REPORTED AMERICAN CASES FROM THE EARLIEST TIMES TO 1896, (century ed. 1897-1904), 1136. In a widely reported 1793 English decision. Chief Justice Lloyd Kenyon ruled that "a

captive in the army being underage is liable to pay for a library ordered for his servant, *as necessaries* but not for cockades ordered for the soldiers of his company." Kenyon's opinion illustrates the breadth of what could be deemed "necessary" depending on an individual's responsibilities and status.

"An infant may contract for necessaries, *convenientia*; though they are not necessary *quod effe,* yet that for such provision he shall be chargeable." St-John Baker, THE INFANTS' LAWYER (2d. ed. 1712). "Among those articles not adjudged necessaries in ordinary cases are articles of mere luxury for the infant himself, or for the entertainment of his friends, horses and grain or harness for them, unless necessary in carrying on his business, loans of money, liquor, etc." Clayton Isaac Miller, CONTRACTS OF INFANTS 12 (Cornell Law School 1892). (internal citations omitted). The voidability rule afforded sole discretion over whether to exercise the privilege of voiding a contract *to minors*, not to adults over twenty-one, and so it should not be contorted to provide analogous support for the restriction of the rights of young adults today.

B. Judicial and Legislative Authority Recognized the Necessity of Firearms

Firearms are squarely within the definition of "necessaries" exempt from the voidability rule during the Founding Era. As set forth in *Peters v Fleming*, determining what was "necessary" was a "question of circumstances—not only of age but also of station in life." 6 M. & W. 42 (Ex. 1839). "From the landing of the Pilgrims in 1620 until the last Indian menace on the Kansas frontier in 1885, the rifle over the fireplace and the shotgun behind the door were *imperatively necessary* utensils of every rural American household. And it was just as imperative that the members of such household, old and young, should know how to handle them. And it was almost equally true that, unless a man were trained in the use of the rifle and shotgun in his boyhood, he seldom learned to use them." *Parman v. Lemmon*, 244 P. 227 (Kan. 1925) (Dawson, J., dissenting), *dissent adopted on rehearing, Parman v. Lemmon*, 224 P. 232 (1926) (emphasis added)(overturning statute that prohibited furnishing a pistol, revolver, or other weapon to a minor). Indeed, the 1606 Virginia Charter gave settlers the perpetual right to import "the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said Apparel, Food, Defence or otherwise." 7 Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America 3783, 3786 (Francis Newton Thorpe ed., 1909).

As pointed out by petitioner, a 1786 Massachusetts Law barred local officials from taking "any person's arms or household utensils, necessary for upholding life" pursuant to a debt collection warrant. Pet. at 33 (citing Act of Feb. 16, 1786, 1785 Mass. Acts 510, 516); *see also* THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 537 (J. Hammond Trumbull ed., 1850) (Code of 1650) (similar law in Connecticut); 30 ARCHIVES OF MARYLAND 277, 280 (William Hand Browne ed., 1910) (Act of 1715) (similar law in Maryland); 1723 Va. Stat. 121 (similar law in Virginia). This "necessaries" sentiment was reiterated in *Crocker v. Spencer*, where the court found that "tools, arms, or articles of household furniture" were "necessary articles of household furniture for the upholding of life" exempt from bankruptcy-related seizures. 2 D. Chip. 68 (1824).

In Virginia, all free males between sixteen and sixty years of age were required by law to provide themselves with arms, powder, and shot. The act requiring this provision specified that the arms and ammunition were exempt from impressment, "distresse, seizure, attachment or execution." Anna L. Hawley, THE MEANING OF ABSENCE: HOUSEHOLD INVENTORIES IN SURRY COUNTY, VIRGINIA, 1690-1715, in EARLY AMERICAN PROBATE INVENTORIES, at 27-28 (Peter Benes ed., 1987). It was "the duty of all persons (except women, decrepit persons, and infants under fifteen) to aid and assist the peace officers to suppress riots & c. when called upon to do it. *They may take with them such weapons as are necessary to enable them effectually to do it.*" John Adams, 3 LEGAL

PAPERS OF JOHN ADAMS 5 at 285 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).

In some instances, military uniforms were considered "necessities" for those not enlisted in the armed forces. *See, e.g., Coates v Wilson* (1804) 5 Esp. 152; 170 ER 769 (military uniforms for a volunteer corps were necessary as a consequence of the number of men who had enlisted for military service at the time). In this case, the court emphasized that "it was only right that in these perilous times, an infant ought to be able to contract for clothing which was essential for duties undertaken for defence of the country. *Id.* (cleaned up).

And so, firearms in the founding era were necessary *de bene effe*, and therefore were exempt from the voidability rule. *Pickering and Gunning,* 1 Inst. 172. Palm. 528.

C. Unofficial Records Confirm that Firearms Were Pervasive in Founding Era American Culture

The historical record also confirms that firearms were as much a part of Founding Era American Culture as they are today. On July 8, 1775, the Continental Congress warned King George III that the Americans' superiority with arms, *due to their training beginning in childhood*, would make them a formidable foe: "Men trained to Arms from their Infancy, and animated by the Love of Liberty, will afford neither a cheap or easy Conquest." 1

JOURNALS OF THE AM. CONGRESS FROM 1774-1788, at 106-11 (adopted July 8, 1775) (1823) (emphasis added). Countless letters warned the British of the American advantage due to its citizenry's "use of firearms almost from the cradle." MOSES COIT TYLER, THE LITERARY HISTORY OF THE AMERICAN REVOLUTION, 1763–1776, at 484 (1898). David Ramsay, a legislator from South Carolina and delegate to the Continental Congress, pointed out that Americans were "from their youth familiar with these instruments." *Id.* Still other sources attributed American successes during the Revolutionary War to the fact that every soldier was "intimate with his gun from his infancy." 1 THE WORKS OF THOMAS JEFFERSON 208 (H. A. Washington ed., 1884).

Additionally, probate records reflect that most recorded estates from the Founding Era included at least one firearm. (63% of estates containing firearms). James Lindgren and Justin L. Heather, *Counting Guns in Early America,* 43 WM. & MARY L. REV. 1777, 1801 (2002). Due to manufacturing costs, only the richest individuals at the time were able to own more than one firearm, much less multiple new firearms. Instead, probate records reflect that most people passed firearms down from generation to generation. Firearms were more common in estates than copies of the Bible (32%) and edged weapons (30%). *Id.* Guns were next in importance after beds, cooking utensils, and pewter—outranking chairs and books. *Id.* at 1837. Firearms were "highly desired and important part[s] of the culture of the day." *Id.* at 1838. Indeed, "if guns were merely a luxury or a

relatively useless tool, one would not expect to find roughly as many or more guns than chairs, but that is precisely what those of us who count items in probate inventories find. Further, if guns were not useful, one might expect to find most guns listed as old or in poor working condition, but fully 87-91% of gun estates in the three databases we examined at length here listed at least one gun that was not pejoratively described as old or broken." *Id.*

By law, "no person under 18 years [was] capable of disposing of his chattels by will." Henning, William Waller, THE NEW VIRGINIA JUSTICE: COMPRISING THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE, IN THE COMMONWEALTH OF VIRGINIA 262 (1795). Since an estimated 50-79%[3] of itemized male estates from the Founding Era contained firearms, it follows that young adults acquired these items from their forefathers, and may have passed them down to their own descendants, all before turning twenty-one.

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[3] This estimate may be lower than the actual value, since "appraisers in Surry County may have selectively omitted the guns of poor men from their inventories so that their heirs could meet their civic responsibility." Anna L. Hawley, *The Meaning of Absence: Household Inventories in Surry County, Virginia*, 1690-1715, in EARLY AMERICAN PROBATE INVENTORIES, at 27-28 (Peter Benes ed., 1987).

D. Later Acknowledgement of Firearms as "Necessaries"

Although not binding, it is informative that courts acknowledged that firearms were an exception to the voidability rule outside of the Founding Era. In 1851, the Supreme Court of Vermont held that "the infant should be enabled to pledge his credit for necessaries to any extent, consistent with his *perfect safety*." *Bradley v. Pratt*, 23 Vt. 378, 384 (1851) (emphasis added). Additionally, in 1847, Virginia courts held that:

> [t]he capacity of all citizens or subjects able to bear arms to bind themselves to do so by voluntary enlistment, is in itself a high rule of the public law, to which the artificial and arbitrary rule of the municipal law forms no exception. The rule of the public law is subject to but two conditions, the ability of the party to carry arms, and his consent to do so; and these conditions may exist in as full force at the age of eighteen as at the age of twenty-one. The party is subject to no incapacity by any arbitrary rule in regard to discretion; and there is but little room for discretion when he is in the line of his allegiance and public duty."

United States v. Blakeney, 44 Va. (3 Gratt.) 405, 418 (1847). In that case, the court held that the

contract was valid, since Blakeney, a 19-year-old adult, had the mental and physical capacity to bear arms. *Id.*

Most recently, this Court offered a list of longstanding firearms regulations that were presumptively lawful. *Heller*, 554 U.S. at 627. Age restrictions were not on the list. *Id.*; *see also Worth v. Jacobson*, 108 F.4th 677, 698 (8th Cir. 2024), *cert. denied*, No. 24-782, 2025 WL 1151242 (U.S. Apr. 21, 2025). *Heller* gave further detail, with the observation that 'the people' "unambiguously refers to all members of the political community, not an unspecified subset. *Id.* at 579-80 (*citing United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) ("'the people' seems to have been a term of art employed in select parts of the Constitution. Its uses suggest that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community") (cleaned up).

III. Founding Era Statutes Regulating the Use of Firearms by Minors

Rather than preventing minor access to firearms, Founding Era statutes confirm that minors and individuals above the age of majority were *identically* regulated. For example, Delaware state

law prohibited discharging firearms "within the towns and villages, and other public places" of the state, and extended its prohibition to any "child or children" that broke the law. 195 DEL. LAWS 522 § 2 (1812). New York City had a similar law restricting discharging firearms "at any Mark, or at Random, against any Fence, Pales or other Place in any Street, Lane or Alley, or within any Orchard, Garden or other Inclosure [sic], or in any Place where Persons frequent to walk;" on pain of fines. N.Y.C., N.Y., ORDINANCES § VI (1763). The New York City statute applied equally to "Children, Youth, Apprentices, Servants, or other Persons." *Id.* Further, South Carolina law prohibited firing of arms in Columbia, noting that if such illegal firing were committed "by minors or other disorderly persons, who have no ostensible property," the guns in question could be seized. COLUMBIA, S.C., Ordinances No. 41 (1823).

Since Colonies and States in the Founding Era regulated the use and acquisition of firearms without discriminating on the basis of age, "[t]he right of the whole people, *old and young,* men, *women and boys,* and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State." *Heller*, 554 U.S. at 583 (emphasis in original).

In capsule form, Founding Era judicial, legislative, and probate records confirm that Second Amendment rights extend to individuals younger than twenty-one years old. Notwithstanding the fact that "for political rights, the Twenty-Sixth Amendment sets the age of majority at age 18," firearms are "necessaries" exempt from the voidability rule. *Worth v. Jacobson*, 108 F.4th 677, 692 (8th Cir. 2024); U.S. CONST. amend. XXVI. And so, this rule is not a proper analogue to the age ban at issue in this case.

CONCLUSION

Because Founding Era precedent, statutes, and probate records all confirm that firearms were considered "necessaries" exempt from the voidability rule, the rule does not provide historical support for a contemporary firearm purchase ban.

Accordingly, the Court should grant certiorari and reverse the decision below.

Dated: June 20, 2025

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