No. 24-1329

IN THE

Supreme Court of the United States

CHRISTOPHER PARIS, COMMISSIONER,
PENNSYLVANIA STATE POLICE,

Petitioner,

v.

MADISON M. LARA, *et al.*,

Respondents.

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

BRIEF OF NATIONAL ASSOCIATION FOR GUN RIGHTS AND PENNSYLVANIA GUN RIGHTS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Constitutional Provisions

Statutes and Other Authorities

Cited Authorities

Page

INTEREST OF AMICUS

The right to keep and bear arms is a fundamental right that existed prior to the Constitution. The right is not in any sense granted by the Constitution. Nor does it depend on the Constitution for its existence. Rather, the Second Amendment declares that the pre-existing "right of the people to keep and bear Arms shall not be infringed." The National Association for Gun Rights ("NAGR")[1] and Pennsylvania Gun Rights ("PAGR") are nonprofit membership and donor-supported organizations. NAGR has hundreds of thousands of members nationwide and PAGR has thousands of members in Pennsylvania. The sole reason for amici's existence is to defend citizens' right to keep and bear arms. Amici have a strong interest in this case because the guidance the Court will provide in its resolution of this matter will have a major impact on their ongoing litigation efforts in support of citizen's fundamental right to keep and bear arms.

SUMMARY OF ARGUMENT

The State's contractual capacity argument proves too much. Yes, 18-to-20-year-olds lacked contractual capacity in the Founding era. But that cannot possibly be a valid reason for concluding they do not have Second Amendment rights today. Otherwise, one would have to conclude that married women do not have Second Amendment rights.

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1. No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Amici curiae provided timely notice to the parties of their intention to file this brief.

The State's attempt to use Founding-era college rules as analogies fails for several reasons. First, most colleges were private institutions. The rules applied to a miniscule proportion of the population. The rules were imposed *in loco parentis*, not as a general regulatory measure. In any event, the rules are best understood as sensitive place regulations, not regulations of a general nature.

There were absolutely zero regulations in the Founding era that are remotely analogous to the challenged statute. The State's effort to address this deficit by pointing to late nineteenth-century laws fails because such contrary evidence cannot be used to establish a Founding-era tradition when there was none.

The State's argument that the Founders were unaware of special risks associated with young adults is not supported by any historical evidence and defies common sense. Finally, the State may not single out disfavored demographic groups and deprive them of their constitutional rights.

ARGUMENT

A. The State's Contractual Incapacity Argument Proves Too Much

The State asserts that 18-to-20-year-olds do not have Second Amendment rights because they lacked the contractual capacity to purchase firearms in the Founding era. Pet. 28, 29, citing Saul Cornell, "*Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, 40 Yale L. & Pol'y Rev. inter Alia 1, 14 (2021). That argument proves way too

much, because it also proves that married women have no Second Amendment rights.

The very article cited by the State in support of its argument demonstrates this point. Professor Cornell writes:

> In many respects, the situation of minors under twenty-one resembled that of married women under coverture. Under the doctrine of coverture, a married woman ceased to exist as a legal entity, and her entire legal persona was subsumed within her husband's authority. Sir William Blackstone described the legal meaning of coverture as follows:
>
> > By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French a *feme-covert*. . . . [1 William Blackstone, *Commentaries*, 442]
>
> An influential eighteenth-century English treatise on the law of domestic relations noted that the comparison between a *feme covert* and a minor was frequently made by writers on the law: "*Feme Covert* in our Books is often compared to an Infant, *both being persons being*

> *disabled in the Law*." Given the irrefutable fact that minors were legally "disabled" in the eyes of the law, the claim that they might assert a Second Amendment right against government interference is just false.

Id. at 9 (emphasis added).

Consider the last sentence of this block quotation. Substitute "married women" for "minors" in that sentence and one gets: "Given the irrefutable fact that married women were legally 'disabled' in the eyes of the law, the claim that they might assert a Second Amendment right against government interference is just false." The statement is now manifestly absurd.

Under the common law doctrine of coverture in effect at the Founding, a married woman did not have the right to contract for herself. 41 Am. Jur. 2d Husband and Wife § 2; accord *Townsend v. Townsend*, 708 S.W.2d 646, 647 (Mo. 1986). This Court recognized that contractual disability for married women crumbled under the principles embodied in the fight for women's suffrage that culminated in the adoption of the Nineteenth Amendment:

> But the ancient inequality of the sexes, otherwise than physical, as suggested in the *Muller* Case (208 U. S. 421, 28 Sup. Ct. 327, 52 L. Ed. 551, 13 Ann. Cas. 957) has continued 'with diminishing intensity.' In view of the great—not to say revolutionary—changes which have taken place since that utterance, in the *contractual*, political, and civil status of women, culminating in the Nineteenth

> Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point.

Adkins v. Children's Hosp. of the D.C., 261 U.S. 525, 553 (1923), overruled on other grounds by *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (emphasis added).

Under common law contract doctrine in effect at the time of the Founding, an 18-to-20-year-old person also did not have the right to contract for himself or herself. 1 William Blackstone, *Commentaries*, *453.[2] In contract matters, the Twenty-Sixth Amendment had the same effect for young adults that the Nineteenth Amendment had for married women. Professor Murray describes this effect as follows: "The twenty-sixth amendment to the U.S. Constitution lowered the voting age to 18. This prompted almost all of the states to enact statutes reducing the age of majority for contracting to 18." Murray, John Edward, Jr., Murray on Contracts, Loc. 2502, n. 216 LexisNexis, (5th ed. 2011), Kindle Edition.[3]

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2. The common law now recognizes 18 as the age of contractual capacity. *Restatement (Second) of Contracts* § 14 (Am. Law Inst. 1981) ("Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday.").

3. Professor Murray cites Pennsylvania law, specifically, 23 Pa. Stat. and Cons. Stat. Ann. § 5101(a), to illustrate this point. That statute states: "Any individual 18 years of age and older shall have the right to enter into binding and legally enforceable contracts and the defense of minority shall not be available to such individuals."

The State writes that "the rights 18-to-20-year-olds enjoy in modern times have no bearing" on the Second Amendment analysis. Pet. 34. Again, substitute "married women" into that sentence. "The rights married women enjoy in modern times have no bearing on the Second Amendment analysis." The State's analysis is fundamentally flawed.

B. University Regulations Do Not Meet the *Bruen* Standard

The State argues that young adults do not have Second Amendment rights because universities in the Founding Era standing *in loco parentis* commonly restricted firearm access. Pet. 13. For several reasons, university regulations are manifestly not the kind of historical analogues contemplated by the Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

The State's burden is to demonstrate an "enduring" and "broad" "American tradition of *state* regulation." *Bruen*, 597 U.S. at 69 (emphasis added). College rules are not "state" regulations. Indeed, they applied to only a minuscule fraction of the population in the Founding era.[4] In 1789, there were approximately 1,000 students enrolled in higher education in the United States out of a total population of 3.8 million. Arthur M. Cohen and Carrie B. Kisker, *The Shaping of American Higher Education: Emergence and Growth of the Contemporary System*, 14 (2d ed. 2010). It is unclear why the State believes school rules that affected less than 0.03% of the population reflect

4. *Bruen*, 597 U.S. at 67 (regulations that apply to minuscule populations do not establish a tradition of firearm regulation).

a broad tradition of firearm regulation in the nation. Such "localized restrictions" do not establish a tradition of "broadly prohibiting" 18-to-20-year-olds from acquiring firearms. *Bruen* at 66-67.

Next, the State's own argument cuts against it. The State acknowledges that these school rules were adopted *in loco parentis*. Pet. 13. This guardianship authority allowed schools to impose rules that in other contexts would have been manifestly unconstitutional. See, e.g. *University Church in Yale*, Yale University, https://church.yale.edu/history (explaining that until 1927, chapel attendance was mandatory) (last accessed July 22, 2025). Thus, Founding-era college rules are not persuasive historical analogues to discern the constitutional rights of students, much less the population as a whole. *Worth v. Jacobson*, 108 F.4th 677, 696 (8th Cir. 2024), cert. denied, 145 S. Ct. 1924 (2025).

Next, restriction on the possession of firearms in a school (a sensitive place) is much different in scope than a blanket ban on acquisition of firearms. Therefore, such college rules fail the "how" test under *Bruen*. *Worth*, 108 F.4th at 696. Finally, school rules fail *Bruen's* "why" test as well. Unlike the Pennsylvania statute, these rules were not targeted at students because of their age but because they were students. Indeed, they did not prevent a person under the age of 21 who was not a student at one of the schools from possessing or carrying a firearm, and they undoubtedly applied with equal force to students older than 21.

C. Later History Can Liquidate an Understanding of the Text; it Cannot Change the Text

Prior to 1791 there were zero laws prohibiting the possession or purchase of firearms by minors. *See* Robert J. Spitzer, *The Second Generation of Second Amendment Law & Policy: Gun Law History in The United States and Second Amendment Rights*, 80 Law & Contemp. Prob. 55, 59 (2017). In stark contrast to the complete absence of laws prohibiting 18-to-20-year-olds from purchasing or possessing firearms in the Founding era stand the early militia laws that *required* men 18 years of age and older to obtain firearms. Congress passed the Second Militia Act on May 8, 1792, a mere five months after the Second Amendment was ratified on December 15, 1791. The Second Militia Act stated that "every free able-bodied white male citizen of the respective states, resident therein, who is or shall be *of the age of eighteen years* and under the age of forty-five years (except as herein exempted) shall severally and respectively be enrolled in the militia[.]" Second Militia Act of 1792 § 1, 1 Stat. 271 (1792) (emphasis added). The Act also required each of these 18-year-old militia members to "provide himself with a good musket or firelock . . . or with a good rifle[.]" *Id.* § 1. Shortly thereafter, *every state* revised its existing militia laws to conform with the federal statute, adopted a militia age of 18, and required militia members to arm themselves.[5]

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5. The state militia statutes are collected at *Fraser v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 672 F. Supp. 3d 118, 140 n. 31 (E.D. Va. 2023), rev'd and remanded sub nom. *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568 (4th Cir. 2025).

Surely there can be no Founding-era tradition of regulations prohibiting 18-to-20-year-olds from acquiring firearms when the laws of the time unanimously imposed on them an affirmative duty to do exactly that. It is true that in the second half of the nineteenth century several states adopted statutes prohibiting 18-to-20-year-olds from acquiring certain firearms. These later laws are irrelevant to the Constitutional analysis as demonstrated by *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020). In that case, the Court noted that 30 states adopted no-aid provisions in the second half of the nineteenth century. 591 U.S. at 482. The Court held that these late-adopted laws were simply irrelevant to the meaning of the First Amendment. *Id.* This is consistent with *Bruen's* approach to post-ratification history. Nineteenth-century evidence may be relevant to determining the public understanding of a provision of the Bill of Rights as of the time it was ratified. *Bruen*, 597 U.S. at 35. Also, evidence that a governmental practice has been open, widespread, and unchallenged since the early days of the Republic can serve to "liquidate" the meaning of a phrase in the Constitution. *Id.* at 35-36. Nevertheless, as in *Espinoza*, late nineteenth-century evidence cannot provide much insight into the meaning of a provision of the Bill of Rights "when it contradicts earlier evidence." *Id.* at 66.

In summary, if the text is vague and Founding-era history is elusive or inconclusive, post-ratification history may be important in interpreting the constitutional text. *United States v. Rahimi*, 602 U.S. 680, 723 (2024) (Kavanaugh, J., concurring). By the same token, if the Founding-era history supporting a particular interpretation of an enumerated right is robust, post-ratification history that contradicts that interpretation

is simply irrelevant. *Bruen*, 597 U.S. at 66, n. 28 (Late evidence "does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence."). See also *Rahimi*, 602 U.S. at 738 ("evidence of 'tradition' unmoored from original meaning is not binding law.") (Barrett, J., concurring).

Justice Barrett's concurrence in *Rahimi* should be emphasized, because, as Judge Newsom recently observed, the Court should be wary of attempts to change the text by means of an ersatz "traditionalism." He wrote:

> My first fear is that traditionalism gives off an originalist "vibe" without having any legitimate claim to the originalist mantle. It seems old and dusty—and thus objective and reliable. And maybe it is indeed all those things. But let's be clear: it's not originalism. Remember, originalism is fundamentally a text-based interpretive method. We originalists say that any particular constitutional provision should be interpreted in accordance with its common, ordinary meaning *at the time it was adopted and ratified*. If we really mean that, then by definition, it seems to me, evidence that significantly *post*-dates that provision's adoption isn't just second-best—it's positively *irrelevant*.

Hon. Kevin C. Newsom, *The Road to Tradition or Perdition? An Originalist Critique of Traditionalism in Constitutional Interpretation*, 47 Harv. J.L. & Pub. Pol'y 745, 754 (2024) (emphasis in the original).

D. The Same Societal Issues Surrounding 18-to-20-Year-Olds Today were Understood by the Founders

Bruen noted that the historical inquiry is fairly straightforward in cases where "a challenged regulation addresses a general societal problem that has persisted since the 18th century" and a "lack of a distinctly similar historical regulation addressing that problem [provides] relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* 597 U.S. at 26. The State has singled out 18-to-20-year-olds for differential treatment from other adults because it believes that unlike in the Founding era, in modern times there has been an increase in "firearm-related injuries at the hands of minors." Pet. 31. The State argues this is an "unprecedented societal concern."

This argument is unsound. Surely the Founders knew all about the foibles of 18-to-20-year-olds, but they never took any action to disarm them. Indeed, they did just the opposite when they affirmatively required them to acquire firearms for service in the militia. They never enacted a single "distinctly similar" ban on their acquisition of firearms. In *Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 714 F.3d 334 (5th Cir. 2013), Judge Jones took notice of this deficiency as follows:

> Originalism is not without its difficulties in translation to the modern world. For example, deciding whether the use of a thermal heat imaging device violates the original public meaning of the Fourth Amendment is a hard question. In this case, however, the answer to the historical question is easy. The original

> public meaning of the Second Amendment include[s] individuals eighteen to twenty[.] . . . The members of the first Congress were ignorant of thermal heat imaging devices; *with late teenage males, they were familiar.*

Id. 714 F.3d at 342 (Jones, J., dissental) (internal citation omitted; emphasis added). Thus, the State's argument that the Founders were ignorant of the societal issues purportedly addressed by the statute does not bear up under analysis.

E. The State May Not Strip Disfavored Demographic Groups of their Constitutional Rights

The State at least implies that it has the right to prohibit the sale of firearms to young adults because that demographic group is overrepresented among those who commit gun violence. Pet. 31. There are at least two problems with this argument. First, the government's argument is a thinly veiled policy argument of the kind specifically forbidden in *Bruen*. 597 U.S. at 19. The State says it has a policy interest in reducing firearm injuries among young adults. Even if that is the case, it must still identify some remotely analogous regulation from the Founding era for its law to pass constitutional muster.

Secondly, this is a dangerous road to trek down. The State does not have *carte blanche* to declare disfavored demographic groups outside the protective scope of the Second Amendment. By the same logic, the State could place discriminatory limitations on African Americans

hoping to purchase firearms.[6] Such limitations would be obviously unconstitutional regardless of how effective the State claimed they might be at stopping gun violence. Any argument that entails such a facially absurd result cannot be correct.

CONCLUSION

For the reasons set forth herein, NAGR and PAGR respectfully request the Court to deny the petition for writ of certiorari.

Respectfully submitted,

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6. Department of Justice statistics indicate that African Americans are overrepresented among persons arrested for violent crimes. Bureau of Justice Statistics, Race and Ethnicity of Violent Crime Offenders and Arrestees, 2018 (available at https://bit.ly/48PyzjN).