No. 24-1185

In the Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.,
Petitioner,
v.
MARK GLASS, in his Official Capacity as Commissioner of the Florida Department of Law Enforcement,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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August 20, 2025

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QUESTION PRESENTED

Whether Florida Statute § 790.065(13) violates the Second Amendment by restricting individuals 18-to-20 years old—legal adults under state law—from purchasing firearms.

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STATEMENT

1. In 2018, the Florida legislature passed the Marjory Stoneman Douglas High School Public Safety Act, which prohibits a group of legal adults—persons age 18-to-20—from "purchas[ing] a firearm" as well as licensed dealers from selling or transferring a firearm to them. Fla. Stat. § 790.065(13). It is a third-degree felony to violate the law, punishable by up to five years in prison and a fine not to exceed $5,000. *Id.* Section 790.065(13) does not prohibit 18-to-20-year-olds from possessing firearms and exempts purchase of a rifle or shotgun by a law-enforcement officer, correctional officer, or a military servicemember who is under the age of 21. *Id.*

2. Shortly after the law's enactment, the National Rifle Association and a number of regulated individuals sued the Commissioner of the Florida Department of Law Enforcement and the Attorney General of Florida in the Northern District of Florida, claiming that Section 790.065(13) is facially unconstitutional under the Second Amendment. The district court dismissed the Attorney General as an improper defendant and granted summary judgment for the Commissioner, holding that the statute was constitutional.

Plaintiffs appealed and the Eleventh Circuit affirmed. Relying in large part on *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the panel determined that Florida's law is consistent with the Nation's historical tradition of regulating firearms for 18-to-20-year-olds. Pet. App. 174a. In *Bruen*, this Court held that a firearm regulation is constitutional if the government can show that its modern restriction is "consistent with the Second Amendment's

text and historical understanding." 597 U.S. at 26. To do so, the government must identify a historical restriction that is "analogous enough" to the modern restriction "to pass constitutional muster." *Id.* at 30.

In upholding Florida's purchase ban, the Eleventh Circuit panel began by concluding that the government must identify historical analogues from the time of the Fourteenth Amendment's ratification—rather than the Founding—because laws from that period are "more probative" of how States understood the Second Amendment. Pet. App. 178a. The panel found that the regulatory tradition at or around 1868 supported Florida's law. In particular, the panel emphasized that, like Section 790.065(13), laws in three states—Alabama, Tennessee, and Kentucky—prohibited 18-to-20-year-olds from purchasing firearms as early as twelve years before ratification. *Id.* at 186a. And those States did so to "enhanc[e] public safety," much like Section 790.065(13). *Id.* at 189a. The panel further cited a collection of sources from that era, including public university rules prohibiting students from possessing firearms on campus from the early nineteenth century; 19 state restrictions prohibiting 18-to-20-year-olds from purchasing firearms between ratification and the end of the nineteenth century; Reconstruction-era newspapers reporting the public's belief that Second Amendment protections did not extend to the right of persons aged 18-to-20 years old to purchase firearms; a court decision from the late nineteenth century upholding a State's restriction on the sale of firearms to minors; and the writings of contemporaneous legal commentators who regarded such age restrictions as constitutional. *Id.* at 189a–197a.

Plaintiffs petitioned for rehearing en banc. The Eleventh Circuit granted rehearing but postponed en banc briefing until after this Court decided *United States v. Rahimi*, 602 U.S. 680 (2024). This Court decided *Rahimi* in 2024, holding that laws disarming those who "pose a credible threat to the physical safety of others" are consistent with the Second Amendment because of the "ample" Founding-era analogues, such as surety and affray laws. *Id.* at 693, 695–98. Accordingly, a federal statute prohibiting a person subject to a domestic-violence restraining order from possessing a firearm was constitutional. *Id.* at 684–85.

3. The en banc Eleventh Circuit, divided 8-4, likewise affirmed, this time upholding Section 790.065(13)'s purchase prohibition because it falls within the scope of the right to bear arms as the public understood that right "when the Bill of Rights was adopted in 1791." Pet. App. 11a. That is so, the majority reasoned, because lawmakers at the Founding had determined that persons under the age of 21 were not legal adults: they "lacked the reason and judgment necessary to be trusted with legal rights[,]" and, as most relevant here, "generally lacked the capacity to contract" to purchase non-necessary goods such as firearms on credit. *Id.* at 15a, 17a. From that common-law rule the majority concluded that, as a practical matter, minors at the time could not purchase firearms; they instead had to rely on their parents to provide them with arms. *Id.* at 17a–18a. Further supporting this inference, the majority pointed to Founding-era evidence that includes a few state militia laws exempting minors from the requirement to muster with firearms and directing parents to provide firearms to

minors serving in the militia, as well as two university regulations prohibiting students from accessing firearms. *Id.* at 19a–23a.

There were multiple dissenting opinions. Judge Brasher, joined by three other judges, stressed that "nothing" in the Second Amendment's Founding-era historical tradition "resembles" Section 790.065(13)'s onerous restrictions on the right of "law-abiding, nonviolent, mentally competent" 18-to-20-year-olds to purchase firearms. *Id.* at 137a, 138a. The only purchase bans Florida could point to, he added, "were passed many years after the Founding," and were "meaningfully dissimilar from Florida's ban." *Id.* at 146a. Without historical precedent, Florida's "categorical ban" violates the Second Amendment. *Id.* at 137a.

Judge Branch's dissent made two main points. She argued that the majority erred, first, by relying on Founding-era contract laws rather than on "firearm regulation[s]," and second, by invoking an economic "inference" rather than the "history and tradition" test as set forth by *Bruen* and *Rahimi*. *Id.* at 122a–123a, 125a. As Judge Branch saw it, the majority's "inferred economic effects" of the common-law voidability rule were insufficient to establish that "minors at the Founding generally could not purchase firearms." *Id.* at 123a–124a.

DISCUSSION

The Court should grant certiorari and hold that 18-to-20-year-olds have a Second Amendment right to purchase firearms.

Petitioner argues that Section 790.065(13)'s prohibition on persons under the age of 21 purchasing firearms violates the Second Amendment rights of 18-to-20-year-olds. Pet. 20–34. Florida agrees. Though Florida defended the constitutionality of its law below, Florida's Attorney General announced shortly after taking office that, in his view as the State's chief legal officer, the law violates the Second Amendment.[1] Based on that determination, the Commissioner of the Florida Department of Law Enforcement has likewise concluded that the law is unconstitutional.

Certiorari is warranted. The decision below is incorrect; this issue has divided the courts of appeals and is critically important to the civil liberties of young adults; and this case presents a suitable vehicle. The Court should therefore take this opportunity to declare Florida's purchase ban invalid to the extent it is applied against legal adults.

A. The en banc Eleventh Circuit erred in upholding Florida's ban.

1. The Second Amendment provides: "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." U.S. Const. amend II. The right to keep and bear arms is both an "individual

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[1] Attorney General James Uthmeier, X.com (4:07pm, March 14, 2025), https://tinyurl.com/yyd2x2de.

right," *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), and a "fundamental right," *McDonald v. City of Chicago*, 561 U.S. 742, 775, 791 (2010) (plurality op.). It is incorporated against the States through the Fourteenth Amendment. *Id.* at 791.

State laws challenged under the Second Amendment are subject to a two-step test. At step one, courts determine whether "the Second Amendment's text covers an individual's conduct." *Bruen*, 597 U.S. at 17. If so, "the Constitution presumptively protects that conduct." *Id.* The burden then shifts to the government at step two to "demonstrate that the regulation is consistent with this Nation's historical tradition." *Id.* To meet that burden, the government must show that its modern regulation is "'relevantly similar' to laws that our tradition is understood to permit" and "comport[s] with the principles" undergirding the Second Amendment. *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29, 30). "Why and how the regulation burdens the right are central to this inquiry." *Id.* And "[e]ven when a law regulates arms-bearing for a permissible reason," "it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.*

2. Florida's purchase ban does not survive that inquiry. The Eleventh Circuit majority identified no history of States restricting the right of 18-to-20-year-olds to purchase firearms, and certainly no history of restrictions on the purchase rights of legal adults. Just the opposite, Founding-era evidence affirmatively demonstrates that early Americans trusted 18-to-20-year-olds with firearms and, indeed, expected them to possess and even purchase guns. At the very

least, history reflects that society understood that those deemed sufficiently mature for purposes of the age of majority—which in Florida and elsewhere in this country is age 18—would have ready access to guns.

a. Applying *Bruen*, the Eleventh Circuit determined that Florida's ban fits within the historical tradition of gun regulations at the Founding. It relied principally on the fact that the "age of majority" at the Founding was 21. Pet. App. 15a. This meant that "as a 'general rule,' contracts for the purchase of 'personal property' involving minors were 'voidable.'" *Id.* at 17a. And since those contracts were voidable, sellers faced a "high risk" that they could not enforce a contract with a minor for a good purchased by that minor on credit. *Id.* at 18a. This, coupled with a second general observation—that minors often lacked disposable income, *see id.*—led the Eleventh Circuit to conclude that minors were "impeded . . . from acquiring firearms during the Founding era." *Id.* at 17a.

The Eleventh Circuit bolstered this conclusion by pointing to a series of other, tangential regulations regarding firearms and minors. This included the fact that numerous States "had enacted laws that placed the onus on parents to provide minors with firearms for militia service" and that universities—acting *in loco parentis*—"commonly restricted firearm access both on and off campus." *See id.* at 21a–22a.

The majority then surveyed "[m]id-to-late-nineteenth-century laws" explicitly restricting purchase of firearms by those under 21, which it thought further corroborated its reasoning. *See id.* 23a–27a. Putting these pieces together, the majority concluded that "the

Florida law is consistent with our regulatory tradition in why and how it burdens the right of minors to keep and bear arms." *Id.* at 27a.

This holding errs multiple times over. First and most problematically, the majority identified no Founding-era analogue for the regulation here: a near-total ban on purchasing firearms on a subset of legal adults. The Founding-era sources demonstrate that, at a minimum, the Second Amendment applies to those deemed sufficiently mature—that is, law-abiding, legal adults. *See Bruen*, 597 U.S. at 31–32 ("ordinary, law-abiding *adult* citizens—are part of 'the people' whom the Second Amendment protects") (emphasis added). Today, nearly every State sets the age of majority at 18.[2] This Court has acknowledged as much. *See Roper v. Simmons*, 543 U.S. 551, 574 (2005) ("The age of 18 is the point where society draws the line for many purposes between childhood and adulthood."). Thus, 18-year-olds today can join the military and take up arms against other nations, vote in State and national elections, live independently, lease an apartment or car, serve on juries, make medical decisions, open bank accounts, apply for a credit card, and keep educational information private under federal privacy laws—all because they are legal adults. The Second Amendment protects the right of 18-year-olds today to purchase firearms as it did for any legal adult at the Founding.

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[2] Forty-seven States and the District of Columbia set legal adulthood at 18. *See* World Population Review, *Age of Majority by State 2025*, https://tinyurl.com/r28sjn49. The age of majority is 19 in Alabama and Nebraska and 21 in Mississippi. *Id.*

Moreover, the earliest purchase prohibitions the majority could point to were enacted in the 1850s, more than 60 years after the Founding. As this Court has "generally assumed" that the scope of a provision of the Bill of Rights "is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791," those mid-to-late nineteenth century restrictions are far too late to be probative. *Bruen*, 597 U.S. at 37. Those laws, in other words, cannot speak to what the public in 1791 understood the Second Amendment to mean. In fact, the Eleventh Circuit acknowledged that this Court has "warned" courts about "overus[ing]" evidence from Reconstruction, as *Heller* pointed out that such sources appear as much as "75 years after the ratification of the Second Amendment," and thus provide less "insight into [the Second Amendment's] original meaning" than "earlier sources." Pet. App. 12a; *Heller*, 554 U.S. at 614. The rights enumerated in the Bill of Rights, including the Second Amendment, are enforced against the States "according to the same standards that protect those personal rights against federal encroachment." *McDonald*, 561 U.S. at 765 (quoting *Malloy v. Hogan*, 378 U.S. 1, 10 (1964)).

Next, the mere fact that minors' contracts were voidable does not mean that firearms merchants would decline to extend credit to 18-year-olds at the Founding—or that 18-year-olds would have lacked the cash necessary to purchase a gun outright. Indeed, the Eleventh Circuit proffered no evidence at all that anyone aged 18-to-20 was *legally prevented* from purchasing a firearm—either on credit or with cash. From the uncontroversial premise that contracts formed

with minors were voidable, the majority made the logical leap that minors were "effectively unable" to enter into a contract at all. Pet. App. 17a–18a.

The historical record reflects the opposite. *See* Pet. App. 126a (Branch, J., dissenting) ("[M]inors at the Founding could and did purchase goods, including firearms, on credit."). It was simply not true that merchants refused to extend credit to minors. To the contrary, one early case reports that merchants would "give credit to [minors,] and minister to their pleasures and dissipation, relying upon the honor of ingenuous young men to discharge debts so incurred," even though those contracts were not legally enforceable. *Soper v. President & Fellows of Harv. Coll.*, 18 Mass. (1 Pick.) 177, 183 (1822). That includes for the sale of firearms: An 1822 South Carolina state appellate decision involved a merchant's suit to recover the funds he gave to a minor who had successfully purchased "pistols [and] powder" on credit. *Saunders Glover & Co. v. Ott's Adm'r*, 12 S.C.L. (1 McCord) 572, 572 (1822).

The majority's heavy reliance on contract law and voidability also runs afoul of this Court's instruction that the challenged law must be "consistent with the Nation's historical tradition of *firearm* regulation." *Bruen*, 597 U.S. at 24 (emphasis added); *see also* Pet. App. 122a (Branch, J., dissenting). Rules generally providing for the voidability of a minor's contract are not firearm regulations. It may have been true that it was more difficult for some minors in some instances to purchase a firearm on credit, but that was not because of any regulation on the right to buy or bear

arms. Rather it was merely an "inferred economic effect[]" based on the nature of the economy at that time, which is too far afield to justify the limitation on a constitutional right. *See* Pet. App. 126a (Branch, J., dissenting).

b. Even accepting the majority's premise that indirect historical evidence is relevant, the evidence supporting a minor's right to firearms overwhelms the evidence supporting its restriction. A law prohibiting an 18-to-20-year-old from purchasing a firearm "would have been unimaginable" at the Founding. Pet. App. 148a (Brasher, J., dissenting). Most tellingly, state and federal militia laws "establish[] that eighteen-to twenty-one-year-olds were universally required to have access to firearms" for their militia service. *Id.* at 149a. The Militia Act of 1792, for example, "required males beginning at the age of eighteen years to be enrolled in the militia and for each one to provide himself with a good musket or firelock . . . or with a good rifle." *Id.* at 151a (quotation marks omitted).[3] Militia-aged men exercised their right to bear arms—unless someone has "just reason to fear" that the man bearing arms could not be trusted because he "purposes to make an unlawful use of them." David B. Kopel & Joseph G.S. Greenlee, *History and Tradition in Modern*

[3] The majority divorced the legal requirement to possess or have access to a firearm from the ability to purchase it. *See* Pet. App. 19a–21a. That assertion is dubious. *See id.* at 151a (Brasher, J., dissenting) ("But, as a matter of both formal logic and common sense, a legal *obligation* to acquire a private firearm necessarily presupposes the legal *ability* to acquire one."). But even if the militia laws did not speak directly to 18-to-20-year-olds' ability to purchase firearms, it is far more probative about the issue at hand than the inability to fully contract on credit.

Circuit Cases on the Second Amendment Rights of Young People, 43 S. Ill. U. L.J. 119, 135 (2018) (quoting William Rawle, *A View of the Constitution of the United States of America* 125–26 (William S. Hein & Co. 2003) (2d ed. 1829)). Thus, militia-aged men—which included persons aged 18-to-20—were expected to be, and indeed were, armed, and a person in that cohort would be disarmed only if there was a reason to believe he posed a safety risk to others.

Outside of militia requirements, 18-year-olds were expected to participate in the *posse comitatus*, a group of citizens "who accompanied sheriffs or other officials in pursuit of fugitives" while armed. *Reese v. ATF*, 127 F.4th 583, 598 (5th Cir. 2025).

All said, this direct evidence that early Americans trusted 18-to-20-year-olds with firearms—and in fact *required* them to possess firearms in connection with militia service—far outshines the circumstantial evidence offered by the majority.

3. Florida therefore must depart from its previous position regarding the constitutionality of Section 790.065(13). Although 18-to-20-year-olds could face practical impediments to purchasing guns on credit, and though parents in the Founding generation indeed "had absolute authority over their minor children," *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 822 (2011) (Thomas, J., dissenting), the laws of the time nevertheless permitted 18-to-20-year-olds to purchase guns. And the public at the Founding appears to have assumed that 18-to-20-year-olds would have access to firearms—including to carry out their militia service and to participate in the *posse comitatus*—and that they were responsible enough that they

could be trusted to wield firearms. An ability to purchase firearms would have been necessary to ensure that 18-to-20-year-olds could fulfill their obligations to muster, armed, with the militia.

Indeed, the "[w]hy and how" of Florida's purchase restriction differs from the "[w]hy and how" of firearms regulations from the Founding era. *Rahimi*, 602 U.S. at 692. Founding-era laws regarded 18-to-20-year-olds as sufficiently responsible to bear arms in state militias and citizen law-enforcement groups, and they required 18-to-20-year-olds to acquire firearms to serve in those organizations. Those laws indicate that the public regarded 18-to-20-year-olds with enough trust to handle firearms. And although some States relieved 18-to-20-year-olds of the obligation to procure their own firearms when they reported for militia service, the fact that only a handful in the Founding era did so emphasizes how widespread those expectations were.[4] Meanwhile, the "[w]hy and how" of

[4] Between 1792 and 1826, two states—Pennsylvania and Delaware—exempted minors from acquiring firearms for militia service and from 1792 to 1800, three states—New Hampshire, Massachusetts, and Vermont—charged parents with the duty to provide 18-to-20-year-olds with firearms when they arrived to serve in the militia. Louisiana, Maine, and Missouri imposed similar obligations on parents shortly after the Founding era, from 1805 to 1825. *See* 14 James T. Mitchell & Henry Flanders, *The Statutes at Large of Pennsylvania From 1682 to 1801* at 456 (Harrisburg, Harrisburg Publishing Co. 1909) ("young men under the age of twenty-one . . . shall be exempted from furnishing the necessary arms, ammunition and accoutrements"); 2 *Laws of the State of Delaware* 1135, 1136 (New-Castle, Samuel and John Adams 1797) (same); New Hampshire (1792), *The Laws of the State of New Hampshire* 421–22 (Portsmouth, John Melcher 1797); Massachusetts (1793), 2 *The Perpetual Laws of the Commonwealth of Massachusetts* 181–82 (Boston, I. Thomas & E.T.

Section 790.065(13) imposes a restriction on purchasing firearms out of a general mistrust of adults that age. And it materializes this mistrust through a blanket prohibition that no known Founding-era law or tradition ever imposed; a near-total ban for 18-to-20-year-olds from purchasing firearms while also preventing a licensed dealer from selling or transferring a firearm to such a person.

The upshot of Florida's law is that a 20-year-old single mom is powerless to purchase a firearm to defend herself and her child against a menacing ex-boyfriend. Same for the 19-year-old who lives alone in a bad neighborhood and fears gang violence. To be sure, some young adults may be able to borrow a firearm from a parent or other older adult. But the exercise of a vaunted constitutional right should not depend on that chance.

B. The circuits are split on this critical question.

Certiorari is also warranted because the decision below widens a circuit split on this issue. The Eleventh Circuit now joins the Fourth and Tenth Circuits in concluding that age restrictions for buying firearms comport with regulatory traditions from the Founding era. *See McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025)

Andrews 1801); Vermont (1797), 2 *The Laws of the State of Vermont* 131–32 (Randolph, Sereno Wright 1808); Louisiana (1805), *Acts Passed at the First Session of the Legislative Council of the Territory of Orleans* 284–88 (New-Orleans, James M. Bradford 1805); Maine (1821), *An Act to Organize, Govern, and Discipline the Militia, of the State of Maine* 21, 37 (Portland, Todd & Smith 1824); Missouri (1825), 2 *Laws of the State of Missouri* 554, 571, 574 (St. Louis, E. Charles 1825).

(upholding federal handgun purchase ban for persons under 21 seeking to purchase a firearm from a licensed dealer); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024) (dissolving preliminary injunction against law raising the age to purchase a firearm in Colorado to 21); Pet. App. 2a–3a (upholding state law prohibiting persons under 21 from purchasing firearms).

The Fifth Circuit, on the other hand, has concluded that the government failed to demonstrate sufficient evidence to show that the purchase restriction in question was sufficiently analogous to Founding-era gun restrictions. *See Reese*, 127 F.4th at 600 (holding that the government failed to produce sufficient evidence to support the federal ban on handgun purchases by those under 21). And, relatedly, the Third and Eighth Circuits have struck down state bans on the public carriage of firearms by 18-to-20-year-olds. *See Lara v. Comm'r of the Penn. State Police*, 125 F.4th 428 (3d Cir. 2025) (holding that Pennsylvania's laws banning public carry by those aged 18 to 20 during a state of emergency violates the Second Amendment); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024) (holding that Minnesota's restriction on public carry of pistols by those under 21 violates the Second Amendment).

C. This case is an appropriate vehicle.

Finally, the petition presents a suitable vehicle for resolving this important question. The parties' Second Amendment arguments were fully briefed and argued

at every stage of this litigation.[5] And because *Rahimi* had issued by the time of the Eleventh Circuit's decision, this Court will benefit from the en banc court's analysis of how that recent decision affects the legal inquiry.

Of course, Florida defended the constitutionality of Section 790.065(13) in the court of appeals, whereas in this Court it intends to argue that the law is infirm. But that lack of adversity on the purely legal question does not moot this case. Given the Eleventh Circuit's decision, and the duty state law imposes on the Department of Law Enforcement to "determine . . . whether the potential buyer is prohibited from receiving or possessing a firearm," Commissioner Glass continues to enforce Section 790.065(13). Fla. Stat. § 790.065(2)(c)4; *see also First Nat'l Bank of Boston v. Belloti*, 435 U.S. 765, 774–75 (1978) (holding that a case is not moot where there remained a "reasonable expectation" that the state would seek to enforce the law against plaintiffs in the future, as the law remained in effect and a state official expressed his intention to enforce the law against the plaintiffs in the future). And if this Court wants the benefit of opposing views at the merits stage, it can appoint an

[5] *See* NRA's Initial En Banc Brief, *Nat. Rifle Ass'n v. Bondi*, No. 21-12314 (11th Cir. 2025), Dkt. No. 94; Florida's En Banc Brief, Dkt. No. 97; NRA's Corrected Initial Brief, Dkt. No. 19; Florida's Answer Brief, Dkt. No. 32; Florida's Motion for Summary Judgment, *Nat. Rifle Ass'n. et al., v. Swearingen*, No. 4:18cv137 (N.D. Fla. June 24, 2021), Dkt. No. 107; NRA's Response in Opposition to Motion for Summary Judgment, Dkt. No. 116.

amicus to defend the judgment of the court of appeals.[6]

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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August 20, 2025

[6] This Court will also have the parties' extensive adversarial briefing at the en-banc stage in the Eleventh Circuit, and at least one amicus curiae has already offered a defense of Florida's law in this Court, *see* Br. of Amicus Curiae Brady Center 9–26 (Aug. 8, 2025).