

No. _____

**In the
Supreme Court of the United States**

WEST VIRGINIA CITIZENS DEFENSE LEAGUE, INC.,

Petitioner,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EX-
PLOSIVES, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

ADAM J. KRAUT
SECOND AMENDMENT
FOUNDATION
12500 N.E. 10th Place
Bellevue, WA 98005
(800) 426-4302
akraut@saf.org

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
JOHN D. OHLENDORF
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire
Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Petitioner

July 31, 2025

QUESTION PRESENTED

Whether a federal law that bans licensed sales of handguns and handgun ammunition to law-abiding 18-to-20-year-old adults violates the Second Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

Petitioner West Virginia Citizens Defense League, Inc. (“WVCDL”), was a plaintiff before the District Court and a plaintiff-appellee in the Court of Appeals. Steven Brown was a plaintiff before the District Court and a plaintiff-appellee in the Court of Appeals, but he turned 21 during the course of the appeal, and he is not a party to the proceeding in this Court. Benjamin Weekley was a plaintiff before the District Court and a plaintiff-appellee in the Court of Appeals, but he turned 21 during the course of the appeal, and he is not a party to the proceeding in this Court. On June 18, 2025, the Court of Appeals granted Petitioner’s motion to supplement the record with evidence confirming that WVCDL continues to have at least one member who is between the ages of 18 and 21 and would purchase a handgun from a federally licensed dealer were it not for the challenged provisions. The Second Amendment Foundation was a plaintiff in the district court, but it was voluntarily dismissed on December 1, 2023, it was not an appellee in the Court of Appeals, and it is not a party to the proceeding in this Court.

Respondents Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), Pamela Jo Bondi, in her official capacity as Attorney General of the United States, and Steven Michael Dettelbach, in his official capacity as Director of the ATF, were defendants-appellants in the Court of Appeals, and ATF and Director Dettelbach were defendants before the District Court. Merrick B. Garland, the previous Attorney General of the United States, was also a defendant before the District Court and also initially

a defendant-appellant in the Court of Appeals, but Respondent Bondi was automatically substituted in his place pursuant to FED. R. APP. P. 43(c)(2) upon assuming office, and he is not a party to the proceeding in this Court.

CORPORATE DISCLOSURE STATEMENT

West Virginia Citizens Defense League, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Brown v. ATF*, No. 23-2275 (4th Cir.) (judgment entered June 18, 2025);
- *Brown v. ATF*, No. 22-cv-80 (N.D. W. Va.) (judgment entered Dec. 1, 2023).

There are no proceedings directly related to this case under this Court's Rule 14.1(b)(iii), but the following district court proceeding and appeal challenged the same federal provisions as this case on the same basis, and the Court of Appeals consolidated the two appeals for purposes of oral argument:

- *McCoy v. ATF*, No. 23-2085 (4th Cir.) (judgment entered June 18, 2025);
- *Fraser v. ATF*, No. 22-cv-410 (E.D. Va.) (judgment entered Dec. 1, 2023).

The Court of Appeals deconsolidated the two cases on June 13, 2025, entered judgment through a published opinion in *McCoy* on June 18, and contemporaneously entered a brief per curium order resolving this case on the basis of that opinion.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT.....	iv
RELATED PROCEEDINGS.....	iv
TABLE OF AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	4
JURISDICTION.....	4
CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED.....	5
STATEMENT	5
I. Federal law bans 18-to-20-year-olds from purchasing handguns from licensed dealers.	5
II. The proceedings below.....	6
REASONS FOR GRANTING THE WRIT	11
I. This Court’s review is needed to resolve the conflict between the circuits over the constitutionality of the federal age-based handgun ban.	11
II. Review is needed because the decision below conflicts with this Court’s decisions in <i>Heller</i> and <i>Bruen</i>	18
CONCLUSION.....	34

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JUNE 18, 2025	1a
APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JUNE 18, 2025	3a
APPENDIX C — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA, FILED DECEMBER 1, 2023	63a
APPENDIX D — RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED	102a

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Andrews v. State</i> , 50 Tenn. 165 (1871).....	20
<i>Coats v. Wilson</i> , 170 Eng. Rep. 769 (1804)	28
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	1, 19, 20, 21, 22, 27, 33
<i>Espinoza v. Montana Dep’t of Revenue</i> , 591 U.S. 464 (2020)	24, 25
<i>Fraser v. ATF</i> , 689 F.Supp.3d 203 (E.D. Va. 2023)	7
<i>Gamble v. United States</i> , 587 U.S. 678 (2019)	24
<i>Hirschfeld v. ATF</i> , 14 F.4th 322 (4th Cir. 2021)	15
<i>Hirschfeld v. ATF</i> , 5 F.4th 407 (4th Cir. 2021)	15, 21, 22
<i>Jones v. Bonta</i> , 47 F.4th 1124 (9th Cir. 2022)	15
<i>Jones v. Bonta</i> , 34 F.4th 704 (9th Cir. 2022)	15, 21
<i>Jordan v. Coffield</i> , 70 N.C. 110 (1874).....	28, 29
<i>Kansas v. Marsh</i> , 548 U.S. 163 (2006)	13

<i>Lara v. Commissioner Pa. State Police,</i> 125 F.4th 428 (3d Cir. 2025)	1, 14, 15
<i>Luis v. United States,</i> 578 U.S. 5 (2016)	19
<i>McCoy v. ATF,</i> 140 F.4th 568 (4th Cir. 2025)	7
<i>McCulloch v. Maryland,</i> 17 U.S. (4 Wheat.) 316 (1819)	31
<i>McDonald v. City of Chicago,</i> 561 U.S. 742 (2010)	1
<i>New Hampshire Mut. Fire Ins. Co. v. Noyes,</i> 32 N.H. 345 (1855)	31, 32
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen,</i> 597 U.S. 1 (2022)	2, 3, 4, 6, 18, 19, 20, 24, 26, 27, 28, 31, 32, 33
<i>New Jersey v. T.L.O.,</i> 469 U.S. 325 (1985)	19
<i>New York State Rifle & Pistol Ass’n v. City of New York,</i> 590 U.S. 336 (2020)	20
<i>NRA v. ATF,</i> 700 F.3d 185 (5th Cir. 2012)	6
<i>NRA v. Bondi,</i> 133 F.4th 1108 (11th Cir. 2025)	1, 16, 20, 23, 25, 27, 31, 33
<i>Peters v. Fleming,</i> 6 M. & W. 42 (Ex. 1839)	28
<i>Reese v. ATF,</i> 127 F.4th 583 (5th Cir. 2025)	1, 11, 12, 13, 20, 21, 22, 23

<i>Riley v. Mallory</i> , 33 Conn. 201 (1866)	27
<i>Rocky Mountain Gun Owners v. Polis</i> , 121 F.4th 96 (10th Cir. 2024)	1, 16, 17, 20
<i>Runkel v. Keeler</i> , 7 Watts 237 (Pa. 1838)	28
<i>Saunders Glover & Co. v. Ott's Adm'r</i> , 12 S.C.L. 572 (S.C. Ct. App. 1822)	27, 30
<i>Teixeira v. County of Alameda</i> , 873 F.3d 670 (9th Cir. 2017)	20
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019)	24
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969)	19
<i>United States v. Marzzarella</i> , 614 F.3d 85 (3d Cir. 2010)	20
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	1, 2, 4, 25, 30, 31, 33, 34
<i>Worth v. Jacobson</i> , 108 F.4th 677 (8th Cir. 2024) ...	1, 13, 14, 24, 25
CONSTITUTIONAL PROVISIONS, STATUTES, AND LAWS	
U.S. CONST.	
art. II, § 1, cl. 6	19
amend. II	19
amend. XXVI, § 1	19
18 U.S.C.	
§ 922(a)(1)(A)	6
§ 922(b)(1)	5
§ 922(c)(1)	5

27 C.F.R. §	
§ 478.96(b)	5
§ 478.99(b)	5
§ 478.124(a)	5
§ 478.124(f)	5
OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, Pub. L. No. 90-351, 82 Stat. 197.....	31
Militia Act of 1792, ch. 33 § 1, 1 Stat. 271....	21, 28, 29
1856 Ala. Laws 17	24
1859 Ky. Acts 241	24
1856 Tenn. Pub. Acts 92	24
THE PUBLIC RECORDS OF THE STATE OF CONNECTICUT (Charles J. Hoadly ed., 1894)	29
30 ARCHIVES OF MARYLAND (William Hand Browne ed., 1910).....	29
Act of Feb. 16, 1786, 1785 Mass. Acts 510.....	29
An Act for Settling the Militia, ch. 24, 3 THE STAT- UTES AT LARGE OF VIRGINIA (William Walker Hening ed., 1823)	29
1 JOURNALS OF THE COUNCIL OF THE STATE OF VIR- GINIA (H.R. McIlwaine ed., 1931)	29
OTHER AUTHORITIES	
1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (St. George Tucker ed., 1803)	32, 33
HENDRIK BOORAEM, YOUNG HICKORY: THE MAKING OF ANDREW JACKSON (2001).....	30

2 JAMES KENT, COMMENTARIES ON AMERICAN LAW (1827)	29, 30
Mark W. Smith, <i>Attention Originalists: The Second Amendment was adopted in 1791, not 1868</i> , HARV. J.L. & PUB. POL'Y PER CURIAM (Dec. 7, 2022), https://perma.cc/8CSW-QB2L	24

PETITION FOR WRIT OF CERTIORARI

The right to keep and bear arms is a “fundamental right[] necessary to our system of ordered liberty,” *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010), and it “belongs to all Americans,” *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). The Second Amendment thus reflects the sacred national value that part of what it means *to be* an American is to enjoy the right to defend yourself, your family, and your community with common firearms. By preventing an entire class of Americans—law-abiding 18-to-20-year-olds—from acquiring handguns on the commercial market, 18 U.S.C. Section 922(b)(1) cuts to the very heart of this fundamental American value. Yet the federal courts of appeals are divided over whether this restriction is constitutional: the Fifth Circuit correctly struck it down, *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025), but the Fourth Circuit panel majority in this case upheld it as “‘consistent with the principles that underpin our regulatory tradition,’” App.10a (quoting *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (emphasis omitted)).

This direct split over the constitutionality of Section 922(b)(1) is part of a broader one over the constitutionality of laws that restrict 18-to-20-year-olds’ right to keep or carry firearms. Compare *Lara v. Commissioner Pa. State Police*, 125 F.4th 428 (3d Cir. 2025), and *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), with *NRA v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc), and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024). The result is that for an entire class of Americans, the Second Amendment has become a national patchwork, with the availability of the right to keep and bear arms

contingent on one’s state of residence. That situation is intolerable, and only this Court has been entrusted with the authority—and the solemn responsibility—to resolve it. The U.S. Solicitor General recently recognized the imperative that this Court “provide much-needed guidance to lower courts” concerning the interpretation and application of the Second Amendment. Brief for the United States as Amicus Curiae Supporting Petitioners at 19, *Wolford v. Lopez*, No. 24-1046 (U.S. May 1, 2025). This case presents an ideal vehicle for the Court to do so.

The decision below not only conflicts with the precedent of three other circuits, it is also contrary to this Court’s decisions in *Heller*, *Bruen*, and *United States v. Rahimi*, 602 U.S. 680 (2024). The “plain text” of the Second Amendment, *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022), encompasses the purchase of firearms by 18-to-20-year-olds, as the panel majority did not dispute. App.11a–12a. And the majority was unable to identify any Founding-era laws or regulations that directly restricted the keeping or bearing of arms by 18-to-20-year-olds, *id.* at 20a. Indeed, the only eighteenth-century laws cited by anyone below that directly relate to the use of firearms by this age group—the militia laws throughout the Nation that “required 18- to 20-year-olds” to serve in the militia and “to show up [for militia service] with a musket, firelock or rifle”—in fact “provide[] strong evidence that the Second Amendment protected 18- to 20-year-olds.” *Id.* at 51a (Quattlebaum, J., dissenting).

But the majority below upheld Section 922’s age restriction anyway, based almost entirely on the notion that the common law at the Founding made

contracts by minors for the purchase of goods—incidentally including firearms, according to the majority—“unenforceable” at the option of the minor. *Id.* at 12a (majority). That reasoning is unsustainable for multiple independent reasons. The majority’s reliance on this common-law voidability rule ultimately depends on an economic inference about “what the practical impact of the voidability principle may have been,” rather than any actual historical statute or legal rule directly limiting anyone’s acquisition of firearms. *Id.* at 44a (Quattlebaum, J., dissenting). Nothing about the voidability rule prevented minors from bartering for goods or purchasing them with cash—or even on credit, if the vendor was willing to take the risk (as at least some apparently were, *see id.* at 46a–47a). Instead, the voidability rule at most functioned as a background contracting rule that protected 18-to-20-year-olds from economic exploitation. It did not reflect any substantive legal understanding that this age cohort possessed no right to keep and bear arms.

Moreover, the panel majority failed to persuasively establish that the Founding-era voidability rule *even applied to firearms in the first place*. The majority acknowledged that there was a recognized exception covering contracts for “necessaries,” *Id.* at 15a (majority), and the best reading of the historical record is that this category *included firearms*, at least for 18-to-20-year-olds, given that most states charged Americans in this age group with the legal duty to acquire firearms for militia service.

Finally, and in all events, the contract voidability rule cannot justify Section 922’s age-based handgun ban under *Bruen*’s text and history inquiry because it is not remotely “relevantly similar” to the challenged

restriction. *Bruen*, 597 U.S. at 29. Indeed, there is a fundamental mismatch between the two restrictions. The voidability rule applied only to *legal minors*—persons who were not treated as adults for most other purposes and who remained within the care, custody, and protection of their parents. But Section 922(b)(1) restricts the Second Amendment rights of *legal adults*—18-to-20-year-olds who enjoy the practical and legal benefits of adulthood, who *are not* within the custody or protection of their parents, and who often have families of their own. A fundamental incident of adulthood in America is the enjoyment of constitutional rights, including the right to armed self-defense. Stripping away an 18-year-old adult’s Second Amendment rights is thus fundamentally irreconcilable “with the principles that underpin the Nation’s regulatory tradition,” *Rahimi*, 602 U.S. at 681, and the Court should grant the writ and reverse.

OPINIONS BELOW

The opinion of the Court of Appeals is not reported in the Federal Reporter, but it is available at 2025 WL 1704429 and is reproduced at App.3a–62a. The order of the District Court granting Petitioners’ motion for summary judgment is reported at 704 F. Supp. 3d 687 and reproduced at App.63a–101a.

JURISDICTION

The Court of Appeals issued its judgment on June 18, 2025. App.1a–2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The relevant portions of Amendment II to the United States Constitution; Title 18, Section 922 of the United States Code; and Title 27, Part 478 of the Code of Federal Regulations are reproduced in the Appendix beginning at App.102a.

STATEMENT

I. Federal law bans 18-to-20-year-olds from purchasing handguns from licensed dealers.

18 U.S.C. Section 922(b)(1) bars 18-to-20-year-old Americans from purchasing handguns from federal firearms licensees (“FFLs”). Section 922(b)(1) provides that an FFL may not:

sell or deliver . . . any firearm or ammunition . . . if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

18 U.S.C. § 922(b)(1). Likewise, Section 922(c)(1) prohibits FFLs from selling a firearm to a person “who does not appear in person at the licensee’s business premises” unless the person submits a sworn statement that “in the case of any firearm other than a shotgun or a rifle, [he or she is] twenty-one years or more of age.” *Id.* § 922(c)(1). These statutes are implemented by regulations that similarly restrict handgun sales to individuals over 21. *See* 27 C.F.R. §§ 478.96(b), 478.99(b), & 478.124(a), (f).

As a result, “18-to-20-year-olds may not purchase handguns from FFLs.” *NRA v. ATF*, 700 F.3d 185, 190 (5th Cir. 2012), *abrogated by Bruen*, 597 U.S. 1. And FFLs effectively *are* the commercial market for handguns—all who “engage in the business of importing, manufacturing, or dealing in firearms” must become FFLs. 18 U.S.C. § 922(a)(1)(A).

Petitioner West Virginia Citizens Defense League (“WVCDDL”) is a non-profit, incorporated membership association that has, as members, peaceable 18-to-20-year-old adult citizens who wish to purchase common handguns from licensed dealers but are barred from doing so by the challenged federal provisions. *See* 4th Cir. Doc. 86-2 at 1–2 (May 21, 2025); 4th Cir. Doc. 88 at 3 (June 18, 2025).

II. The proceedings below.

A. On August 30, 2022, Petitioner WVCDDL (then joined by two individual plaintiffs who turned 21 during the course of the appeal) brought this lawsuit in the U.S. District Court for the Northern District of West Virginia, challenging Respondents’ age-based handgun ban. Petitioner alleged that the ban violated the Second Amendment, and it sought a declaratory judgment and injunction restraining its continued enforcement. 4th Cir. Doc. 20 at JA27–JA28 (Jan. 22, 2024). The district court had jurisdiction under 28 U.S.C. § 1331. Respondents moved to dismiss, and Petitioner cross-moved for summary judgment.

On December 1, 2023, the district court denied Respondents’ motion to dismiss and granted summary judgment for Petitioner. The court concluded that the Second Amendment’s text protects the plaintiffs’ proposed conduct and thus that “the burden falls on the

Government to justify the challenged regulation” by demonstrating an analogous historical tradition of firearm regulation. App.94a–97a. The government failed to bear that burden, the court determined, because it did not “present[] any evidence of age-based restrictions on the purchase or sale of firearms from before or at the Founding or during the Early Republic,” and the handful of such restrictions that existed “by the eve of the Civil War” “cannot provide much insight into the meaning of the Second Amendment.” *Id.* at 96a–97a, 99a (cleaned up).

B. Around the same time as Petitioner’s suit was filed, another set of 18-to-20-year-old plaintiffs challenged the federal age-based handgun ban in the District Court for the Eastern District of Virginia, seeking an injunction and certification of a nationwide class of 18-to-20-year-olds. *See Fraser v. ATF*, 689 F.Supp.3d 203 (E.D. Va. 2023), *rev’d sub nom. McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025). That court likewise granted summary judgment to the plaintiffs, and the government appealed. On December 20, 2024, the Fourth Circuit Court of Appeals consolidated the two cases for purposes of oral argument.

C. On June 18, 2025, a divided panel of the Fourth Circuit reversed the opinion in *McCoy* in a published opinion, and the panel simultaneously reversed the district court’s opinion below in an unpublished *per curiam* order relying on the opinion in *McCoy*. The panel also, at the same time, granted Petitioner’s motion to supplement the record with information establishing that it continues to have at least one member—Alec La Neve—who is between the ages of 18 and 21 and who would purchase a handgun from a licensed dealer were it not for the challenged federal ban. 4th

Cir. Doc. 86-2 at 1–2 (May 21, 2025); 4th Cir. Doc. 88 at 3 (June 18, 2025).

Judge Wilkinson’s opinion for the majority in *McCoy* assumed without deciding that 18-to-20-year-olds “are part of ‘the people’ ” who enjoy Second Amendment rights and that “purchasing a handgun for lawful purposes . . . is part of the ‘conduct’ protected by the Amendment.” App.11a–12a. But the panel majority concluded that the federal age ban “comports with our country’s regulatory tradition,” based on its determination that at the Founding “a person under the age of 21 was considered an ‘infant’ for purposes of contracting, and infants were not bound by their contracts.” *Id.* at 9a, 12a.

The majority acknowledged that there were no age-based restrictions specific to purchasing firearms at the Founding, *id.* at 18a, but it found the common-law voidability of contracts sufficiently analogous to the challenged age ban. While that voidability rule “exposed sellers only to the risk of financial loss,” the majority reasoned that “from the perspective of a minor purchaser, the effects of § 922(b)(1) and the infancy doctrine are virtually the same,” since both make “a rational merchant . . . highly unlikely to sell a gun to a minor.” *Id.* at 17a. And the panel majority also thought both rules “share a common rationale,” since the voidability rule protected 18-to-20-year-olds who lacked “the judgment and discretion to transact with more sophisticated adults,” and the federal age limit was designed to protect against “immature” and “thrill-bent . . . minors prone to criminal behavior.” *Id.* (cleaned up).

The majority reasoned that this analysis was bolstered by the historical “laws that placed the onus on parents to provide minors with firearms for militia service,” which it thought undermined “any constitutional right derived from the Militia Act” of 1792, which required 18-to-20-year-old males to enroll for militia service. *Id.* at 19a. And the panel also thought its conclusion was “reinforced by later nineteenth-century history,” when “at least twenty jurisdictions enacted laws criminalizing the sale of firearms, often handguns specifically, to individuals under the age of 21.” *Id.* at 19a–20a.

D. Judge Heytens published a concurrence highlighting, in his view, the “startling result” of Petitioner’s arguments. *Id.* at 25a (Heytens, J., concurring). Because “16- and 17-year-olds also served in Founding-era militias, and they were not subject to any Founding-era firearm sales restrictions based on age,” Judge Heytens maintained, “any decision accepting the plaintiffs’ logic would suggest that—any *ipse dixit* aside—today’s high school juniors *also* have a constitutionally protected right to buy handguns.” *Id.* at 26a. Judge Heytens did not mention the fact that every state in the Union coalesced around a minimum militia age of 18 at, or within a few years of, the Second Amendment’s ratification. Nor did he seriously grapple with Petitioner’s alternative argument that while historical principles may support limiting the purchase of firearms by actual legal minors—still within the care and custody of their parents—they do not justify restrictions on today’s 18- 20-year-olds.

E. Judge Quattlebaum dissented. Consistent with the majority’s assumptions, he concluded that “ ‘the people’ must include 18- to 20-year-olds,” and that

“the right to keep and bear arms includes the right to purchase them.” *Id.* at 36a, 38a (Quattlebaum, J., dissenting). And also like the majority, he determined that when it comes to *Bruen*’s second, historical inquiry, the focus “is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.” *Id.* at 42a (quoting *Bruen*, 597 U.S. at 37). But Judge Quattlebaum parted from the majority in the application of this historical inquiry.

The majority failed to identify any “actual founding-era firearm regulations” remotely analogous to the federal age-based handgun ban, Judge Quattlebaum explained. *Id.* at 29a. Instead, the majority “attempt[ed] to shoehorn the minor’s ability to void a contract into a governmental burden by considering what the practical impact of the voidability principle may have been.” *Id.* at 44a. In reality, not only did the voidability rule “not impose any *governmental* burden on contracts,” as opposed to economic risk attributable to “the seller’s economic choices,” but the majority “point[ed] to no evidence that the contract principle limited the ability of 18- to 20-year-olds to acquire guns” specifically, and in fact there “is actual historical evidence” that Founding-era “merchants [sold] on credit to minors, including sales of firearms, despite the risk.” *Id.* at 43a–44a, 46a (emphasis added).

Finally, Judge Quattlebaum explained, the “why” between the two regulatory regimes is “not sufficiently similar.” *Id.* at 44a–45a. The voidability rule was based on a “paternalistic” belief in “‘the inability of infants to take care of themselves.’ ” *Id.* at 44a (quoting 2 James Kent, *Commentaries on American Law* 191 (O. Halsted ed., 1827)). The modern federal

age-ban, by contrast, “targets public safety.” *Id.* at 45a.

REASONS FOR GRANTING THE WRIT

I. **This Court’s review is needed to resolve the conflict between the circuits over the constitutionality of the federal age-based handgun ban.**

A. The federal Courts of Appeals are in direct conflict over the constitutionality of Section 922(b)(1) and (c)(1)’s restriction on 18-to-20-year-olds’ purchase of handguns. In *Reese*, the Fifth Circuit struck down that federal age ban in a unanimous opinion by Judge Jones, concluding that “the text of the Second Amendment includes eighteen-to-twenty-year-old individuals among ‘the people’ whose right to keep and bear arms is protected” and “[t]he federal government has presented scant evidence that eighteen-to-twenty-year-olds’ firearm rights during the founding-era were restricted in a similar manner to the contemporary federal handgun purchase ban.” 127 F.4th at 600. The Fourth Circuit panel below, by contrast, upheld the federal ban—and while it acknowledged that it was splitting with the *Reese* decision in a “see also” citation, App.18a, it made no attempt whatsoever to rebut, discuss, or even mention the Fifth Circuit’s contrary reasoning.

Reese concluded that “the text of the Amendment’s prefatory clause considered along with the overwhelming evidence of their militia service at the founding indicates that eighteen-to-twenty-year-olds were indeed part of ‘the people’ for Second Amendment purposes.” 127 F.4th at 595 (citations omitted); *contra* App.18a–19a (rejecting reliance on militia

service). And under *Bruen*'s second, historical inquiry, the Fifth Circuit held that the challenged restriction was unsupported by historical tradition. *Reese*, 127 F.4th at 600. In doing so, *Reese* addressed, and rejected, each of the pieces of historical evidence relied upon by the court below. The Fifth Circuit noted "the common law's recognition of 21 years as the date of legal maturity at the time of the founding," and that under this rule "eighteen-to-twenty-year-olds did not enjoy the full range of civil and political rights in the founding-era," including the rights to vote or serve on juries. *Id.* at 590–91 (quotation marks omitted). But this general legal principle, the court held, did not demonstrate that restrictions on this age cohort's *Second Amendment* rights are constitutional, since "[t]he terms 'majority' and 'minority' lack content without reference to the right at issue." *Id.* at 592 (quoting *NRA*, 700 F.3d at 204 n.17). "The fact that eighteen-to-twenty-year-olds were minors unable to vote (or exercise other civic rights)" accordingly "does not mean they were deprived of the individual right to self-defense." *Id.*

Nor was the *Reese* court swayed by the other evidence that the Fourth Circuit relied upon. Laws that "required parents to furnish firearms for young men's militia duty" did "not mean that the military-age young men lacked the right to keep and bear (or obtain) such arms themselves," the Fifth Circuit explained, because such laws "just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by parents." *Id.* at 597; *contra* App.19a–20a (relying on these laws). And because the Second Amendment's meaning was fixed by "the public understanding of the right when the

Bill of Rights was adopted in 1791,” *Reese* held that the age limits enacted by a minority of states in the late nineteenth century “were passed too late in time to outweigh the tradition of pervasively acceptable firearm ownership by eighteen-to-twenty-year-olds at the crucial period of our nation’s history.” 127 F.4th at 599–600 (cleaned up); *contra* App.20a–21a (relying on late-nineteenth-century evidence).

This Court’s “principal responsibility” is “to ensure the integrity and uniformity of federal law.” *Kansas v. Marsh*, 548 U.S. 163, 183 (2006) (Scalia, J., concurring). The lower courts have split over the constitutionality of an important federal statute, based on reasoning that is irreconcilable, and it is incumbent upon this Court to resolve that explicit disagreement over the fundamental constitutional question at issue and restore the uniform application of federal criminal law.

B. Beyond this direct conflict over the question presented, the federal Courts of Appeals are also more generally divided over the constitutionality of laws that restrict the ability of 18-to-20-year-olds to acquire or carry firearms. This Court’s review is also needed to resolve that intractable conflict between the circuits over this acutely important question.

In addition to the Fifth Circuit in *Reese*, two other federal Courts of Appeals have held that 18-to-20-year-olds enjoy full Second Amendment rights. In *Worth v. Jacobson*, the Eighth Circuit invalidated a Minnesota law prohibiting anyone under 21 from carrying firearms in public. 108 F.4th 677. Like the *Reese* court, the Eighth Circuit concluded that at the Founding there were insufficient analogues “to demonstrate

that the Nation’s historical tradition of firearm regulation supports the Carry Ban.” *Id.* at 696. Also like *Reese*, *Worth* specifically rejected the government’s reliance on the Founding-era “common law” rule that “individuals did not have rights until they turned 21 years old,” reasoning that arguments “focusing on the original contents of a right instead of the original definition” are “bordering on the frivolous.” *Id.* at 689, 690 (quoting *Heller*, 554 U.S. at 582). “The Second Amendment extends, *prima facie*, to all members of the political community, even those that were not included at the time of the founding,” and “[e]ven if the 18 to 20-year-olds were not members of the political community at common law, they are today.” *Id.* at 690–91 (cleaned up). Finally, the government’s Reconstruction-era laws, the Eighth Circuit held, both “carry less weight than Founding-era evidence” and “have ‘serious flaws even beyond their temporal distance from the founding.’” *Id.* at 697 (quoting *Bruen*, 597 U.S. at 66).

The Third Circuit’s recent decision in *Lara v. Commissioner Pennsylvania State Police* is in accord. *Lara* struck down a collection of state laws that barred 18-to-20-year-olds from carrying firearms whenever the State is under a declared state of emergency. 125 F.4th at 432. It held “that 18-to-20-year-olds are, like other subsets of the American public, presumptively among ‘the people’ to whom Second Amendment rights extend,” and that the state failed to show that its “restriction on 18-to-20-year-olds’ Second Amendment rights is consistent with the principles that underpin founding-era firearm regulations.” *Id.* at 438, 445. Like the Fifth and Eighth Circuits, the *Lara* court did not find it dispositive that at “the Founding

... those who were under 21 were considered ‘infants’ or ‘minors’ in the eyes of the law,” because “the legal status of 18-to-20-year-olds during that period” is not binding *today*, now that this legal status has changed. *Id.* at 436–47. Indeed, the court explained, if “we were rigidly limited by eighteenth-century conceptual boundaries, ‘the people’ would consist solely of white, landed men, and that is obviously not the state of the law.” *Id.* at 437. The Third Circuit likewise rejected the relevance of the late-nineteenth-century age bans because “the constitutional right to keep and bear arms should be understood according to its public meaning in 1791.” *Id.* at 441.

Finally, the Ninth Circuit previously reached a similar conclusion, albeit in a decision that was subsequently vacated—as did another, prior panel of the Fourth Circuit itself. In *Jones v. Bonta*, the Ninth Circuit ordered preliminarily enjoined a California law banning 18-to-20-year-olds from purchasing semiautomatic centerfire rifles. 34 F.4th 704, 733 (9th Cir. 2022). It reached that decision, however, before this Court’s decision in *Bruen*, and its opinion has accordingly been vacated for further analysis under the *Bruen* framework. 47 F.4th 1124 (9th Cir. 2022) (Mem.). Similarly, a previous panel of the Fourth Circuit struck down Section 922(b)(1) and (c)(1) as unconstitutional in *Hirschfeld v. ATF*, 5 F.4th 407, 452 (4th Cir. 2021). But that opinion was ultimately vacated as moot, after all of the plaintiffs turned 21, *Hirschfeld v. ATF*, 14 F.4th 322 (4th Cir. 2021), and the Fourth Circuit panel below obviously reached the directly opposite conclusion.

C. Three of the six federal Courts of Appeals that have published opinions considering the

constitutionality of age-based restrictions on the right to keep and bear arms have thus struck them down. But the other three—the panel majority below and two others—have upheld such restrictions based on directly contrary reasoning. In *NRA v. Bondi*, the en banc Eleventh Circuit, in a closely-divided opinion, upheld a Florida law that flatly bans 18-to-20-year-olds from purchasing any firearms. 133 F.4th 1108 (11th Cir. 2025) (en banc). Like the panel majority below, the Eleventh Circuit did not rely on any tradition of firearm regulation—it acknowledged that “the Founding era lacked express prohibitions on the purchase of firearms” by any age group—and it instead placed nearly all the weight of its decision on the Founding-era contract voidability rule. *Id.* at 1124. Also like the panel below, the Eleventh Circuit thought this conclusion was bolstered by state militia laws that “required parents of minors to acquire firearms for their militia service” and by the late-nineteenth-century laws in several states “restrict[ing] the purchase or use of certain firearms by minors.” *Id.* at 1119, 1122.

A panel of the Tenth Circuit likewise recently upheld a Colorado age ban on purchasing firearms based on reasoning that contradicts the decisions of the Third, Fifth, and Eighth Circuits. *Rocky Mountain Gun Owners v. Polis* concluded that Colorado’s ban fell within the category of “laws imposing conditions and qualifications on the commercial sale of arms,” which it read this Court’s precedent to deem “presumptively lawful.” 121 F.4th at 118 (quoting *Heller*, 554 U.S. at 626–27 & n.26). It thus concluded that Colorado’s blanket age ban on the purchase of firearms did not even “implicate the plain text of the

Second Amendment.” *Id.* at 120. And the court also credited—and discussed at length over the course of three pages—the “scientific consensus” that the challenged age ban “will likely reduce the numbers of firearm homicides, nonhomicide violent crimes, suicides, and accidental firearm injuries in Colorado.” *Id.* at 127.

D. Accordingly, the Fourth Circuit’s decision in this case forms part of direct circuit split over the constitutionality of Section 922’s age ban—and part of a broader three-to-three division over the extent to which the Second Amendment protects the right of 18-to-20-year-olds to keep and bear arms. This question is a foundational one: whether an age cohort comprising tens of millions of Americans may be categorically excluded from one of our fundamental, enumerated constitutional protections. 18-to-20-year-olds are considered legal adults today for virtually all purposes: they may vote, serve on juries, petition the government, freely express their views, and serve in (or be conscripted into) the armed services. In the Third, Fifth, and Eighth Circuits the government is also barred from infringing their Second Amendment rights. Yet in the Fourth, Tenth, and Eleventh Circuits, the states are free to effectively foreclose their right to defend themselves and their families with common firearms. That situation is unsustainable and urgently calls for this Court to resolve the intractable division between the Circuits.

This case presents an optimal vehicle for the Court to do so. The district court resolved Petitioner’s challenge on summary judgment, so both courts below passed squarely on the merits, and there is no concern that the record or relevant facts are incompletely

developed in a way that would impede this Court’s review. Because Petitioner is an associational plaintiff with thousands of members in West Virginia, there is no risk that this case will be mooted out by individual plaintiffs aging out of the federal ban. And unlike the pending petition in *McCoy*—the case that the panel below temporarily consolidated with this one for purposes of oral argument—this case presents the key substantive dispute over the Second Amendment’s application to 18-to-20-year-olds unencumbered by a complicated and unrelated question about class certification. *See* Petition for a Writ of Certiorari at i, 32–35, *McCoy v. ATF*, No. 25-24 (U.S. July 3, 2025).

II. Review is needed because the decision below conflicts with this Court’s decisions in *Heller* and *Bruen*.

This Court’s review is also warranted because the Fourth Circuit’s decision below conflicts with the Court’s Second Amendment jurisprudence. The federal age-based handgun ban is flatly contrary to the right to keep and bear arms as interpreted by this Court in *Heller*, *McDonald*, *Bruen*, and *Rahimi*, and the court below was wrong to uphold it.

A. *Bruen* instructs courts assessing a Second Amendment challenge to ask, first, “whether the plain text of the Second Amendment protects [the plaintiffs’] proposed course of conduct” and, if so, whether the “government [can] justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” 597 U.S. at 24, 32. An 18-to-20-year-old individual’s purchase of a handgun falls squarely within the Second Amendment’s textual reach.

18-to-20-year-olds like Petitioner’s members are presumptively among “the people” who enjoy the right to keep and bear arms. U.S. CONST. amend. II. The Second Amendment does not include any express age limit—unlike other provisions of the Constitution. *E.g. id.* at art. II, § 1, cl. 6; *id.* at amend. XXVI, § 1. And the “normal and ordinary” meaning of “the people” includes *all* the people—“all Americans,” or all “who are part of [the] national community,” as *Heller* put it. 554 U.S. at 576, 580–81 (quotation marks omitted). Moreover, the two other provisions in the Bill of Rights that explicitly protect a right of “the people”—the First and the Fourth Amendments—extend to *the whole people*, including those under 21. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969); *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985). “The people” “seems to have been a term of art employed in select parts of the Constitution,” *Heller*, 554 U.S. at 580 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)), and to cabin its scope with an unenumerated age limitation for purposes of *the Second Amendment only* would be to treat that provision as “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,” *Bruen*, 594 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780 (plurality)).

The Second Amendment’s text also covers the “proposed course of conduct” these 18-to-20-year-old “people” wish to engage in, *id.* at 32: acquiring handguns. Constitutional rights “implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment). Here, the Second Amendment explicitly protects the right to “have

weapons,” *Heller*, 554 U.S. at 582, and one “necessary concomitant of this right,” *New York State Rifle & Pistol Ass’n v. City of New York*, 590 U.S. 336, 364 (2020) (Alito, J., dissenting), is obviously the right to acquire those arms in the first place. Numerous courts of appeals have held this. See *Reese*, 127 F.4th at 590; *Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017); *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010), *abrogated on other grounds by Bruen*, 597 U.S. 1; see also *Andrews v. State*, 50 Tenn. 165, 178 (1871) (“The right to keep arms, necessarily involves the right to purchase them.”). And *Heller* conclusively establishes that the particular firearms targeted by the federal age ban—handguns—are in common use and thus protected by the Second Amendment. 554 U.S. at 628–29.

The panel majority below, the Eleventh Circuit in *NRA*, and the Tenth Circuit in *Rocky Mountain Gun Owners* all assumed that the plain text of the Second Amendment protects the purchase of firearms by peaceable 18-to-20-year-old Americans. See App.11a–12a; *NRA*, 133 F.4th at 1130; *Rocky Mountain Gun Owners*, 121 F.4th at 114–18. They assumed this because the conclusion is unassailable.

B. Nor can Section 922(b)(1) and (c)(1)’s age-based restriction on purchasing handguns be justified as “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. Both Founding-era and Reconstruction-era firearm regulations offer no support for the restriction, and neither does the evidence offered by the Fourth Circuit.

1. The clearest Founding-era evidence of our historical traditions surrounding the right of 18-to-20-

year-olds to keep and bear arms comes from the Founders' understanding of militia service. Although the Second Amendment's prefatory clause cannot be read to "limit or expand the scope of the operative clause," it nonetheless "announces the purpose for which the right was codified: to prevent elimination of the militia." *Heller*, 554 U.S. at 578, 599. And there is no doubt that 18-to-20-year-olds were understood to be part of the militia at the time the Second Amendment was adopted: the Militia Act of 1792 set the minimum age of militia service at 18, Militia Act of 1792, ch. 33 § 1, 1 Stat. 271, and all states likewise adopted "the minimum age of eighteen . . . at or immediately after ratification of the Second Amendment," *Reese*, 127 F.4th at 594.

These "Founding-era militia laws provide powerful historical evidence" that the Second Amendment "encompassed 18-year-olds." *Hirschfeld*, 5 F.4th at 424. "The Second Amendment refers to the militia, and [18-to-20-year-olds] had to be in the militia and bring their own firearms." *Jones*, 34 F.4th at 721. The federal Militia Act, for example, required each militia enrollee to "provide himself with a good musket or firelock" and appropriate ammunition. Militia Act of 1792, ch. 33 § 1, 1 Stat. 271. "This reference implies at least that young adults needed to have their own firearms." *Jones*, 34 F.4th at 721. Moreover, if the Second Amendment was codified to prevent the disarmament of the militia, and 18-to-20-year-olds were universally understood to be part of the militia, then the Second Amendment necessarily must protect that age cohort's right to keep and bear arms. "After *Heller*, there is no doubt that 'the militia' was 'a subset of the people' protected by its operative clause," *Reese*, 127 F.4th

at 593, and “because the militia is a subset of ‘the people,’ those in the militia share the same rights as ‘the people,’” *Hirschfeld*, 5 F.4th at 427.

The reasons offered by the Fourth Circuit panel in this case for rejecting the relevance of the Founding-era militia laws do not withstand scrutiny. It asserted that the federal 1792 Militia Act “allowed states to exempt individuals from militia service notwithstanding their being above the age of eighteen” and that three states in the eighteenth and nineteenth centuries in fact “set the age of militia service at 21.” App.18a (quotation marks omitted). This response confuses the *organized* militia—those actually called into service at any given time—with the *unorganized*, or “general” militia—the body of “all able-bodied men.” *Heller*, 554 U.S. at 596. It is the latter group that the Second Amendment protects. *Id.* And the fact that “the minimum age of eighteen prevailed” *in every single state* “at or immediately after ratification of the Second Amendment,” *Reese*, 127 F.4th at 594–95, conclusively shows that the Founders understood 18-to-20-year-olds to be part of the general militia—and thus necessarily within the Second Amendment’s protective sphere.

Nor does the fact that some states “enacted laws that placed the onus on parents to provide minors with firearms for militia service,” App.19a, undermine the force of the Founding-era militia laws. Such laws “do[] not establish that minors could not acquire guns themselves.” *Id.* at 53a (Quattlebaum, J., dissenting). As the panel majority itself noted, after all, 18-to-20-year-olds at the Founding generally “either worked for their parents for no wages, or any wages earned belonged to their parents,” *id.* at 14a (majority), so these

parental provision laws are best read as simply shifting to parents “the financial burden of equipping” their 18-to-20-year-old children for militia service, *id.* at 53a (Quattlebaum, J., dissenting). More fundamentally, such laws “just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by parents.” *Reese*, 127 F.4th at 597. Thus, “[t]o the extent those laws reflect a Founding-era policy on age and firearms, they reflect the policy that eighteen- to twenty-one-year-olds *should be armed*.” *NRA*, 133 F.4th at 1181 (Brasher, J., dissenting).

By contrast to this strong historical evidence that law-abiding 18-to-20-year-old citizens were understood at the Founding to enjoy the Second Amendment’s protections, the Government has not identified, and we are not aware of, *any evidence whatsoever* of colonial or Founding-era laws restricting the keeping, carrying, or acquisition of firearms by individuals 18 or over because of their age. The closest anyone has been able to come are the handful of nineteenth-century university restrictions on students keeping firearms, but those are “uniquely poor analogues,” *id.* at 1185—which is likely why the panel majority below did not even mention them. These school rules were rooted in the authority of their college to act “*in loco parentis*.” *Id.* at 1120 (majority). They thus represent nothing more than the fact that *parents* could restrict their children in all sorts of ways. “A campus code says no more about the Constitution than does a particular parent’s house rules.” *Id.* at 1186 (Brasher, J., dissenting).

2. Given the uniform historical evidence that 18-year-olds fully enjoyed the Second Amendment right

to acquire firearms at the Founding, the restrictions enacted by a minority of states in the late nineteenth century cannot justify the challenged law. There are just three putative analogues that predate the Fourteenth Amendment’s ratification in 1868: from Alabama, Tennessee, and Kentucky. *See* 1856 Ala. Laws 17; 1856 Tenn. Pub. Acts 92; 1859 Ky. Acts 241, 245, § 23. Another seventeen jurisdictions followed suit in the ensuing decades—most in the 1880s and ‘90s. *See* App.20a. These state laws are both too late and too little.

“[F]or decades,” this Court “has generally assumed that the public understanding of the right when the Bill of Rights was adopted in 1791 governs” in cases involving federal law. *Worth*, 108 F.4th at 693 (cleaned up); *see also Gamble v. United States*, 587 U.S. 678, 702 (2019). And the Court has made emphatically clear that once “a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires.” *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). It follows that 1791 is the focal point for inquiry into the Second Amendment’s historically understood limits. *See* 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), <https://perma.cc/8CSW-QB2L>. A collection of laws dating back no earlier than sixty years after the Second Amendment’s ratification cannot establish a “tradition of firearm regulation” justifying the federal age ban, particularly where those late-breaking laws “contradict[] earlier evidence.” *Bruen*, 597 U.S. at 24, 66; *see also Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 482 (2020) (collection of over 30 state laws

that “arose in the second half of the 19th century. . . cannot by itself establish an early American tradition” justifying the laws under the First Amendment). The collection of nineteenth-century laws thus “deserves little weight under *Bruen*.” App.57a–58a (Quattlebaum, J., dissenting).

In any event, these Reconstruction-era laws “have serious flaws even beyond their temporal distance from the founding.” *Worth*, 108 F.4th at 697 (quotation marks omitted). By the turn of the twentieth century, less than half of the States had adopted age-based firearm restrictions of any sort. This smattering of late-breaking age restrictions does not suffice to show a “[w]ell entrenched,” *Rahimi*, 602 U.S. at 695, or “well-established and representative,” *Bruen*, 597 U.S. at 30, historical tradition of firearm regulation.

Even more fundamentally, because the age of majority generally was 21 at the time, these nineteenth-century laws applied only to limit the Second Amendment rights of *actual minors*—individuals who, at the time, remained under the legal custody and protection of their parents. Because they were “based on one’s status as a minor,” *Worth*, 108 F.4th at 698, the “[w]hy and how” of these laws, *Rahimi*, 602 U.S. at 692, were thus both fundamentally different from Section 922’s age limit. “Not to belabor the point, but eighteen- to twenty-one-year-olds . . . today are analogous to adults, not minors, at the time these statutes were enacted.” *NRA*, 133 F.4th at 1185 (Brasher, J., dissenting).

3. The panel majority below nonetheless held that Section 922’s age ban “comports with our country’s regulatory tradition,” based virtually entirely on the

general common-law rule at the Founding that “a person under the age of 21 was considered an ‘infant’ for purposes of contracting, and infants were not bound by their contracts.” App.9a, 12a. This general contract-law voidability rule cannot bear the extraordinary weight the majority placed on it for at least three independent reasons.

i. First, rather than identifying any direct “historical tradition of firearm regulation,” *Bruen*, 597 U.S. at 24, the majority’s reasoning rests on a far flimsier reed: inferences about the presumed “practical impact” of the voidability rule on a “seller’s economic choices.” App.44a (Quattlebaum, J., dissenting). The majority did not cite a single Founding-era statute, ordinance, or rule actually regulating firearms—in fact it conceded that no laws directly analogous to Section 922’s age ban existed. *Id.* at 21a. Even assuming that the voidability rule had the practical effect of limiting 18-to-20-year-olds’ ability to acquire firearms, that was merely the incidental effect of the Founding era’s background rules of contract law. At most, that shows that the Second Amendment did not sweep away such incidental, practical impediments to keeping and bearing arms. But because the contract voidability rule was not a direct “firearm regulation,” *Bruen*, 597 U.S. at 24, it does not illuminate the substantive scope of the Second Amendment right itself. Accordingly, now that the voidability rule no longer obtains—and any practical impediment it imposed on 18-to-20-year-olds’ access to arms has been removed—that defunct rule has no continuing relevance to the Second Amendment inquiry.

Moreover, although the panel majority asserted that the general common-law voidability rule

“imposed a severe burden on a minor’s ability to purchase goods, including firearms,” App.13a, it was able to identify only two cases actually applying the rule to firearms. The only case close in time to the Founding involved “pistols,” *Saunders Glover & Co. v. Ott’s Adm’r*, 12 S.C.L. 572, 572 (S.C. Ct. App. 1822), notably not the long guns that were the “quintessential self-defense weapon,” *Heller*, 554 U.S. at 629, of the day and the type that 18-to-20-year-olds were obliged to acquire for militia service. The other case was decided in 1866, *Riley v. Mallory*, 33 Conn. 201 (1866)—over seven decades after the Second Amendment’s ratification and, for the reasons discussed above, far too distant in time to shed any meaningful light on the original meaning of that provision.

Even by the panel majority’s telling, the common law at most rendered minors’ contracts *voidable*; it did not proscribe them. The majority’s conclusion that the voidability rule had “virtually the same” effect as Section 922’s flat age-based ban on handgun sales, App.17a, is thus based not on any law saying this but rather on speculation that the “*ex ante* effect[s]” of the voidability rule created “practical difficulties” for minors who wished to purchase firearms on credit, *NRA*, 133 F.4th at 1166 (Branch, J., dissenting). And in reality “we need not speculate about” whether the rule had this effect, since “the historical record”—including the two nineteenth-century cases just discussed—“reflects merchants selling on credit to minors including sales of firearms, despite the risk.” App.46a (Quattlebaum, J., dissenting). The panel majority’s inferences from the common-law voidability rule thus do not show that laws banning handgun sales to 18-to-20-year-olds are “consistent with this Nation’s

historical tradition of firearm regulation” at the Founding. *Bruen*, 597 U.S. at 17.

ii. In any event the common-law voidability rule cannot justify Section 922’s age restriction because neither Respondents nor the panel majority below have persuasively shown that the rule actually applied to firearms in common use. The majority acknowledged that the common-law voidability rule did not apply to “a contract for necessities,” App.15a, and it was well established at common law that this category encompassed not “only such articles as are absolutely necessary to support life, but it includes also such articles as are suitable to the state, station and degree in life of the person to whom they are furnished,” *Jordan v. Coffield*, 70 N.C. 110, 114 (1874). As such, the question of whether an item was necessary was a “question of circumstance.” *Peters v. Fleming*, 6 M. & W. 42 (Ex. 1839). The Pennsylvania Supreme court held in 1838 that a knife was a necessary for a minor living with his widowed mother. *Runkel v. Keeler*, 7 Watts 237, 238–39 (Pa. 1838). And given that eighteen-year-olds were counted as members of the militia by every state at or around the time of ratification—and were legally required to “provide [them]sel[ves] with a good musket or firelock . . . or with a good rifle” for use in militia service, Militia Act of 1792, ch. 33 § 1, 1 Stat. 271—there can also be no doubt that the private arms those 18-year-olds were mandated to acquire were considered necessities. Indeed, an English court held in 1804 that “a suit of regimentals,” or a military uniform, was a necessary for a minor enrolled in a voluntary corps. *Coats v. Wilson*, 170 Eng. Rep. 769 (1804). The firearms 18-to-20-year-olds were required to acquire for military service were

plainly no less “suitable to the state, station and degree in life” of minor militiamen. *Jordan*, 70 N.C. at 114.

Founding-era statutes confirm that firearms were considered necessities. A 1786 Massachusetts law, for instance, barred local officials from executing a warrant of distress for the collection of debts against “any person[’s] . . . arms or household utensils, necessary for upholding life[.]” Act of Feb. 16, 1786, 1785 Mass. Acts 510, 516. Connecticut, Maryland, and Virginia had similar laws. THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 537 (J. Hammond Trumbull ed., 1850) (Code of 1650); 30 ARCHIVES OF MARYLAND 277, 280 (William Hand Browne ed., 1910) (Act of 1715); An Act for Settling the Militia, ch. 24, 3 THE STATUTES AT LARGE OF VIRGINIA 339 (William Walker Hening ed., 1823). The federal 1792 Militia Act likewise exempted militia arms “from all suits, distresses, executions or sales, for debt or for the payment of taxes.” Militia Act of 1792, ch. 33 § 1, 1 Stat. 271, 272. And in a related context, numerous late eighteenth century militia rules and orders identified firearms as “necessaries” for individuals serving in the militia. *See*, e.g., 1 JOURNALS OF THE COUNCIL OF THE STATE OF VIRGINIA 242 (H.R. McIlwaine ed., 1931); THE PUBLIC RECORDS OF THE STATE OF CONNECTICUT 197–98 (Charles J. Hoadly ed., 1894).

The evidence cited by the panel majority for its conclusion that the necessities exception was not “extended to firearms,” App.15a, is far from compelling. It invoked Chancellor Kent’s early-American treatise, but that authority merely set forth a list of necessities that did not include firearms. *See* 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 195–96 (1827). Because

the list did not purport to be exhaustive, that proves nothing. In fact, Kent elsewhere acknowledged that “[t]he question of necessities is governed by the real circumstances of the infant.” *Id.* at 196. Nor does the single case cited by the court—the 1822 South Carolina decision in *Saunders Glover & Co.*, 12 S.C.L. at 572—establish the point. As explained above, that case concerned pistols, not the muskets or rifles militiamen were obligated to acquire for militia service. Indeed, the case does not even indicate whether the minor in question was of militia age and does not even hold that pistols are *per se* not necessities, just that they were not necessities (along with liquor and fiddle strings) for that particular infant. They undoubtedly *were* necessary for individuals in other circumstances. See HENDRIK BOORAEM, *YOUNG HICKORY: THE MAKING OF ANDREW JACKSON* 195, 199 (2001) (recounting future President Andrew Jackson’s purchase, as a practicing attorney and minor of 20, of a pair of pistols and a rifle for his self-defense when he moved to what would become Tennessee).

Finally, the panel majority noted that a minor living “with his father or guardian . . . could not bind himself even for necessities.” App.15a (quotation marks omitted). But that exception is utterly irrelevant for 18-to-20-year-olds today, who are not under the custody of a father or guardian. Indeed, this feature of the voidability doctrine merely underscores the fact that “the principles that underpin” this “regulatory tradition” have no application whatsoever to modern 18-to-20-year-olds. *Rahimi*, 602 U.S. at 681.

iii. Finally, if the majority had shown that the common law at the Founding barred minors from acquiring firearms, this evidence would still fail to

justify Section 922's age-based bar because a restriction on the Second Amendment rights of *minors* at the Founding is simply not analogous to a restriction on the Second Amendment rights of *adults* today. It is "the principles that underpin the Nation's regulatory tradition" that bind us today, not those principles' specific eighteenth-century application, and analogizing to Founding-era restrictions on minors to justify a modern ban on adults commits the very same error this Court condemned in *Rahimi*: treating the Second Amendment as "a law trapped in amber," *id.* at 681, 691, rather than "a constitution, intended to endure for ages to come," *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819).

This Court's precedent requires inquiry into "how and why the regulations burden a law-abiding citizen's right to armed self-defense," *Bruen*, 597 U.S. at 29, and the common-law voidability rule fails on both metrics. The purpose behind Section 922(b)(1) and (c)(1)'s age restriction is clear and undisputed: it is to curb "the prevalence of lawlessness and violent crime" by limiting "the easy availability of firearms other than a rifle or shotgun" to "juveniles and minors prone to criminal behavior." OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, Pub. L. No. 90-351, 82 Stat. 197, 225–26; *accord* App.6a. But the "why" of the voidability rule—even assuming it applied, incidentally, to contracts for the purchase of firearms—was nothing like this. Rather than protecting public safety from minors, the Founding-era contract rule was designed to protect *the minor himself*: it was "conferred by law for *his protection* against his own improvidence and the designs of others." *NRA*, 133 F.4th at 1179 (Brasher, J., dissenting); *see also* App.16a

(voidability rule “necessary to protect [minors] from persons of more years and experience.” (quotation marks omitted)); *New Hampshire Mut. Fire Ins. Co. v. Noyes*, 32 N.H. 345, 351–52 (1855) (voidability rule “established to protect the inexperience and credulity of youth against the wiles and machinations of designing men”).

The justifications of the Founding-era contract voidability rule and Section 922’s age ban are thus “not sufficiently similar. The former is paternalistic; the latter targets public safety.” App.44a–45a (Quattlebaum, J., dissenting). While the panel majority attempted to minimize the cleavage between the two regulatory regimes’ disparate purposes by suggesting that the voidability rule, too, was designed to keep firearms out of the hands “individuals under the age of 21” because they “lack good judgment and reason,” *Id.* at 17a (majority), that is ahistorical speculation and makes no sense. Why would the Founding generation protect against minors’ purported lack of “judgment and discretion” to responsibly purchase firearms, *id.*, by making the contracts for those purchases perfectly lawful but *voidable at the option of the minor*?

As to the “how,” any “burden on the right of armed self-defense” imposed by the voidability rule is also in no way “comparable” to Section 922’s age limit. *Bruen*, 597 U.S. at 29. For whatever limits the common law did impose on 18-to-20-year-olds it imposed on *legal minors*. The hallmark of minority status, at the Founding as today, was that minors remained under the care, custody, and protection of their parents—as Blackstone put it, they were under “the empire of the father, or other guardian.” 1 WILLIAM BLACKSTONE,

COMMENTARIES ON THE LAWS OF ENGLAND 453 (St. George Tucker ed., 1803). A minor's need for "the right of armed self-defense," *Bruen*, 597 U.S. at 29, was for that reason less acute, because he remained under the protection of his parents, who could engage in self-defense on his behalf. But an eighteen-year-old today, precisely because he is no longer a minor, is now "emancipated from the care and custody of his or her parents, and they in turn are no longer responsible for his or her care and support." *NRA*, 133 F.4th at 1173 (Brasher, J., dissenting). And the burden on self-defense imposed by depriving an 18-year-old who is legally a full adult of access to "the quintessential self-defense weapon," *Heller*, 554 U.S. at 629, with no one bound by law to provide for his care and protection, is totally unlike the burden of limiting the ability of actual minors to access firearms.

By focusing on the specific applications of Founding-era law—treating 18-year-olds like minors today because they were minors in the eighteenth century—the majority entirely missed the *principle* behind that law—18-year-olds were subject to certain limits at the Founding *precisely because* they were minors. The Fourth Circuit's mistake can be brought into sharp focus by noting another category of Americans who could not enter contracts at the Founding: married women. 1 BLACKSTONE, *supra*, at 441–43. It is difficult to see how the panel majority's reasoning does not necessarily lead to the conclusion that married women today may be barred from purchasing firearms. The historical tradition for both groups is *precisely the same*. But this conclusion is untenable, and this Court's precedent gives the reason why: the correct inquiry in interpreting the Second Amendment is not

whether particular modern applications precisely match those at the Founding, but rather whether a modern law “is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692. And because the voidability rule as applied to married women (just like as applied to legal minors) was justified at the Founding based on principles that no longer apply to married women (or 18-to-20-year-olds) today, it cannot justify a modern ban on their exercise of Second Amendment rights.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for writ of certiorari.

July 31, 2025

Respectfully submitted,

ADAM J. KRAUT
SECOND AMENDMENT
FOUNDATION
12500 N.E. 10th Place
Bellevue, WA 98005
(800) 426-4302
akraut@saf.org

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
JOHN D. OHLENDORF
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire
Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JUNE 18, 2025.	1a
APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JUNE 18, 2025.	3a
APPENDIX C — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA, FILED DECEMBER 1, 2023	63a
APPENDIX D — RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED.....	102a

1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, FILED JUNE 18, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-2275

STEVEN ROBERT BROWN; BENJAMIN
WEEKLEY; WEST VIRGINIA CITIZENS
DEFENSE LEAGUE, INC.,

Plaintiffs–Appellees,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS
AND EXPLOSIVES; PAMELA JO BONDI, U.S.
ATTORNEY GENERAL, IN OFFICIAL CAPACITY;
STEVEN MICHAEL DETTELBACH, DIRECTOR
OF THE ATF, IN OFFICIAL CAPACITY,

Defendants–Appellants.

GIFFORDS LAW CENTER TO PREVENT GUN
VIOLENCE; BRADY CENTER TO PREVENT GUN
VIOLENCE; EVERYTOWN FOR GUN SAFETY,

Amici Supporting Appellants.

THE NATIONAL SHOOTING SPORTS
FOUNDATION, INC.,

Amicus Supporting Appellees.

Filed June 18, 2025

2a

Appendix A

OPINION

UNPUBLISHED

Appeal from the United States District Court for the Northern District of West Virginia at Clarksburg. Thomas S. Kleeh, Chief District Judge. (1:22–cv–00080–TSK)

Argued: January 30, 2025 Decided: June 18, 2025

Before WILKINSON, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Reversed and remanded with directions to dismiss by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

This case is hereby remanded with directions to dismiss it on the authority of *McCoy v. ATF*, No. 23-2085 (4th Cir. 2025). Judge Wilkinson and Judge Heytens concur in this disposition. Judge Quattlebaum dissents for the reasons set forth in his dissenting opinion in *McCoy*. The motion to supplement the record with an additional plaintiff is hereby granted.

*REVERSED AND REMANDED
WITH DIRECTIONS TO DISMISS*

**APPENDIX B — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT, FILED JUNE 18, 2025**

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 23-2085

JOSHUA CLAY MCCOY; TYLER DALTON
MCGRATH; IAN FLETCHER SHACKLEY;
JUSTIN TIMOTHY FRASER, ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY
SITUATED AS A CLASS,

Plaintiffs–Appellees,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS
AND EXPLOSIVES; STEVEN DETTELBAACH, IN
HIS OFFICIAL CAPACITY AS DIRECTOR OF THE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS
AND EXPLOSIVES; PAMELA JO BONDI, IN HER
OFFICIAL CAPACITY AS ATTORNEY GENERAL
OF THE UNITED STATES,

Defendants–Appellants.

GIFFORDS LAW CENTER TO PREVENT GUN
VIOLENCE; BRADY CENTER TO PREVENT GUN
VIOLENCE; ILLINOIS; ARIZONA; CALIFORNIA;
COLORADO; CONNECTICUT; DELAWARE;
DISTRICT OF COLUMBIA; HAWAII; MARYLAND;
MASSACHUSETTS; MICHIGAN; MINNESOTA;
NEVADA; NEW JERSEY; NEW YORK; NORTH
CAROLINA; OREGON; PENNSYLVANIA; RHODE
ISLAND; VERMONT; WASHINGTON,

Amici Supporting Appellants.

Appendix B

Argued: January 30, 2025

Decided: June 18, 2025

OPINION

Appeal from the United States District Court for the Eastern District of Virginia at Richmond. Robert E. Payne, Senior District Judge. (3:22-cv-00410-REP)

Before WILKINSON, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Reversed and remanded with directions to dismiss by published opinion. Judge Wilkinson wrote the opinion, in which Judge Heytens joined. Judge Heytens wrote a concurring opinion. Judge Quattlebaum wrote a dissenting opinion.

WILKINSON, Circuit Judge:

18 U.S.C. § 922(b)(1) prohibits the commercial sale of handguns to individuals under the age of 21. Appellees are four 18-to-20-year-olds who want to buy handguns. The question in this case is whether § 922(b)(1) violates appellees' Second Amendment rights.

We hold that it does not. From English common law to America's founding and beyond, our regulatory tradition has permitted restrictions on the sale of firearms to individuals under the age of 21. Section 922(b)(1) fits squarely within this tradition and is therefore constitutional. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022)

Appendix B

(establishing text, history, and tradition test for the Second Amendment).

I.**A.**

Federal law prohibits any person from “engag[ing] in the business of importing, manufacturing, or dealing in firearms” without a Federal Firearms License. 18 U.S.C. § 923(a). Upon obtaining a license, Federal Firearm Licensees (“FFLs”) become subject to a number of statutory restrictions. One restriction concerns the buyer’s age. Section 922(b)(1) makes it unlawful for FFLs to sell “any firearm” to individuals under the age of 18 or, as relevant here, any firearm “other than a shotgun or rifle” to individuals between 18 and 20. It reads as follows:

It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

18 U.S.C. § 922(b)(1). An FFL who “willfully violates” this provision can be fined, imprisoned for up to five years, or

Appendix B

both. 18 U.S.C. § 924(a)(1)(D). The law does not penalize the underage individuals who buy firearms.

When it comes to 18-to 20-year-olds, § 922(b)(1)’s prohibition on sales of firearms “other than a shotgun or rifle” was “primarily designed to reduce access to *handguns*.” S. REP. NO. 90-1097, at 189 (1968) (statement of Sen. Tydings). After years of investigation, Congress found “a causal relationship between the easy availability of [handguns] and juvenile and youthful criminal behavior” and sought to prohibit handgun sales “to emotionally immature” and “thrill-bent juveniles and minors.” Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225-26.

Section 922(b)(1) is narrow in several respects. First, the law regulates only *transactions* involving firearms. It does not prohibit anyone from owning, possessing, or using firearms.

Second, the provision regulates only the *commercial sale* of firearms. It applies only to FFLs, who are sellers “engage[d] in the business of . . . dealing in firearms.” 18 U.S.C. § 923(a). A seller engages in the business of dealing in firearms only if he “devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms.” 18 U.S.C. § 921(21)(C). Sellers not engaged in the business of dealing in firearms are not required to have a license, and unlicensed sellers are not covered by § 922(b)(1). As a result, gifts and private sales are beyond the law’s reach. *See United States v. Hosford*, 843 F.3d 161, 166 (4th Cir. 2016).

Appendix B

Third, when it comes to 18-to 20-year-olds, § 922(b)(1) applies only to firearms “*other than* a shotgun or rifle.” That qualification leaves much of the firearms market untouched. *See NSSF Releases Most Recent Firearm Production Figures*, NAT’L SHOOTING SPORTS FOUND. (Jan. 15, 2025). The law does not, for example, prohibit the sale of hunting rifles and other long guns.

B.

Appellees are four 18-to 20-year-olds who wish to buy a handgun from an FFL but cannot because of § 922(b)(1). In June 2022, appellees sued the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) in the Eastern District of Virginia. They claimed that § 922(b)(1) violates the Second Amendment and sought declaratory and injunctive relief.

The district court granted appellees’ motion for summary judgment. Applying the text, history, and tradition test outlined in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), the court first determined that “the Second Amendment’s protections apply to 18-to-20-year-olds” and that “the right to purchase a gun falls within the Second Amendment’s plain text.” *Fraser v. ATF*, 672 F. Supp. 3d 118, 130, 136 (E.D. Va. 2023). It then concluded that the government failed to demonstrate a relevant tradition of firearm regulation that could support the constitutionality of § 922(b)(1). With respect to the founding era, the district court found the government’s evidence of analogous regulation lacking. It also emphasized that “the Founders

Appendix B

understood that militia service began at the age of 18” which, in the district court’s view, indicated that 18- to 20-year-olds had an unlimited constitutional right to purchase a handgun. *Id.* at 143. Turning to the nineteenth century, the court acknowledged that numerous states prohibited the sale of handguns to individuals under the age of 21 but concluded that these laws “tell[] us nothing” because they came long after the ratification of the Second Amendment. *Id.* at 144-45.

The government timely appealed. It argues that the district court erred in concluding that § 922(b)(1) violates the Second Amendment. We agree and reverse the district court’s grant of summary judgment.¹

II.

The Second Amendment reads: “A well regulated Militia, being necessary to the security of a free State,

1. After the district court ruled for appellees on the merits, appellees moved for class certification and the district court certified a nationwide class. On appeal, the government argues that the district court erred in certifying a class after issuing a favorable ruling on the merits for appellees. *See* Fed. R. Civ. P. 23(c)(1)(A) (“At an early practicable time after a person sues . . . the court must determine by order whether to certify the action as a class action.”). The government argues that appellees should not receive the benefit of class-wide relief when they strategically withheld their class certification motion to avoid being bound by an unfavorable ruling. Opening Br. at 26. We agree with the government that the district court did not certify the class at “an early practicable time.” Fed. R. Civ. P. 23(c)(1)(A). We therefore hold that the district court’s decision to certify the class was an error.

Appendix B

the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), the Supreme Court set forth a two-part test for determining “whether modern firearm regulations are consistent with the Second Amendment’s text and historical understanding.” *Id.* at 26, 142 S.Ct. 2111.

At step one, we must determine whether “the Second Amendment’s plain text covers [the] individual’s conduct.” *Bruen*, 597 U.S. at 17, 142 S.Ct. 2111. If it does, “the Constitution presumptively protects that conduct” and we must proceed to step two. *Id.*

At step two, the burden shifts to the government to “demonstrate that the [challenged] regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Bruen*, 597 U.S. at 17, 142 S.Ct. 2111 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961)).

Determining whether the challenged regulation comports with our country’s regulatory tradition involves “analogical reasoning.” *Bruen*, 597 U.S. at 28, 142 S.Ct. 2111. The key question is “whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit.” *United States v. Rahimi*, 602 U.S. 680, 692, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024) (quoting *Bruen*, 597

Appendix B

U.S. at 29, 142 S.Ct. 2111). “How and why the regulations burden” Second Amendment rights are “central to this inquiry.” *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111; *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889. Put differently, we must ask whether the “modern and historical regulations impose a comparable burden” on the right and whether “that burden is comparably justified.” *Bruen*, 597 U.S. at 29, 142 S.Ct. 2111.

Importantly, the challenged law need not “precisely match its historical precursors.” *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889. As the Supreme Court has explained, “the appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition,” not applications of those principles found in particular laws. *Id.* (emphasis added); *see also id.* at 740, 144 S.Ct. 1889 (Barrett, J., concurring) (“‘Analogical reasoning’ under *Bruen* demands a wider lens: Historical regulations reveal a principle, not a mold.”). That is why the government must distill a relevant principle from a “historical *analogue*,” but it need not unearth a “dead ringer” or “historical *twin*.” *Bruen*, 597 U.S. at 30, 142 S.Ct. 2111.

When discerning a relevant principle from our regulatory tradition, we are mindful that “not all history is created equal.” *Bruen*, 597 U.S. at 34, 142 S.Ct. 2111. “‘Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.’ The Second Amendment was adopted in 1791.” *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008)). A regulatory practice

Appendix B

from around that date, therefore, is more likely to be consistent with the principles of the Second Amendment than a practice that existed long before or emerged long after the Amendment’s ratification. *See id.* at 34-36, 142 S.Ct. 2111.

That is not to say that pre-or post-enactment history is without value. If a founding-era practice stemmed from a “long, unbroken line of common-law precedent,” that is strong evidence that the practice was part of a deeply rooted tradition and thus a “part of our law.” *Bruen*, 597 U.S. at 35, 142 S.Ct. 2111. Likewise, a founding-era practice that gave rise to an enduring tradition is more likely to reflect the widespread understanding of the founding generation than a practice that was short-lived and may have been an outlier. *See id.* at 37, 66 n.28, 142 S.Ct. 2111.

III.

Starting with *Bruen*’s first step, we look to the text of the Second Amendment. As *Heller* made clear, handguns are “Arms” because they are “the quintessential self-defense weapon.” *Heller*, 554 U.S. at 629, 128 S.Ct. 2783. And the parties do not dispute that appellees’ intended action—purchasing a handgun for lawful purposes—is part of the “conduct” protected by the Amendment. *Bruen*, 597 U.S. at 31-32, 142 S.Ct. 2111. The parties do seem to dispute, however, whether individuals between the ages of 18 and 20 are part of “the people” protected by the Second Amendment. Like the Eleventh Circuit, we assume without deciding that appellees are part of “the

Appendix B

people” and are therefore covered by the Amendment’s text. *See NRA v. Bondi*, 133 F.4th 1108, 1129-30 (11th Cir. 2025) (en banc).

IV.

Turning to the narrower focus of step two, we conclude that the burden § 922(b)(1) imposes on the Second Amendment rights of 18-to 20-year-olds is relevantly similar to the burden imposed by the founding-era rule that contracts with individuals under the age of 21 were unenforceable.

A.

At English common law, a person under the age of 21 was considered an “infant” for purposes of contracting, and infants were not bound by their contracts. *See* EDWARD COKE, THE FIRST PART OF THE INSTITUTES OF THE LAWES OF ENGLAND 171-72 (1628). As Blackstone put it in his influential eighteenth-century treatise, “an infant can neither aliene his lands, nor do any legal act, nor make a deed, nor indeed any manner of contract, that will bind him.” 1 WILLIAM BLACKSTONE, COMMENTARIES *453.

The common law understanding of contracting was broad. Like today, contracts could be “express or implied.” 2 BLACKSTONE, *supra*, at *443. They could also be “executed,” as when two parties make an exchange “immediately,” or “executory,” as when two parties agree to make an exchange later. *Id.*; *see also* 1 SAMUEL COMYN, A TREATISE OF THE LAW RELATIVE TO CONTRACTS AND AGREEMENTS NOT UNDER SEAL 151 (1809).

Appendix B

Like many common law principles, the infancy doctrine made its way across the Atlantic, and early American courts routinely applied it. *See, e.g., Pool v. Pratt*, 1 D. Chip. 252, 253 (Vt. 1814) (“It is an ancient doctrine, as old as the common law, that an infant shall not, in general be bound by his contract; he is under an incapacity to bind himself by his contract.”); *Collins’ Lessee v. Rigua*, 2 Del. Cas. 78, 79 (Com. Pl. 1797); *Evans v. Terry*, 3 S.C.L. (1 Brev.) 80, 80 n.b1 (Const. Ct. App. 1802); *Johnson v. Van Doren*, 2 N.J.L. 372, 373 (N.J. 1808); *Beeler v. Young*, 4 Ky. (1 Bibb.) 519, 520 (1809); *Commonwealth v. Murray*, 4 Binn. 487, 491 (Pa. 1812). Indeed, by the time of the founding, an infant’s inability to contract was a well understood and engrained principle of American law. *See* 1 ZEPHANIAH SWIFT, A SYSTEM OF THE LAWS OF THE STATE OF CONNECTICUT 215 (1795) (noting that contracts with infants are generally unenforceable); 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 191 (1827) (stating that “until the infant has attained the age of twenty-one years,” he “cannot, except in a few specified cases, make a binding contract”).

The infancy doctrine imposed a severe burden on a minor’s ability to purchase goods, including firearms, during the founding era. Eighteenth-century America was a credit economy. From the “account books as survive, it is evident that very little cash changed hands,” “purchasers who paid in cash were rare,” and because of the “shortage of a circulating medium,” “credit rather than cash payment was the rule everywhere.” CARL BRIDENBAUGH, THE COLONIAL CRAFTSMAN 153-54 (1961). Under a practice known as “book credit,” merchants recorded promises

Appendix B

of future payment from their customers in account books. David T. Flynn, *Credit in the Colonial American Economy*, ECON. HIST. ASS'N (2008). And since infants could “not be held liable for failing to uphold their side of a contract over goods,” extending credit to minors was a “considerable risk.” HOLLY BREWER, *BY BIRTH OR CONSENT: CHILDREN, LAW, AND THE ANGLO-AMERICAN REVOLUTION IN AUTHORITY* 265 (2005). Put simply, “whoever entered into a contract with an infant could lose substantial amounts of money” because courts refused to hold minors accountable for payment. *Id.* at 270; *see also, e.g., Counts v. Bates*, 16 S.C.L. (Harp.) 464, 467 (Const. Ct. App. 1824) (holding that infant can keep a horse without paying credit amount owed). That “high risk made infants effectively unable to” purchase goods on credit. *See* BREWER, *supra*, at 270.

Nor could minors rely on buying a firearm with cash. First, coin was scarce during the founding era. *See* BRIDENBAUGH, *supra*, at 153-54. In addition, infants “lacked disposable income” because “they either worked for their parents for no wages, or any wages earned belonged to their parents.” *Bondi*, 133 F.4th at 1118 (citing Robert J. Spitzer, *Historical Weapons Restrictions on Minors*, 76 RUTGERS U. L.R. 101, 108 (2024); 1 BLACKSTONE, *supra*, at *453). Furthermore, even if an infant had enough coin to buy a gun, merchants would have been unwilling to sell because they bore the risk that the minor would rescind the transaction and be entitled to a full refund under the infancy contract doctrine. *See, e.g., Riley v. Mallory*, 33 Conn. 201 (1866) (holding that seller of a firearm was required to give a full refund to minor who insisted on returning used gun).

Appendix B

In arguing that the infancy doctrine did not apply to purchases of firearms, appellees point us to the “necessaries” exception. *See* Oral Arg. at 35:34. It is true that at English common law an infant could be bound by a contract for necessities. But by the time of the founding, courts “began to view necessities in very narrow terms.” BREWER, *supra*, at 266. If an “infant live[d] with his father or guardian,” for example, he could not “bind himself even for necessities.” 2 KENT, *supra*, at 196. And even where the necessities exception did apply, it covered “victuals, clothing, medical aid, and ‘good teaching or instruction.’” *Id.* There is no evidence that the exception was ever extended to firearms. Indeed, at least one court explicitly held that it did not apply to “pistols.” *Saunders Glover & Co. v. Ott’s Adm’r*, 12 S.C.L. (1 McCord) 572, 572 (Const. Ct. App. 1822).

Appellees next argue that “infancy” in contract doctrine was tethered not to the age of 21 but to a generally applicable “age of majority” that changes over time. Appellees derive this general age of majority by considering the critical mass of age restrictions for important civic activities, such as the age to vote and to serve on juries. They then observe that while at the founding the age threshold for these civic activities was 21, today it is 18. From this appellees conclude that, even if our Nation’s regulatory tradition supports restrictions on an infant’s ability to buy a gun, the scope of that tradition today is limited to those who are under 18, given the change in the “age of majority.” *See* Response Brief at 15.

The problem is that “infancy” in contract law was not tied to a dynamic, generally applicable age of majority. The

Appendix B

definition of an “infant” at common law varied with the nature of the activity. *See* SAMUEL CARTER, *THE INFANTS LAWYER: OR, THE LAW (ANCIENT AND MODERN) RELATING TO INFANTS* 44 (2d ed. 1712) (describing “the Several Ages of Infants in the Law”). For example, the age of consent to marry ranged from twelve to fourteen and the age of criminal responsibility was fourteen. *Id.* at 45, 47. Sometimes the age of infancy even varied within an area of law. An individual could execute a will “as to Goods and Chattels” at eighteen “but not as to Lands” until he was twenty one. *Id.* at 49. For contracting it was determined that a person was “an infant till the age of 21 years” because such individuals lacked “judgment and discretion in their contracts and transactions with others” and it was therefore necessary to protect them from “persons of more years and experience.” 1 COMYN, *supra*, at 148.

In sum, the infancy doctrine demonstrates that there was an early American tradition of burdening the ability of 18- to 20-year-olds to purchase goods, including firearms. We now hold that § 922(b)(1) fits comfortably within this tradition because it is analogous in both “how” it burdens their Second Amendment rights and “why.” *See Bruen*, 597 U.S. at 29, 142 S.Ct. 2111; *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889.

With respect to “how,” the infancy doctrine and § 922(b)(1) both make it exceedingly difficult for a minor to purchase a handgun from a commercial seller, and they do so in similar ways. Both subject sellers to a risk of loss if they sell a handgun to a minor. Because of that risk, sellers are far less likely to transact with a minor

Appendix B

and, in turn, a minor's ability to purchase a handgun is severely burdened.

To be sure, the risk sellers face under § 922(b)(1) is more severe than under the infancy doctrine. Section 922(b)(1) includes the possibility of imprisonment, whereas the infancy doctrine exposed sellers only to the risk of financial loss. But the relevant burden, for purposes of our analysis, is the burden on the minor purchasers challenging the law. And from the perspective of a minor purchaser, the effects of § 922(b)(1) and the infancy doctrine are virtually the same. Whether he faces criminal penalties or a law that transforms his sales into free giveaways, a rational merchant is highly unlikely to sell a gun to a minor.

As for “why,” § 922(b)(1) and the infancy doctrine share a common rationale. Both were motivated by a recognition that individuals under the age of 21 lack good judgment and reason. As we have explained, the infancy doctrine responded to the concern that infants lack the “judgment and discretion” to transact with more sophisticated adults. 1 COMYN, *supra*, at 148; *see also* 2 KENT, *supra*, at 191. Similarly, Congress enacted § 922(b)(1) to prohibit firearm sales to “emotionally immature” and “thrill-bent juveniles and minors prone to criminal behavior.” Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225-26.

Because § 922(b)(1) is “relevantly similar” to founding-era restrictions on the commercial sale of firearms, we are satisfied that the Second Amendment permits the

Appendix B

law's burden on an 18- to 20-year-old's right to purchase a handgun.

B.

The district court held, and appellees here argue, that the Militia Act of 1792 demonstrates that 18- to 20-year-olds have a constitutional right to purchase handguns. *See also Reese v. ATF*, 127 F.4th 583, 596 (5th Cir. 2025) (holding the same). The Act required that “each and every free able-bodied white male citizen of the respective states . . . who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein of after excepted), shall severally and respectively be enrolled in the militia.” Militia Act, § 1, 1 Stat. 271, 271 (1792). It further required that “every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock.” *Id.* Given this requirement to serve in an armed militia, the district court and appellees conclude that 18- to 20-year-olds must have had a constitutional right to purchase firearms.

We disagree for two reasons. One, the Militia Act did not mandate 18 as the universal age of militia eligibility. It explicitly allowed states to exempt individuals from militia service “notwithstanding their being above the age of eighteen.” Militia Act, § 2, 1 Stat. 271, 272 (1792). This reflected the fact that the age of enrollment fluctuated a great deal around the founding. Many state laws set the age of militia service at 21, for example.² So even if

2. *See, e.g.*, An Act for Raising Levies and Recruits to Serve in the Present Expedition Against the French, on the Ohio, ch. II, §§ 1-3, *reprinted in* 6 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL

Appendix B

the Militia Act is evidence of some constitutional right to purchase firearms, it cannot stand for the proposition that such a right vested firmly at 18.

Two, any constitutional right derived from the Militia Act would not conflict with § 922(b)(1)’s narrow restriction on purchase. Again, the Act required a militiaman to “*provide himself* with a good musket or firelock.” Militia Act, § 1, 1 Stat. 271, 271 (1792) (emphasis added). Not *purchase* for himself. There were of course many ways for an infant to “provide” himself with a firearm without going out and purchasing one himself. A minor could use the family gun, for instance. Indeed, “[b]y 1826, at least 21 of the 24 states admitted to the Union—representing roughly 89 percent of the population—had enacted laws that placed the onus on parents to provide minors with firearms for militia service.” *Bondi*, 133 F.4th at 1120; *see also id.* at 1118-20 (collecting state statutes).

The 1792 Militia Act therefore does nothing to undermine our analysis regarding the founding-era tradition of restricting the sale of firearms to infants.

C.

Finally, our analysis is reinforced by later nineteenth-century history, which, when consistent with founding-era history, is helpful “confirmation” of original meaning.

THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 438-39 (William Waller Hening ed., 1819) (setting age of militia service at 21); Act of June 2, 1779, ch. XXIV, §§ 3-4, 1779 N.J. Acts 58, 59-60 (same); Ga. Code § 981, (1861) (same).

Appendix B

See Bruen, 597 U.S. at 37, 66 & n.28, 142 S.Ct. 2111. Beginning in 1856, at least twenty jurisdictions enacted laws criminalizing the sale of firearms, often handguns specifically, to individuals under the age of 21.³ An illustrative example is Indiana’s 1875 law, which made it “unlawful for any person to sell . . . to any other person, under the age of twenty-one years, any pistol.” Act of Feb. 27, 1875, ch. XL, § 1, 1875 Ind. Acts 59, 59.

Like the infancy contract doctrine, these nineteenth-century laws burdened 18- to 20-year-olds’ ability to purchase handguns by making it far less likely that

3. Act of Feb. 2, 1856, No. 26, 1856 Ala. Acts 17; Tenn. Code § 4864 (1858), *reprinted in* 1 THE CODE OF TENNESSEE ENACTED BY THE GENERAL ASSEMBLY OF 1857-8, at 871 (Return J. Meigs & William F. Cooper eds., 1858); Act of Jan. 12, 1860, ch. 33, § 23, 1859 Ky. Acts 241, 245; Act of Feb. 27, 1875, ch. XL, 1875 Ind. Acts 59; Act of Feb. 17, 1876, No. CXXVIII (O. No. 63), 1876 Ga. Laws 112; Act of Feb. 28, 1878, ch. 66, § 2, 1878 Miss. Laws 175, 175; Mo. Rev. Stat. § 1274 (1879), *reprinted in* 1 THE REVISED STATUTES OF THE STATE OF MISSOURI 1879, at 224 (Hockaday et al. eds., 1879); Act of Apr. 8, 1881, ch. 548, § 1, 16 Del. Laws 716, 716; Act of Apr. 16, 1881, § 2, 1881 Ill. Laws 73, 73; Act of Mar. 24, 1882, ch. CXXXV, 1882 W. Va. Acts 421-22; Act of May 3, 1882, ch. 242, 1882 Md. Laws 656; Act of Mar. 5, 1883, ch. CV, 1883 Kan. Sess. Laws 159; Act of Apr. 3, 1883, ch. 329, §§ 1-2, 1883 Wis. Sess. Laws 290, 290; Act of Mar. 29, 1884, ch. 78, 1884 Iowa Acts 86; Act of July 1, 1890, No. 46, 1890 La. Acts 39; Penal Code of the Territory of Oklahoma, ch. XXV, art. 47, §§ 1-3, 1890 Okla. Sess. Laws 412, 495; Act of Mar. 14, 1890, ch. 73, § 97, 1890 Wyo. Sess. Laws 127, 140; Act of July 13, 1892, ch. 159, §§ 1, 5, 27 Stat. 116, 116-17 (District of Columbia); Act of Mar. 6, 1893, ch. 514, 1893 N.C. Sess. Laws 468; Act of May 14, 1897, ch. 155, 1897 Tex. Gen. Laws 221; *see also Bondi*, 133 F.4th at 1121-22 (collecting these statutes and relevant cases).

Appendix B

merchants would sell to them. And these laws were enacted for a familiar reason: a concern that youths lacked the maturity and judgment to responsibly buy their own pistols. *See* PATRICK J. CHARLES, *ARMED IN AMERICA: A HISTORY OF GUN RIGHTS FROM COLONIAL MILITIAS TO CONCEALED CARRY* 156, 404-05 (2019) (collecting contemporaneous sources).

These nineteenth-century laws also support our understanding that restrictions specific to handguns fall within the tradition we have identified. Because handgun ownership was not prevalent until the mid-nineteenth century, it is not surprising that the government cannot point us to a “historical twin” from the founding era. But as soon as handguns came on the scene, legislatures quickly prohibited their sale to minors, consistent with our Nation’s regulatory tradition of restricting firearm sales to infants. These nineteenth-century laws were celebrated by the public and went largely unchallenged. *See* CHARLES, *supra*, at 156. As far as we can tell, the Tennessee Supreme Court was the only court to consider the constitutionality of these laws, and it held that they were constitutional. *See State v. Callicutt*, 69 Tenn. 714, 716-17 (1878).

Last, it is not lost upon us that in modern times “[m]any states (and the District of Columbia) proscribe or restrict the sale of handguns to persons under 21.” *NRA v. ATF*, 700 F.3d 185, 190 n.4 (5th Cir. 2012). These widespread restrictions on handgun sales to those under 21 are testament to the continuity of the historical tradition that we have identified.

Appendix B

Moreover, the New York law struck down in *Bruen* and the D.C. law invalidated in *Heller* were both identified as outliers by the Supreme Court. *See Bruen*, 597 U.S. at 79, 142 S.Ct. 2111 (Kavanaugh, J., joined by Roberts, C.J., concurring) (“[T]he Court correctly holds that New York’s outlier ‘may-issue’ licensing regime for carrying handguns for self-defense violates the Second Amendment.”); *id.* at 78, 142 S.Ct. 2111 (Alito, J., concurring) (“The District of Columbia law [in *Heller*] was an extreme outlier.”); *Heller*, 554 U.S. at 629, 128 S.Ct. 2783 (noting that “[f]ew laws in the history of our Nation have come close to the severe restriction of the District’s handgun ban”). The law before us is anything but. The only “outlier” would be our ruling unconstitutional a federal statute that is so consonant with our historical and contemporary tradition. If we were to hold that it is beyond the power of a legislature to bar an 18-year-old from purchasing a handgun, why stop at 18? What principle of law would allow a legislature to prohibit handgun sales to a 14-or 16-year-old? *See Heytens*, J., concurring, at 580-81. Appellees would have us pursue a path more sweeping and unlimited than any reasonable interpretation of the Constitution can bear.

V.

Declaring an Act of Congress to be unconstitutional is a big step for a court to take. Just as the Second Amendment protects the right of the people to keep and bear arms, the democratic process protects the right of the people to the blessings of self-government. *Bruen* and *Rahimi* acknowledge the latter right. *See Bruen*, 597 U.S. at 30, 142 S.Ct. 2111 (noting that history and tradition

Appendix B

is not a “regulatory straightjacket”); *Rahimi*, 602 U.S. at 691, 144 S.Ct. 1889 (emphasizing that *Bruen* did not transform the Second Amendment into “a law trapped in amber”). It seems clear from the Court’s decisions that individual and democratic rights do not extinguish one another in this important area and, further, that it is not impermissible for lower courts to attempt some demonstration of respect for both.

Basic respect for traditional democratic authority is a modest ask. Our holding here simply acknowledges that legislatures *may* enact these sorts of age restrictions, not that they *must*. If § 922(b)(1) proves unpopular, lawmakers remain free to take a different course. But to date they have not done so, and firearms regulation is not the kind of thing that tends to escape legislative attention. Indeed, Congress has had many chances to amend and revise the compromises reflected in the age provision at issue here, but it has passed them by. *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213; Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993); Violence Against Women Act of 1994, Pub. L. 103-322, 108 Stat. 1796. Into the middle of this longstanding legislative compromise, the plaintiffs now come charging, inviting us to improve on Congress’s work. Respectfully, we must decline.

* * *

We have done our best to faithfully apply the analytical framework set out in *Bruen*. There plainly exists a robust tradition that supports the constitutionality of § 922(b)

Appendix B

(1). Our analysis is reinforced by the Supreme Court’s repeated insistence across its Second Amendment cases that “longstanding . . . laws imposing conditions and qualifications on the commercial sale of arms” are “presumptively lawful.” *Heller*, 554 U.S. at 626-27, 128 S.Ct. 2783 (Scalia, J.); see *McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (Alito, J.); *Bruen*, 597 U.S. at 80-81, 142 S.Ct. 2111 (Kavanaugh, J., joined by Roberts, C.J., concurring); *Rahimi*, 602 U.S. at 735, 144 S.Ct. 1889 (Kavanaugh, J., concurring) (calling these laws “traditional exceptions to the right”). We have no reason or right to call such expressions into question. By conditioning the sale of handguns on a buyer’s age, § 922(b)(1) is presumptively lawful. *Bruen* analysis confirms that the law is indeed constitutional.

For the foregoing reasons, the district court’s judgment is reversed, and the case is remanded with instructions to dismiss it.

*REVERSED AND REMANDED WITH DIRECTIONS
TO DISMISS*

Appendix B

TOBY HEYTENS, Circuit Judge, concurring:

Judge Wilkinson’s opinion for the Court explains why the plaintiffs’ arguments fail on their own terms. I write to highlight another—and, to my mind, fatal—flaw.

* * *

Do 16-and 17-year-olds have a constitutional right to buy handguns? To be sure, the plaintiffs—like others before them—have carefully limited their requested relief to those 18 and older.* But “[i]t is usually a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 590 U.S. 83, 104, 140 S.Ct. 1390, 206 L.Ed.2d 583 (2020) (opinion of Gorsuch, J.). And the plaintiffs are on the horns of a dilemma, because their arguments for why 18-year-olds have a constitutional right to buy handguns suggest that younger people do too—a startling result that the plaintiffs seek to obscure and for which they offer no defense.

* * *

* See *National Rifle Ass’n v. Bondi*, 133 F.4th 1108, 1114 (11th Cir. 2025); *Reese v. ATF*, 127 F.4th 583, 586 (5th Cir. 2025); *Hirschfeld v. ATF*, 5 F.4th 407, 422 & n.13, vacated as moot, 14 F.4th 322 (4th Cir. 2021). In a related case that was argued with this one, the plaintiffs admitted that it would be “absurd” to suggest that “there cannot be *any* minimum age requirements with respect to firearms” but offer no rationale for drawing the line at 18. Appellees Br. at 39, *Brown v. ATF*, No. 23-2275 (4th Cir. Feb. 21, 2024).

Appendix B

The plaintiffs' arguments have a facile appeal. The Second Amendment reads: "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. As the argument goes, those 18 and older are part of "the people" and were generally eligible for militia service at the Founding. Serving in the militia entailed "bear[ing] Arms," and Founding-era militia members were expected to provide their own weapons. There were also no Founding-era statutes regulating firearm sales based on age. Ergo, the Second Amendment protects today's 18- to-20-year-olds' individual right to buy a handgun.

So what about today's 16-and 17-year-olds? After all, 16-and 17-year-olds also served in Founding-era militias, and they were not subject to any Founding-era firearm sales restrictions based on age. Indeed, none of the arguments in the previous paragraph are limited to those 18 and older. Thus, any decision accepting the plaintiffs' logic would suggest that—any *ipse dixit* aside—today's high school juniors *also* have a constitutionally protected right to buy handguns.

The plaintiffs respond that today's society has come to treat 18 as the critical age for most (though, of course, not all) purposes. That argument chases its own tail. For example, the plaintiffs point to the Twenty-Sixth Amendment, which says: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. amend. XXVI, § 1. But that amendment was ratified in 1971—

Appendix B

three years after the statute challenged here was enacted. See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 230. It seems implausible that 18 U.S.C. § 922(b)(1) was constitutional as applied to 18-to-20-year-old purchasers on the day it took effect only to become unconstitutional a mere three years later.

True, the Supreme Court has treated 18 as a dividing line for other constitutional provisions that do not mention age—specifically, the Eighth Amendment’s prohibition against “cruel and unusual punishments.” U.S. Const. amend. VIII; see *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). But the Supreme Court has made clear—over and over—that Eighth Amendment analysis requires considering “the evolving standards of decency that mark the progress of a maturing society.” *Roper*, 543 U.S. at 561, 125 S.Ct. 1183 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion)). In contrast, Second Amendment analysis is “centered on constitutional text and history.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 22, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). It should be no surprise that these different approaches sometimes produce different outcomes. Cf. *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (noting that “governments appear to have *more* flexibility and power to impose gun regulations under a test based on text, history, and tradition than they would under strict scrutiny”).

Appendix B

For Second Amendment purposes, it does not matter that today's 18-year-olds have come to enjoy statutory—and even constitutional—rights they would not have possessed at the Founding. Instead, the question is whether the “*pre-existing* right” that Amendment “codified” in 1791 already encompassed a right for 18-year-olds to buy firearms. *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). Because text, history, and tradition show the answer is no, I concur.

Appendix B

QUATTLEBAUM, Circuit Judge, dissenting:

Plaintiffs—18- to 20-year-olds who want to buy handguns—challenge federal laws prohibiting licensed firearms dealers from selling those weapons to them. They argue the federal handgun purchase ban violates their Second Amendment rights. The district court agreed. Now my colleagues in the majority reverse, upholding the handgun purchase ban as consistent with our Nation’s history and tradition of regulating firearms. They reach this conclusion primarily by reviewing a founding-era contract law principle that permitted 18- to 20-year-olds to void all types of contracts they entered. But that principle does not impose a comparable governmental burden (a “how”), nor is it based on a comparable justification (a “why”) to the federal handgun purchase ban. So, it does not support the constitutionality of the federal handgun purchase ban. Considering actual founding-era firearm regulations, the purchase ban is inconsistent with our Nation’s history and tradition.

I recognize that to many, banning sales of handguns to those under 21 makes good sense. I appreciate that sentiment, especially during a time when gun violence is a problem in our county. But that is a policy argument. As judges, we interpret law rather than make policy. Under Supreme Court precedent, this federal handgun purchase ban violates the Second Amendment. Thus, I respectfully dissent.

*Appendix B***I. BACKGROUND****A. The Second Amendment and the Federal Handgun Purchase Ban**

The Second Amendment of the United States Constitution states, “[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.

Plaintiffs—18- to 20-year-olds—challenge several federal statutes. They contest the validity of two provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197. The first provision, 18 U.S.C. § 922(b)(1), prohibits a federally licensed importer, manufacturer, dealer or collector from selling or delivering a firearm, “other than a shotgun or rifle, . . . to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.” The provision also prohibits the sale or delivery of “any firearm” to an individual less than 18. *Id.* So in effect, the statute prohibits licensees from selling or delivering handguns to 18- to 20-year-olds. The second provision, 18 U.S.C. § 922(c)(1), imposes the same prohibition on sales to a person not physically present at the licensee’s business. Plaintiffs also challenge Bureau of Alcohol, Tobacco, Firearms and Explosives regulations that repeat this prohibition. *See, e.g.*, 27 C.F.R. § 478.99(b). For convenience, I refer to these statutes and regulations as the federal handgun purchase ban.

*Appendix B***B. Procedural History**

Plaintiffs sued “on behalf of other similarly situated members of a class”: all 18- to 20-year-olds. *Fraser v. ATF*, 672 F. Supp. 3d 118, 122 (E.D. Va. 2023). Before plaintiffs moved for class certification, the parties agreed to proceed with dispositive motions. The government moved to dismiss, and plaintiffs moved for summary judgment. The district court granted plaintiffs’ motion for summary judgment. Applying the analytical framework from *Bruen*, the court concluded the handgun purchase ban violated the Second Amendment. *Fraser*, 672 F Supp. 3d at 126-47 (citing *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022)). Plaintiffs then moved for class certification and a permanent injunction. The court concluded Federal Rule of Civil Procedure 23 permitted class certification after summary judgment and that plaintiffs satisfied Rule 23(b) (2)’s requirements. *See Fraser v. ATF*, No. 3:22-cv-00410, 2023 WL 5616011, at *3, 11 (E.D. Va. Aug. 30, 2023). And it awarded the class—all 18- to 20-year-olds—a declaratory judgment and a permanent injunction. *See Fraser v. ATF*, 689 F. Supp. 3d 203, 210, 218 (E.D. Va. 2023). The government timely appealed.¹

II. THE SECOND AMENDMENT

In *District of Columbia v. Heller*, the Supreme Court interpreted the Second Amendment to protect

1. The district court exercised jurisdiction under 28 U.S.C. § 1331. We exercise appellate jurisdiction under 28 U.S.C. § 1291. We review *de novo* a district court’s ruling on the constitutionality of a statute. *See Fusaro v. Howard*, 19 F.4th 357, 366 (4th Cir. 2021).

Appendix B

an individual’s “inherent right” to self-defense. 554 U.S. 570, 628, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). More recently, the Court in *Bruen* laid out a two-step analytical framework for applying the Second Amendment. 597 U.S. at 24, 142 S.Ct. 2111. At step one, courts must first assess whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* If it does not, our inquiry ends—there is no Second Amendment problem. But if the text covers the conduct, “the Constitution presumptively protects that conduct,” and we must go to step two. *Id.* At step two, the government must overcome the presumption of unconstitutionality by demonstrating that “its regulation . . . is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* During that historical inquiry, courts must consider the “how” and “why” of historical regulations. *Id.* at 29, 142 S.Ct. 2111. For the “how,” we ask whether the “modern and historical regulations impose a comparable burden on the individual’s right.” *Id.* For the “why,” we ask whether that burden is “comparably justified.” *Id.*

In *United States v. Rahimi*, the Court clarified that Second Amendment jurisprudence is not “a law trapped in amber.” 602 U.S. 680, 691, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024). The historical inquiry focuses not on finding a “historical twin” but “whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Id.* at 692, 144 S.Ct. 1889. But that clarification maintained the need for courts to compare the “how” and “why” of the challenged regulation with that of its historical comparators. “Why and how the regulation burdens the right are central to this inquiry.”

Appendix B

Id. Explaining further, the Court emphasized the importance of historical firearm regulations under this comparison of principles:

For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a new law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, “it still may be analogous enough to pass constitutional muster.”

Id. (quoting *Bruen*, 597 U.S. at 30, 142 S.Ct. 2111). This two-step inquiry frames our analysis of the federal handgun purchase ban.

A. The Second Amendment’s Text

This case presents two questions at *Bruen*’s first step—whether plaintiffs are part of “the people” and whether the Second Amendment’s text protects plaintiffs’ proposed course of conduct.² 597 U.S. at 31-32, 142 S.Ct.

2. In *Bruen*, the Court held that the Second Amendment’s text covers weapons that are “in common use” for a lawful purpose. 597 U.S. at 32, 142 S.Ct. 2111 (quoting *Heller*, 554 U.S. at 627, 128 S.Ct. 2783). Our court later held that the question of whether the weapons

Appendix B

2111; see *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) (en banc). I address them in turn.

1. “The People”

First, are 18- to 20-year-olds part of “the people” protected by the Second Amendment? This is a question of first impression in this circuit.³ But several circuits, after *Rahimi*, have concluded 18- to 20-year-olds are part of “the people.” See *Reese v. ATF*, 127 F.4th 583, 590-95 (5th Cir. 2025); *Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 435-38 (3d Cir. 2025); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 114-16 (10th Cir. 2024); *Worth v. Jacobson*, 108 F.4th 677, 688-92 (8th Cir. 2024), *cert. denied*, No. 24-782, — U.S. —, —, 145 S.Ct. 1924, — L.Ed.2d —, #2025 WL 1151242, at *1 (U.S. April 21,

at issue are commonly used for a lawful purpose should be considered at step one. *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) (en banc); but see *id.* at 415 (Quattlebaum, J., concurring in the judgment). Here, no party disputes that handguns are “in common use” for a lawful purpose. “[T]he American people have considered the handgun to be the quintessential self-defense weapon.” *Heller*, 554 U.S. at 629, 128 S.Ct. 2783; see also *Bianchi v. Brown*, 111 F.4th 438, 451 (4th Cir. 2024) (en banc) (contrasting “weapons of crime and war” with “the handgun”).

3. Prior to *Bruen*, a panel of this Court concluded that “the Constitution’s text, structure, and history affirmatively prove that 18-year-olds are covered by the Second Amendment.” *Hirschfeld v. ATF*, 5 F.4th 407, 440 (4th Cir. 2021). But the panel vacated its opinion for mootness when the plaintiff turned 21. See *Hirschfeld v. ATF*, 14 F.4th 322, 326 (4th Cir. 2021).

Appendix B

2025) (mem).⁴ No federal court of appeals has found “the people” excludes 18- to 20-year-olds. For good reason, the majority assumes they are part of the people. *See* Maj. Op. at 575.

In *Heller*, the Supreme Court described “the people” as referring “to all members of the political community, not an unspecified subset.” 554 U.S. at 580, 128 S.Ct. 2783. The *Heller* Court also referenced the Supreme Court’s earlier description that “‘the people’ protected by the Fourth Amendment, and by the First and Second 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.” *Id.* (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990)). Under either definition, “the people” covers 18- to 20-year-olds.⁵ They enjoy—as part of “the people”—the protections of the First and Fourth Amendments. *See Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794, 131 S.Ct. 2729, 180 L.Ed.2d 708 (2011); *New Jersey v. T.L.O.*, 469 U.S. 325, 334, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). And the Second Amendment protects

4. *Lara* and *Worth* considered state laws prohibiting 18- to 20-year-olds from carrying firearms in certain circumstances. *Lara*, 125 F.4th at 432; *Worth*, 108 F.4th at 683. *Polis* considered a Colorado law prohibiting anyone younger than 21 from purchasing a firearm. 121 F.4th at 104. And *Reese* considered the federal handgun purchase ban that we review today. 127 F.4th at 586.

5. Any distinction between “political community” and “national community” makes no difference in today’s case. *See Worth*, 108 F.4th at 690 n.5.

Appendix B

them too. *See Verdugo-Urquidez*, 494 U.S. at 265, 110 S.Ct. 1056. When read consistently across the Constitution, “the people” must include 18- to 20-year-olds. *See Polis*, 121 F.4th at 116.

The government hints that 18- to 20-year-olds are excluded from “the people” based on the term’s meaning in 1791. And amicus flat out makes that argument. *See Everytown Amicus Curiae Br., Brown v. ATF*, Case No. 23-2275 (4th Cir. Jan. 29, 2024), ECF No. 24 at 4-5. The argument relies on the fact that during the late eighteenth century, 18- to 20-year-olds were minors who could not vote. Since they could not vote, amicus reasons, they are not part of “the people” and thus are not protected by the Second Amendment. *Id.* But that cannot be right. The logic behind that view ties “the people” to those who were part of the national or political community in the 1770s. But applying that logic consistently would not only exclude those who couldn’t vote because of age; it also would exclude those who couldn’t vote “based on property ownership, race, or gender.” *Reese*, 127 F.4th at 592 (describing founding-era voting limitations based on property ownership and longstanding voting restrictions based on race and gender); *see also Lara*, 125 F.4th at 437 (“the people” in the late eighteenth century consisted “solely of white, landed men”).

The proper inquiry is to use the principle of the relevant national or political community but apply it today. *See Heller*, 554 U.S. at 580-82, 128 S.Ct. 2783; *see also Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889 (noting that the Court would be “mistaken” to “apply[] the protections

Appendix B

of the right only to muskets and sabers”). Under that approach, just as the First and Fourth Amendments apply to today’s national and political communities, so does the Second Amendment.

2. “Keep and Bear”

Second, does “the plain text of the Second Amendment protect [plaintiffs’] proposed course of conduct”— purchasing a handgun from a federal licensee? *Bruen*, 597 U.S. at 32, 142 S.Ct. 2111. To answer this question, we must consider whether “the regulation ‘infringes’ the Second Amendment right to keep and bear arms.” *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 220 (4th Cir. 2024) (en banc). Once again, the majority assumes the answer here to be yes. *See* Maj. Op. at 574-75. But not the government. It argues the Second Amendment does not protect a right to purchase handguns from commercial sellers when they are available from other sources.

It is correct that the Amendment’s plain text does not contain the word “purchase.” It uses the phrase “keep and bear Arms.” U.S. Const. amend. II. But an explicitly recognized right implicitly protects closely related acts needed to exercise the right itself. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 192-94 (2012) (Predicate-Act Canon). The Supreme Court has followed this interpretative canon. For example, in *Carey v. Population Services International*, the Court noted that the right to choose contraception requires the ability to purchase contraception, therefore casting doubt on a prohibition of sale. 431 U.S. 678, 687-88,

Appendix B

97 S.Ct. 2010, 52 L.Ed.2d 675 (1977). In the same way, the right to keep and bear arms includes the right to purchase them. Otherwise, the expressly granted right would be rendered hollow.

The other circuits that have addressed this question have acknowledged the Second Amendment implicitly protects “a corresponding right to acquire [firearms] and maintain proficiency in their use.” *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011); *see Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (“[T]he core Second Amendment right to keep and bear arms for self-defense wouldn’t mean much without the ability to acquire arms.” (cleaned up)); *Reese*, 127 F.4th at 590 (“Because constitutional rights impliedly protect corollary acts necessary to their exercise, we hold that” the Second Amendment covers “commercial purchases”); *Polis*, 121 F.4th at 140 (McHugh, J., concurring) (“Keeping and bearing arms . . . implies the right to *acquire* arms in order to use them for self-defense.”); *see also Andrews v. State*, 50 Tenn. (3 Heisk) 165, 178 (1871) (“The right to keep arms, necessarily involves the right to purchase them. . . .”).

That makes sense. If you cannot buy a handgun, it’s pretty hard to keep and bear it. True, a friend or relative might give you a handgun. But are the Second Amendment’s protections so cramped that they only apply to those fortunate enough to have friends or family willing and able to transfer handguns as gifts? Surely not.

Also, applying the Second Amendment to the purchase ban conforms with the ordinary meaning of

Appendix B

“infringe” during the founding era. Recall that the amendment instructs the right “shall not be infringed.” U.S. Const. amend. II. Contemporaneous dictionaries defined “infringe” as “[t]o violate” and “[t]o destroy; to hinder.” 1 Samuel Johnson, *A Dictionary of the English Language* (1st ed. 1755); see 1 Noah Webster, *American Dictionary of the English Language* (1828) (similarly defining “infringe”); see also 1 Johnson, *supra*, (defining “hinder” as “[t]o obstruct” and “to impede”); 1 Webster, *supra*, (defining “hinder” as “[t]o impose obstacles or impediments”). So, the ordinary meaning of “infringe” at the founding did not require a total deprivation. Barring “the people” from purchasing handguns from the only consistent commercial source at the very least hinders or impedes their ability to keep and bear arms. See *Nunn v. State*, 1 Ga. 243, 251 (1846) (“The right of the whole people . . . to keep and bear arms of every description . . . shall not be infringed, curtailed, or broken in upon, in the smallest degree. . . .”); cf. *United States v. Scheidt*, 103 F.4th 1281, 1284 (7th Cir. 2024) (concluding an information disclosure requirement does not “‘infringe’ the right to keep and bear arms”).

3. Conditions and Qualifications on Commercial Sale

The government makes another argument that the purchase ban falls outside the protection of the Second Amendment. This time, it channels *Heller*’s non-exhaustive list of “longstanding,” “presumptively lawful regulatory measures.” 554 U.S. at 626-27 & n.26, 128 S.Ct. 2783. Those measures include “laws imposing conditions

Appendix B

and qualifications on the commercial sale of arms.” *Id.* at 626-27, 128 S.Ct. 2783. The government argues that the federal handgun purchase ban is such a condition on commercial sale.

But this argument conflicts with our precedent. A condition or qualification on the sale of arms is a burden on the seller—“a hoop someone must jump through to sell a gun.” *Hirschfeld*, 5 F.4th at 416; *see also United States v. Hosford*, 843 F.3d 161, 166 (4th Cir. 2016). This really isn’t a burden on the seller though. It’s a burden on would-be buyers.

And even if we were to look past that distinction, some burdens go too far. A burden may be “so prohibitive as to turn this condition or qualification into a functional prohibition.” *Hosford*, 843 F.3d at 166. For example, in *Hosford*, we upheld a requirement that firearm dealers obtain a license as a condition and qualification on commercial sale; but only because it did not rise to a functional prohibition on the purchaser’s right to keep and bear arms. *Id.* at 166-67.

Following *Hosford*, a sales ban that functionally prohibits the right to keep and bear arms is not a valid condition or qualification on sale. That is exactly what the federal handgun purchase ban does. While formally aimed at the seller, § 922(b) functionally prohibits an 18- to 20-year-old buyer from purchasing a handgun. *See Hirschfeld*, 5 F.4th at 417. The 18- to 20-year-old can do nothing but wait until he turns 21. Section 922(b) outright prohibits him from purchasing a handgun from a licensed

Appendix B

dealer, leaving only private sales and gifts as realistic ways to acquire handguns. Those limited channels fail to satisfy the Second Amendment's command.

I acknowledge not all agree. The Tenth Circuit found a similar state restriction constituted a presumptively lawful condition on the commercial sale of arms. *See Polis*, 121 F.4th at 118. It reasoned that the state ban is a “narrow, objective, and definite standard that applies uniformly to all potential sellers and buyers.” *Polis*, 121 F.4th at 123. I agree that such a ban would be objective and definite. But that alone cannot make it constitutional. Bans on selling to those over 25 would also be objective and definite. So would bans on selling to women and Black people. They would also be unconstitutional.

The federal handgun purchase ban, however, is neither narrow nor uniform. Admittedly, it does not preclude possessing a handgun and does not apply to the sale of other arms like rifles or shotguns. But it completely prohibits a category of “the people” from acquiring the quintessential self-defense firearm through ordinary commerce. And it singles out 18- to 20-year-olds for heightened regulation.

For all these reasons, the government's step one arguments fail. Because the federal handgun purchase ban prevents a subset of “the people” from purchasing firearms from the primary source, the Second Amendment protects plaintiffs' proposed course of conduct.

*Appendix B***B. Principles Underpinning Our Regulatory Tradition**

To justify the federal handgun purchase ban, the government must show its “consisten[cy] with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 34, 142 S.Ct. 2111. As noted earlier, while we need not find a “dead ringer” or “historical twin,” we must consider “whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692, 144 S.Ct. 1889. “Why and how the regulation burdens the right are central to this inquiry.” *Id.*

Considering the relevant historical evidence, I cannot agree with the majority. The government has failed to meet its burden.

1. Founding-Era Evidence

“[W]hen it comes to interpreting the Constitution, not all history is created equal.” *Bruen*, 597 U.S. at 34, 142 S.Ct. 2111. “The Second Amendment was adopted in 1791; the Fourteenth in 1868.” *Id.* The Supreme 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.” *Id.* at 37, 142 S.Ct. 2111; *see also Nat’l Rifle Ass’n v. Bondi*, 133 F.4th 1108, 1115 (11th Cir. 2025), *petition for cert. filed sub nom., Nat’l Rifle Ass’n v. Glass*, No. 24-1185 (U.S. May 16, 2025) (looking to founding-era evidence when assessing a similar state

Appendix B

purchase ban). So, I begin by analyzing the founding-era evidence.

a. Contract Law Principles

The majority relies on founding-era contract law. It explains, correctly, that contracts entered by people under 21 were voidable by the minor at common law. *See* Maj. Op. at 575-77; *see also Nat'l Rifle Assoc.*, 133 F.4th at 1117-18. Then, the majority reasons this common law contracting principle is sufficiently similar to the federal handgun purchase ban at issue here. *See* Maj. Op. at 577-78. Both, according to the majority, (1) increase the difficulty for 18- to 20-year-olds to purchase firearms (the “how”) and (2) are based on a common rationale—people of that age group lack the judgment of adults (the “why”). Because of the similarities, the majority concludes that the purchase ban does not offend the Second Amendment.

For several reasons, I disagree.

First, the contract principle relied on by the majority does not share a comparable “how” and “why” with the federal handgun purchase ban. As to “how,” founding-era contract law did not ban the sale of guns to 18- to 20-year-olds. In fact, it did not ban anything. It gave minors the benefit of voiding a contract they had entered. *See Nat'l Rifle Association*, 133 F.4th at 1165-67 (Branch, J., dissenting) (noting a “long recognized [] difference between forming a contract and that same contract later being declared unenforceable”). It did not impose any governmental burden on contracts.

Appendix B

The majority attempts to shoehorn the minor's ability to void a contract into a governmental burden by considering what the practical impact of the voidability principle may have been. Perhaps a seller of guns would hesitate to enter a contract to sell something to an 18-year-old. But any voluntary hesitancy is not a governmental regulation of such sales. It comes from a different source. Any burden imposed on the right to buy a handgun comes not from the government, but from the seller's economic choices.

And the burdens are not similar either. Under the voidability principle, the only "risk" generated by the voidability principle was the possibility the 18-year-old might "rescind the transaction and be entitled to a full refund." Maj. Op. at 576. In a worst-case scenario, the merchant returned the money and got the gun back, losing only the time he took to sell the gun to the 18-year-old. Refunds are a standard part of commercial life with benefits to both retailers and consumers. They are not to be seriously compared with the threat of prison. So, the "how" here is distinct.

So is the "why." The contract principle "results from the inability of infants to take care of themselves." 2 James Kent, *Commentaries on American Law* 191 (O. Halsted ed., 1827). The handgun purchase ban was intended to bar "emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior" from obtaining firearms. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225-26. Perhaps these rationales have some relationship. But they are

Appendix B

not sufficiently similar. The former is paternalistic; the latter targets public safety. *See, e.g., See Bruen*, 597 U.S. at 30-31, 142 S.Ct. 2111 (explaining that the historical, narrow “sensitive places” regulations lack similarity to a declaration that an entire city is a gun-free zone). And no matter how the majority views it, public safety is not a matter of contract law.

Maybe in the future, the Supreme Court will permit more flexibility in the historical evidence courts can consider when reviewing modern firearm regulations. But we apply current law, rather than predict the law’s evolution. *See Agostini v. Felton*, 521 U.S. 203, 237, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997); *see also Ohio v. Becerra*, 87 F.4th 759, 770 (6th Cir. 2023) (“In other words, we apply directly applicable Supreme Court precedent as it currently stands, without projecting where it may be headed.”). Wayne Gretzky, perhaps the greatest hockey player of all time, owed much of his success to his ability to anticipate. He said, “I skate to where the puck is going to be, not where it’s been.” John Robert Colombo, *Colombo’s New Canadian Quotations* 162 (1987).⁶ While that worked for Gretzky, it doesn’t work for us. Our job is to stay where the puck is now. That means we follow the Supreme Court’s current jurisprudence. When we do so, the common law contract principle that permitted minors

6. The quote is famously attributed to Wayne Gretzky, but apparently his father Walter Gretzky stated it. *See Barry Libert, Skate to the Where the Puck is Going . . . AI*, *Forbes* (Feb. 21, 2025, at 8:56 ET), <https://www.forbes.com/sites/libertbarry/2025/02/21/skate-to-the-where-the-puck-is-goingai/> [<https://perma.cc/28PQ-CKRG>].

Appendix B

to void contracts does not support the constitutionality of the federal government banning 18- to 20-year-olds from buying handguns.

Second, the majority points to no evidence that the contract principle limited the ability of 18- to 20-year-olds to acquire guns in the founding era. It declares that age group lacked access to cash and would only be able to purchase with credit. *See* Maj. Op. at 575-76. And it declares that sellers would not sell guns to minors on credit because the contracts could be voided. *Id.* But those statements are not evidence of what actually happened. It is certainly possible that the risk of an 18- to 20-year-old voiding a contract spooked some sellers. But why isn't it just as possible that sellers would have taken the risk knowing they could get the gun back from a voided contract? And isn't it also possible that if minors lacked cash, they would trade property they did have for guns? After all, bartering was an accepted form of founding-era commerce. *See, e.g.,* William T. Baxter, *Observations on Money, Barter and Bookkeeping*, 31 *Accounting Historians J.* 129, 133-36 (2004). Finally, rather than avoiding selling to minors altogether, isn't it possible that sellers might have negotiated collateral or a guarantee in selling a gun to a minor? Ultimately, the majority rests its decisions on economic speculation, not historical evidence.

In fact, we need not speculate about which of these possibilities is more likely correct. There is actual historical evidence. As Judge Branch points out, the historical record reflects merchants selling on credit to minors, including sales of firearms, despite the risk. *See*

Appendix B

Nat'l Rifle Assoc., 133 F.4th at 1166 (Branch, J., dissenting) (first citing *Soper v. President & Fellows of Harv. Coll.*, 18 Mass. 177, 183-84 (1822) (acknowledging that merchants “will nevertheless give credit” to “young men”); then citing *Saunders Glover & Co. v. Ott's Adm'r*, 12 S.C.L. (1 McCord) 572, 572 (1822) (concluding a minor's purchase of “pistols” and “powder” was voidable because the items were not “necessaries”). The evidence just doesn't support the majority's claims.⁷ For those reasons, I cannot agree that the contract principle expresses a relevantly similar historical tradition of firearm regulation.

b. Minority Status

The government marshals other founding-era evidence of 18- to 20-year-olds' minority status. Blackstone

7. The contract principle may not have even applied to firearms in some circumstances. A minor could not void contracts for “his necessary meat, drink, apparel, physic, and such other necessities.” 1 William Blackstone, *Commentaries* *454. Are firearms necessities? The Constitutional Court of Appeals of South Carolina concluded pistols were not a necessary, but only on the facts of that case. *See Saunders Glover*, 12 S.C.L. at 572. And as explained in more detail below, the federal Militia Act of 1792 and contemporaneous laws in all states required militiamen—including 18- to 20-year-olds—to equip themselves with firearms. If the law required 18- to 20-year-olds to obtain arms for militia service, then those arms may have been “necessaries.” *See, e.g., Coates v. Wilson* (1807) 170 Eng. Rep. 769, 769; 5 Esp. 152, 152 (concluding a tailor could enforce a contract against a minor soldier because the soldier's uniform was a necessary); Militia Act of 1792, ch. 33, sec. 1, 1 Stat. 271, 272 (exempting “arms, ammunition and accoutrements” obtained for militia service from “all suits, distresses, executions or sale, for debt or for the payment of taxes”).

Appendix B

described the age of majority as 21. 1 William Blackstone, Commentaries *451. As a result, founding-era legislatures prohibited persons under 21 from marrying without parental approval. *See* 4 *Statutes at Large of Pennsylvania from 1682 to 1801*, at 153 (James T. Mitchell & Henry Flanders eds. 1897) (citing a 1729 act). Persons under 21 could not vote until the ratification of the Twenty-Sixth Amendment in the 1970s. U.S. Const. amend. XXVI. Because jury service was often tied to the franchise, persons less than 21 could not serve on juries. *See* Albert W. Alschuler & Andrew G. Deiss, *A Brief History of Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 877 n.52 (1994). These restrictions were premised on the belief that “infants [had an inability] to take care of themselves; and this inability continues, in contemplation of law, until the infant has attained the age of twenty-one years.” Kent, *supra*, at 191. John Adams and Gouverneur Morris—two founding fathers—expressed concerns about the “prudence” of those under 21. Gov. Br. at 13-14.

But this evidence only shows that some rights at the founding extended to those under 21 and some didn’t. That’s because, as already discussed, the First and Fourth Amendments extended to 18- to 20-year-olds. *See Brown*, 564 U.S. at 794, 131 S.Ct. 2729; *T.L.O.*, 469 U.S. at 334, 105 S.Ct. 733.⁸ So, the fact that 18- to 20-year-olds did not have

8. As Blackstone’s Commentaries makes clear, the relevant age of majority depended on the particular individual’s capacity or activity. 1 William Blackstone, Commentaries *451; see also *id.* at *453 (noting the “different capacities which [individuals] assume at different ages”). For example, a man could take an oath of allegiance at age 12, be capitally punished in a criminal case at age 14, and serve

Appendix B

the full panoply of rights as adults at the founding merely requires that we roll up our sleeves and examine the evidence on a right-by-right basis. When we do that, the historical evidence indicates that the Second Amendment, like the First and Fourth, applied to 18- to 20-year-olds.

Also, this evidence about minority status is not evidence of firearm regulations. At most, it is evidence about how some general principles might apply to firearms. Thus, for the same reasons discussed in the previous analysis of contract law principles, this minority status evidence is not the type of evidence that *Bruen* and *Rahimi* require to overcome the presumption of unconstitutionality.

c. Constables

The government also points to a South Carolina treatise barring “infants” from serving as constables—deputized law enforcement officers—as evidence that 18- to 20-year-olds lacked access to firearms. *See* John Faucheraud Grimke, *The South-Carolina Justice of Peace* 117-18 (3d ed. 1810) (originally published in 1788). According to the government, since minors could not be constables and constables carried firearms, the exclusion of minors shows that they lacked access to guns. The government then claims the constable regulation is based on the same reasoning as the federal handgun purchase ban—that minors lack the judgment to carry firearms.

as an executor at age 17. *Id.* at *451-52. And a woman could consent to marriage at age 12, choose a guardian at age 14, and serve as an executrix at age 17. *Id.* at *451. Both sexes had to wait until age 21 to dispose of their lands. *Id.* So while the full age of majority was 21 at common law, that only mattered for specific activities. *Id.*

Appendix B

This argument is remarkably weak. First, the treatise says nothing about the ability of minors to acquire firearms. Second, it also prohibits “[j]ustices of the peace, clergyman, attornies, infants, lawyers, madmen, physicians, idiots, poor, old and sick persons” from serving as constables. *Id.* at 117. There can be no credible argument that others ineligible to be constables—like clergyman, lawyers and physicians—lack the judgment to carry guns.⁹ As a result, the constable restriction cannot share the same “why” as the federal handgun purchase ban; it’s not excluding persons because of their poor judgment when carrying firearms.

Nor does it share the same “how”—it does not prohibit “infants” from purchasing or possessing firearms, but rather excludes them from performing constable duty.¹⁰ This source does not provide a relevantly similar principle justifying the handgun purchase ban.

9. I realize this is a bit of a hanging curveball. Many might contend that lawyers fall in the same category as madmen and idiots. But even taking lawyers out of the equation, clergyman and physicians surely possess the judgment to carry guns.

10. Amici cite several college regulations preventing students from possessing firearms. But these regulations applied to *all* students, not just minors, and required disarmament in particular locations. *See Reese*, 127 F.4th at 596-97. They appear to be “sensitive place” regulations, with a “why” of securing peace and discipline on a college campus and a “how” of temporary disarmament. *See id.*; *Bruen*, 597 U.S. at 30-31, 142 S.Ct. 2111. What’s more, to the extent these regulations affected minors, they actually demonstrate minors had access to guns. After all, why ban guns on college campuses if minor students could not obtain them?

*Appendix B***d. The Militia Act**

In contrast to the evidence relied on by the majority and the government, the Militia Act of 1792—enacted shortly after the Second Amendment’s ratification—provides strong evidence that the Second Amendment protected 18- to 20-year-olds. The Act required “[t]hat each and 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 after excepted) shall severally and respectively be enrolled in the militia.” Militia Act of 1792, ch. 33, sec. 1, 1 Stat. 271, 271. Each militiaman had a duty to “provide himself with a good musket or firelock . . . or with a good rifle.” *Id.* After Congress enacted this statute, every state set the age for militia service at 18. See *Jones v. Bonta*, 34 F.4th 704, 719, 738 (9th Cir. 2022), *vacated on reh’g and remanded in light of Bruen*, 47 F.4th 1124 (9th Cir. 2022) (mem.); *Hirschfeld*, 5 F.4th at 428-434. As the federal and state militia laws required 18- to 20-year-olds to show up with a musket, firelock or rifle, these laws illustrate that folks of that age could acquire the weapons. Thus, the various militia laws undermine any supposed traditional principle that permits depriving 18- to 20-year-olds of their Second Amendment right.

The government and the majority offer several retorts. None are persuasive.

First, according to the majority, the Militia Act of 1792 merely required a militiaman to “provide himself” with a musket or firelock but did not require him to “purchase”

Appendix B

one. Maj. Op. at 578. But the “provide himself” language applied to all militiamen, not just 18- to 20-year-olds. Given that, the best reading of the Act indicates all militiamen, including 18- to 20-year-olds, had the ability to acquire firearms. Congress could not have expected all 18- to 20-year-old militiamen across the entire country to obtain firearms by gift.

Second, the majority and government point out that some states raised the militia age above 21. True, Virginia did so in 1738 before returning it to 18 or less in 1757—in the midst of the French & Indian War. *See* 5 William Waller Hening, *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, at 16 (1823); *see also* David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL. U. L.J. 495, 579 (2019). And New Jersey set a militia age of 21 for an expedition of 500 men to Canada during King George’s War. *See* 3 Bernard Bush, *Laws of the Royal Colony of New Jersey*, at 15, 17 (1980); *see also* Kopel & Greenlee, *supra*, at 536 (discussing this 1746 New Jersey act); *Hirschfeld*, 5 F.4th at 431-33 (discussing Virginia, New Jersey and Pennsylvania statutes). But these isolated examples were withdrawn decades before the Second Amendment’s ratification when every state required enrollment by age 18.

Third, the government and the majority believe that parental provisioning statutes imply minors could not buy firearms. And it is true that an 1810 Massachusetts act, as one example, required parents to equip minor militiamen “with the arms and equipments, required by

Appendix B

this act.” Act of Mar. 6, 1810, ch. 107, sec. 28, 1810 Mass. Acts 157, 176. I agree that meant parents had to provide a “good musket” if the minor didn’t have one. *Id.* sec. 1, 1810 Mass. Acts 151, 152. But that does not establish that minors could not acquire guns themselves. In fact, under the same act, parents also had to provide “two spare flints, and a knapsack, a pouch with a box therein, to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball.” *Id.* Surely an 18-year-old could buy a “knapsack” and a “pouch” in 1810, and yet the law required parents to provide them. Considering the state militia laws as a whole, parental provisioning requirements do not signal a firearm purchasing restriction; instead, they recognize that some minors might not have had the necessary equipment for militia service. In those instances, parents bore the financial burden of equipping.

The government makes two additional arguments that, for good reason, the majority steers clear of. The government points to militia parental consent statutes. A 1755 Pennsylvania act required parental approval for persons less than 21 to join the militia. But it applied for only one year at the start of the French & Indian War. *See 5 Statutes at Large of Pennsylvania from 1682 to 1801*, at 200 (James T. Mitchell & Henry Flanders eds. 1898); *see also* Kopel & Greenlee, *supra*, at 561. A 1746 New Jersey act had a similar parental consent requirement and was also enacted during wartime. *See* Bush, *supra*, at 15, 17; *see also* Kopel & Greenlee, *supra*, at 536; Hirschfeld, 5 F.4th at 433-34 (discussing a nineteenth-century New

Appendix B

York statute). These consent statutes are hardly sufficient to overcome the strong, contemporaneous evidence from the Militia Act that minors had access to guns during the founding era.

Finally, the government argues the Militia Act should not be considered because *Heller* detached the Second Amendment right from militia service. This misreads *Heller*. True, *Heller* held that the Second Amendment conferred an individual right and not a right solely tied to service in the militia. 554 U.S. at 582-83, 128 S.Ct. 2783. But the Supreme Court did not completely eliminate the relationship between the Second Amendment and the militia. According to *Heller*, a purpose of the amendment was “to prevent elimination of the militia.” *Id.* at 599, 128 S.Ct. 2783. Although not the only reason for the right, “the threat that the new Federal Government would destroy the citizens’ militia by taking away their arms was the reason that right—unlike some other [pre-existing] English rights—was codified in a written Constitution.” *Id.* The people had a right to keep and bear arms so that they could form a militia to protect their interests. As jurist Thomas M. Cooley explained, “the people, from whom the militia must be taken, shall have the right to keep and bear arms.” Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 271 (1880).

In sum, none of the evidence marshaled by the majority or the government demonstrates the federal handgun purchase ban’s consistency with our Nation’s historical tradition of firearm regulation so as to overcome

Appendix B

the presumption of unconstitutionality. In contrast, the Militia Act of 1792 is “good circumstantial evidence of the public understanding at the Second Amendment’s ratification as to whether 18- to-20-year-olds could be armed.” *Lara*, 125 F.4th at 444.¹¹

In concurrence, Judge Heytens criticizes McCoy’s reliance on militia statutes because the logical extension of McCoy’s position would be the Second Amendment permits 16-and 17-year-olds to purchase firearms. I do not share his concerns.

First, because this case does not present the issue, the record before us does not sufficiently address a historical tradition of restricting 16-and 17-year-olds’ access to firearms. But as we stated in *Hirschfeld*, “the history of the right to keep and bear arms, including militia laws, may well permit drawing the line at 18.” 5 F.4th at 422 n.13. After all, within one year of the Bill of Rights’ ratification, the Militia Act of 1792 set the age of service at 18. All states followed suit. So, immediately after the Second

11. Justice Barrett has cautioned that relying on a dearth of eighteenth-century gun regulations to strike down a twenty-first-century regulation “assumes that founding-era legislatures maximally exercised their power to regulate.” *Rahimi*, 602 U.S. at 739-40, 144 S.Ct. 1889 (Barrett, J., concurring). That makes sense to me. Even so, I’m not sure what to do with it. *Bruen* and *Rahimi* say that if conduct is covered by the text of the Second Amendment, it is presumptively unconstitutional. The government must then identify evidence that supports the modern regulation. Just like a tie goes to the runner in baseball, that seems to mean silence in the historical record goes against the government when considering step two of a Second Amendment analysis.

Appendix B

Amendment's ratification, the federal government and all states set a service age of 18. To be sure, some evidence exists supporting a service age younger than 18. But that evidence is scattered across different colonies and states at different times, most of it predating the Bill of Rights' ratification. At least on the record before us, the 16-to 17-year-old evidence is not as persuasive as the 18- to 20-year-old evidence.

Second, even if the evidence was more persuasive, *Bruen* does not permit such consequential reasoning. It requires us to assess the challenged regulation against our historical tradition of firearm regulation. If the historical tradition supports the rights of 16-to 17-year-olds to purchase firearms, then *Bruen* dictates that they have that right under the Second Amendment.

That might be jarring to some. For that matter, some may find permitting 18-year-olds to purchase handguns equally jarring. But those feelings, no matter how legitimate, really are saying a little infringement into the Second Amendment's protections is okay if it's for a good enough reason. But as we all know, *Bruen* confirmed we do not apply such means/ends analysis in the Second Amendment context. *See* 597 U.S. at 24, 142 S.Ct. 2111. Courts cannot functionally resurrect means/ends analysis by avoiding the formalities of its language.

Also, these arguments, at their core, involve policy—at what age *should* persons under 21 be able to purchase handguns? Making policy decisions is outside our job description. We make decisions based on the law. That means we must follow Supreme Court precedent faithfully,

Appendix B

wherever it takes us. We cannot stray from that obligation when we do not like the result.

2. Nineteenth-Century Evidence

The government turns to nineteenth-century evidence to meet its burden. And the majority concludes this evidence “reinforce[s]” the founding-era history. *See* Maj. Op. at —. Admittedly, the government provides evidence of relevantly similar restrictions on 18- to 20-year-olds’ ability to purchase handguns from the decades before and after the Fourteenth Amendment’s ratification. For example, Alabama, Tennessee and Kentucky each passed statutes prohibiting the sale of pistols or other dangerous weapons to minors before the Civil War. *See* An Act to Amend the Criminal Law, No. 26, sec. 1, 1856 Ala. Acts 17, 17; An Act to Amend the Criminal Laws of this State, ch. 81, secs. 2-3, 1856 Tenn. Acts 92, 92; Act of Jan. 12, 1860, ch. 33, sec. 23, 1860 Ky. Acts 241, 245. The Supreme Court of Tennessee rejected a constitutional challenge to one of these statutes, explaining the statute’s purpose as “suppress[ing] [] the pernicious and dangerous practice of carrying arms.” *State v. Callicutt*, 69 Tenn. 714, 716 (1878). So, these statutes share a similar “how”—prohibiting sale of dangerous weapons to persons under 21, with small exceptions—and a similar “why”—public safety—with the federal handgun purchase ban. And states enacted more of these restrictions after the Civil War. *See* Maj. Op. at 578-79 n.3.

Were this evidence present during the founding era, this might be a different case. But it wasn’t. As such, it

Appendix B

deserves little weight under *Bruen*. That is because these mid-nineteenth-century statutes contradict the original meaning of the Second Amendment. See *Reese*, 127 F.4th at 599. While the Supreme Court has acknowledged the importance of the Second Amendment’s interpretation from immediately after ratification through the end of the nineteenth century, *Heller*, 554 U.S. at 605, 128 S.Ct. 2783, “we must also guard against giving postenactment history more weight than it can rightly bear,” *Bruen*, 597 U.S. at 35, 142 S.Ct. 2111. A regular course of practice may demonstrate a settled meaning of a disputed constitutional phrase. *Bruen*, 597 U.S. at 35-36, 142 S.Ct. 2111 (citing *Chiafalo v. Washington*, 591 U.S. 578, 592-93, 140 S.Ct. 2316, 207 L.Ed.2d 761 (2020)). “But to the extent later history contradicts what the text says, the text controls.” *Id.* at 36, 142 S.Ct. 2111. Post-ratification laws *inconsistent* with the constitutional text’s original meaning cannot overcome that text. *Id.* (citing *Heller v. District of Columbia*, 670 F.3d 1244, 1274 n.6 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)). The government’s nineteenth-century statutes contradict the founding-era understanding that 18- to 20-year-olds may buy firearms because (1) there is no evidence of a relevant restrictive principle of firearm regulation from the founding era and (2) 18- to 20-year-olds had to equip themselves with firearms under the Militia Act of 1792 and contemporaneous militia laws in every state.

The majority argues that because handguns became more common in the early nineteenth century, we must accord greater weight to the nineteenth-century evidence. See Randolph Roth, *Why Guns Are and Are Not the*

Appendix B

Problem, in *A Right to Bear Arms?: The Contested Role of History in Contemporary Debates on the Second Amendment* 113, 117-24 (Jennifer Tucker et al. eds., 2019). But the former doesn't require the latter. It is correct that *Bruen* acknowledges that "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." 597 U.S. at 27, 142 S.Ct. 2111. At the same time, *Bruen* still instructs us to apply the historical principles analysis in those cases—"history guide[s] our consideration of modern regulations that were unimaginable at the founding." *Id.* at 28, 142 S.Ct. 2111. And under a *Bruen* analysis, the mid-nineteenth-century statutes contradict the original public meaning of the Second Amendment. *See Lara*, 125 F.4th at 441-42.

Also, it is not clear that these mid-nineteenth-century regulations responded to an "unprecedented societal concern[] or dramatic technological change[]." *Bruen*, 597 U.S. at 27, 142 S.Ct. 2111. Handguns existed at the founding. Some American households owned pistols in the mid-eighteenth century. Roth, *supra*, at 116. True, mid-nineteenth-century revolvers offered ease of use, speed and effectiveness that earlier muzzle-loading pistols could not. Roth, *supra*, at 121-22. And as a result, breech-loading pistols became more popular. But under the historical principles analysis, the content of the nineteenth-century statutes reveal they were not enacted to remedy this technological change. The supposedly relevantly similar nineteenth-century statutes addressed weapons like knives in addition to pistols. *See, e.g.*, 1856 Ala. Acts at 17 (prohibiting the sale of a pistol, air gun,

Appendix B

“a bowie knife, or knife or instrument of the like kind or description, by whatever name called”). Those weapons existed long before the mid-nineteenth century and were not subject to a “dramatic technological change[]” when sale to 18- to 20-year-olds was banned. *Bruen*, 597 U.S. at 27, 142 S.Ct. 2111.¹²

Because the government has not shown a relevant principle of restricting 18- to 20-year-olds’ access to self-defense weapons at the time of the founding, it has failed to justify the federal handgun purchase ban. I would find the ban violates the Second Amendment.

III. REMEDIES

For the reasons above, I would affirm the district court’s Second Amendment conclusions. I would also affirm its remedy—enjoining the federal handgun purchase ban as to the class of 18- to 20-year-olds.

The government argues the district court abused its discretion by certifying a Rule 23(b)(2) class after

12. The majority concludes that unlike the regimes struck down in *Heller* and *Bruen*, the federal handgun purchase ban is no “outlier.” See Maj. Op. at 579-80. In fact, it posits that holding this law unconstitutional would be the outlier. *Id.* Not so. The Fifth Circuit found the federal handgun purchase ban to be unconstitutional, *Reese*, 127 F.4th at 600, and the Third Circuit struck down a similar state prohibition on carrying arms, *Lara*, 125 F.4th at 446. See also *Worth*, 108 F.4th at 698 (concluding age-based carry prohibition was unconstitutional); but see *Bondi*, 133 F.4th at 1130 (upholding a similar state purchase restriction); *Polis*, 121 F.4th at 118 (finding substantial likelihood that state purchasing restriction was a presumptively lawful condition and qualification on commercial sale).

Appendix B

granting summary judgment. We review the district court's certification of a class for abuse of discretion. *EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014).

An earlier version of Federal Rule of Civil Procedure 23 required courts to determine class certification “[a]s soon as practicable after the commencement of an action brought as a class action.” Fed. R. Civ. P. 23(c)(1) (1966). This prevented potential parties from “await[ing] developments in the trial or even final judgment on the merits” before deciding to join the class. *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 547, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974). The Supreme Court has referred to this situation as “one-way intervention.” *Id.* The modern version of the rule slightly amended the timing language: “At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.” Fed. R. Civ. P. 23(c)(1)(A) (2003). The advisory committee explained that courts may need time and even limited discovery to make the certification decision. Fed. R. Civ. P. 23(c) advisory committee’s notes to 2003 amendment.

According to the district court, it had wide discretion to decide whether to reach class certification before or after resolving the summary judgment question. *Fraser*, 2023 WL 5616011, at *3. While certifying a class after granting summary judgment gives me pause, I cannot say the district court abused its discretion here. First, there is no one-way intervention concern because Rule 23(b)(2) class members have no opportunity to opt in or out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,

Appendix B

362, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). Rule 23(b)(2) creates a “mandatory” class and a district court need not even notify members of the action. *Id.*; see also *Gooch v. Life Invs. Ins. of Am.*, 672 F.3d 402, 433 (6th Cir. 2012) (one-way intervention prohibition does not apply to Rule 23(b)(2) class certifications). Second, unlike many cases, this facial constitutional challenge involved no discovery before summary judgment. So, certification was at an “early practicable time.” Fed. R. Civ. P. 23(c)(1)(A). Finally, there is no concern about “fairness to both sides.” *Gooch*, 672 F.3d at 433 (quoting *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 559 (8th Cir. 1982)). The parties conferenced and agreed to proceed with dispositive motions—the government moved to dismiss and plaintiffs moved for summary judgment. Both parties should have understood the risks of moving forward with dispositive motions before the class certification decision. I, therefore, see no abuse of discretion in the district court’s certification of a Rule 23(b)(2) class after it granted summary judgment to plaintiffs.

IV. CONCLUSION

For these reasons, I respectfully dissent. The federal handgun purchase ban implicates the Second Amendment’s text because 18- to 20-year-olds are part of “the people,” a ban on purchasing infringes the right to “keep and bear” arms and the federal handgun purchase ban is not a presumptively valid condition or qualification on commercial sale. The government has not met its burden to justify the regulation with relevant principles from our Nation’s historical tradition of firearm regulation.

**APPENDIX C — MEMORANDUM OPINION AND
ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA, FILED DECEMBER 1, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CIVIL ACTION NO. 1:22-CV-80

STEVEN ROBERT BROWN, BENJAMIN
WEEKLEY, SECOND AMENDMENT
FOUNDATION, AND WEST VIRGINIA CITIZENS
DEFENSE LEAGUE,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS
AND EXPLOSIVES, MERRICK GARLAND,
U.S. ATTORNEY GENERAL, IN HIS OFFICIAL
CAPACITY, AND STEVEN DETTELBAACH,
DIRECTOR OF THE ATF, IN HIS OFFICIAL
CAPACITY,

Defendants.

Filed December 1, 2023

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendants' Motion to
Dismiss and Plaintiffs' Motion for Summary Judgment.

Appendix C

ECF Nos. 23, 28. For the reasons that follow, Defendants' Motion to Dismiss is **DENIED** and Plaintiffs' Motion for Summary Judgment is **GRANTED**.

I. FACTUAL BACKGROUND**A. Undisputed Facts**

This case requires the Court to assess the protected right of the people under the Second Amendment to the Constitution to keep and bear arms. U.S. Const. amend. II. Plaintiffs Robert Brown ("Brown") and Benjamin Weekley ("Weekley"), individuals, are "law-abiding, responsible adult citizens who wish to purchase handguns." ECF No. 11, First Am. Compl. ¶¶ 2, 7-8; *see also* ECF No. 28-3, Brown Decl.; ECF No. 28-2, Weekley Decl. Brown and Weekley are citizens of West Virginia and the United States of America and are between the ages of eighteen and twenty-one. Am. Compl. ¶¶ 7-8. Brown and Weekley, as law-abiding, responsible adult citizens, would purchase handguns and handgun ammunition from Federal Firearms Licensees ("FFLs") but for the right proscribed by 18 U.S.C. §§ 922(b)(1) and (c)(1). *Id.* ¶¶ 1-3.

Plaintiffs Second Amendment Foundation ("SAF")¹ and West Virginia Citizens Defense League ("WVCDL") are organizational plaintiffs. *Id.* ¶¶ 9-10. WVCDL "is [a]

1. In the briefings, the parties agree to the voluntary dismissal, without prejudice, of SAF due to its involvement in *Reese v. ATF*, No. 6:20-cv-01438 (W.D. La. May 5, 2021). Therefore, SAF is **DISMISSED WITHOUT PREJUDICE** from this action and is not part of the Court's opinion herein.

Appendix C

nonpartisan, nonprofit membership organization formed in 2008 with a purpose of preserving, expanding, and perpetuating the right to keep and bear arms in the State of West Virginia.” *Id.* ¶ 10. WVCDL includes adult members between the ages of eighteen years and twenty years who, absent the handgun ban, would purchase handguns and the associated ammunition. *Id.* Brown and Weekley are members of both organizational plaintiffs. *Id.* ¶¶ 7-8.

Plaintiffs assert claims against Defendants Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”); Steven Dettelbach, the Director of ATF; and Merrick Garland, Attorney General of the United States, alleging injuries-in-fact due to the statutory prohibition against 18-to-20-year-olds from purchasing handguns and handgun ammo. *Id.* ¶¶ 11-13. Brown and Weekley both attempted to purchase handguns from FFLs in and around June and July 2022. *Id.* ¶¶ 18-30. Each FFL refused the sales because they were under twenty-one years of age. *Id.*

B. Defendants’ Response

For purposes of Plaintiffs’ Rule 56 motion, the Court treats these facts as undisputed. Defendants filed a Response to Plaintiffs’ Statement of Undisputed Material Facts in Support of Plaintiffs’ Motion for Summary Judgment [ECF No. 34] pursuant to this District’s Local Rule of Civil Procedure 7.02. However, Defendants’ submission does not create any genuine issues of material fact sufficient to preclude consideration of

Appendix C

summary judgment. That Response lists eight (8) factual statements from Plaintiffs' motion and, for six (6) of those, simply offers "Statement disputed. Defendants have no knowledge as to the truth of this statement." ECF No. 34. Simply denying any knowledge about factual statements made in a sworn declaration does not carry a non-movant's burden under Rule 56. Another part of the response simply notes Defendants' inability to verify factual assertions. *Id.*

Although the Court is required to make all inferences in the light most favorable to the non-movant, Defendants' burden in facing a Rule 56 motion is not insignificant. As Judge Bailey summarized,

[a]dditionally, the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." [*Matusushita [Matsushita] Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)]. That is, once the movant has met its burden to show absence of material fact, the party opposing summary judgment must then come forward with affidavits or other evidence demonstrating there is indeed a genuine issue for trial. Fed. R. Civ. P. 56(c); *Celotex Corp.*, 477 U.S. at 323-25 [106 S.Ct. 2548]; *Anderson [v. Liberty Lobby, Inc.]*, 477 U.S. [242] at 248 [106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)]. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249

Appendix C

[106 S.Ct. 2505] (citations omitted). Although all justifiable inferences are to be drawn in favor of the non-movant, the non-moving party “cannot create a genuine issue of material fact through mere speculation of the building of one inference upon another.” *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985).

Anderson v. Profrac Mfg., LLC, No. 5:20-CV-227, 2022 WL 2902846, at *2 (N.D.W. Va. May 25, 2022) (Bailey, J.). Defendants do not even engage in speculation based on stacked inferences. They simply “dispute” Plaintiffs’ factual statement averring lack of knowledge to “verify.” Rule 56 demands more. Moreover, upon review of the docket, neither party engaged in any discovery efforts, nor argued that additional time was needed for discovery. *See* Rule 56(d). Thus, there is no genuine issue of material fact present here. *See* Rule 56(e)(2).

II. PROCEDURAL HISTORY

On August 30, 2022, Brown, *pro se*, filed suit against the ATF, the Director, the Attorney General, and Patrick Morrissey, the West Virginia Attorney General. ECF No. 1. On the same date, summonses were issued to the initial defendants and notice of general guidelines for appearing *pro se* in federal court was given. ECF Nos. 3, 4. The next day, the case was referred to the Honorable Michael J. Aloï, United States Magistrate Judge, for written orders or reports and recommendations on dispositive matters and for decisions of any other matters that may arise. ECF No. 5; 28 U.S.C. §§ 636(b)(1)(A), 636(b)(1)(B); L.R. Civ. P. 7.02(c), 72.01.

Appendix C

On September 23, 2022, Brown's counsel filed a notice of appearance and moved for pro hac vice admission for a visiting attorney. ECF Nos. 8-10. On September 27, 2022, the First Amended Complaint for Declaratory Judgment and Injunctive Relief was filed on behalf of Brown, Weekley, SAF, and WVCDL, pleading allegations against Defendants ATF, Dettelbach, and Garland. ECF No. 11. The next day, summonses were issued to those defendants. ECF No. 12. Because Plaintiffs retained counsel; the Court vacated its referral order and terminated the referred status of the case. ECF No. 14.

On December 12, 2022, Defendants, by counsel, filed *Motion to Dismiss Plaintiffs' First Amended Complaint*. ECF Nos. 23, 24. Plaintiffs timely responded in opposition to Defendants' motion and moved for summary judgment. ECF Nos. 25, 27, 28, 29. Defendants replied in support of their motion to dismiss and in opposition to Plaintiffs' motion for summary judgment. ECF Nos. 30, 31, 33, 34, 35. Plaintiffs replied in support of their motion for summary judgment and in opposition to Defendants' motion. ECF No. 36. Plaintiffs and Defendants have filed supplemental authority during the pendency of their motions. ECF Nos. 37, 38, 39. Thus, the motions are fully briefed and ripe for review.

*Appendix C***III. LAW****A. Legal Standards****1. Motion to Dismiss**

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party may move to dismiss a claim for lack of subject-matter jurisdiction. A defendant challenges subject matter jurisdiction in two ways: (1) “that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based,” or (2) “that the jurisdictional allegations of the complaint [are] not true.” *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (quoting *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)). A challenge of subject matter jurisdiction in the first manner, as Defendants contend here, conjures “the same procedural protection . . . [the plaintiff] would receive under a Rule 12(b)(6) consideration.” *Id.* (citing *Adams*, 697 F.2d at 1219).

Under Rule 12(b)(6), a defendant may move for dismissal upon the ground that a complaint does not “state a claim upon which relief can be granted.” In ruling on a 12(b)(6) motion to dismiss, a court “must accept as true all of the factual allegations contained in the complaint.” *Anderson v. Sara Lee Corp.*, 508 F.3d 181, 188 (4th Cir. 2007) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)). A court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986).

Appendix C

A court should dismiss a complaint if it does not contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Plausibility exists “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A motion to dismiss “does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992).

2. Motion for Summary Judgment

Summary judgment, however, is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The nonmoving party must “make a sufficient showing on an essential element of its case with respect to which it has the burden of proof.” *Id.* at 317-18, 106 S.Ct. 2548. Summary judgment is proper “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there [being] no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89

Appendix C

L.Ed.2d 538 (1986). The Court views the evidence in the light most favorable to the non-moving party and draws any reasonable inferences in the non-moving party's favor. *See* Fed. R. Civ. P. 56(a); *see Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc).

B. Applicable Law

"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. In *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Supreme Court of the United States recognized that the Second Amendment codified a pre-existing "right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 2122, 213 L.Ed.2d 387 (2022) (citing *Heller*, 554 U.S. at 570, 128 S.Ct. 2783). This right, however, is not unlimited: our Nation's historical tradition teaches that there are certain "longstanding," "presumptively lawful regulatory measures" that the Second Amendment did not abrogate. *Heller*, 554 U.S. at 626-27, n.26, 128 S.Ct. 2783. The *Heller* court then set forth a two-step framework for assessing Second Amendment claims that combined a historical analysis with means-end scrutiny. *See United States v. Pruess*, 703 F.3d 242, 245 (4th Cir. 2012) (citing *Heller*, 554 U.S. at 680, 128 S.Ct. 2783).

In *Bruen*, the Supreme Court "kep[t] with *Heller*" but "decline[d] to adopt that two-part approach," finding

Appendix C

it to be “one step too many.” *Bruen*, 142 S. Ct. at 2126-27. *Bruen* rejected any “means-end scrutiny” entirely. *Id.* at 2125-26. “*Bruen* effected a sea change in Second Amendment law.” *Maryland Shall Issue, Inc. v. Moore*, 86 F.4th 1038, 1041 (4th Cir. Nov. 21, 2023) (Richardson, J.). *Bruen*’s holding is more rooted in textualism and originalism: if the “plain text [of the Second Amendment] covers an individual’s conduct, [then] the Constitution presumptively protects that conduct.” *Bruen*, 142 S. Ct. at 2125-26. “To justify its regulation, the government may not simply posit that the regulation promotes an important interest.” *Id.* To demonstrate the regulation of that conduct is within the bounds of the Second Amendment, “the government must demonstrate that the regulation is consistent with the Nation’s historic tradition of firearm regulation. Only if a firearm regulation is consistent with the Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* at 2126. As *Heller* also focused on the Nation’s traditional understanding of the Second Amendment, this was not considered a novel pronouncement. *See id.* at 2131 (“The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding.”).

In *Bruen*, the Supreme Court emphasized that the petitioners were “two ordinary, law-abiding, adult citizens,” making them “part of ‘the people’ whom the Second Amendment protects.” *Id.* at 2119. “Like most rights, the right secured by the Second Amendment is

Appendix C

not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . .” *Heller*, 554 U.S. at 626, 128 S.Ct. 2783.

“Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Bruen*, 142 S. Ct. at 2132 (internal citation omitted). Indeed, courts are instructed to use analogies to “historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.” *Id.* (emphasis in original).

The Fourth Circuit recently summarized the task before this Court. The Supreme Court

supplied an analysis centered on the Second Amendment’s text and history. [*Bruen*,] 142 S. Ct. at 2126-30. The Court explained that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 2126. At that point, the challenged regulation is unconstitutional unless the government can show that “the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* Only then “may a court conclude that the individual’s conduct falls outside the

Appendix C

Second Amendment’s ‘unqualified command.’”
Id. (quoting *Konigsberg v. State Bar of Cal.*,
 366 U.S. 36, 50 n.10 [81 S.Ct. 997, 6 L.Ed.2d
 105] (1961)).

Maryland Shall Issue, Inc., 86 F.4th at 1041.

With this context, 18 U.S.C. § 922(b)(1) makes it

unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver [] any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

18 U.S.C. § 922(c)(1) prohibits FFLs from selling firearms to those who do not appear in person unless the buyer submits a sworn statement affirming he or she is “twenty-one years or more of age” “in the case of any firearm other than a shotgun or rifle.” ATF’s implementing regulations are 27 C.F.R. § 478.99(b) and § 478.124. Chief Counsel of the ATF wrote an opinion letter in 1983 explaining that FFLs

are prohibited from selling or delivering handguns to person under the age of 21.

Appendix C

However, a minor or juvenile is not prohibited by Federal law from possessing, owning, or learning the proper usage of firearms since any firearm that the parents or guardian desire the minor to have can be obtained by the parents or guardian.

ECF No. 24-1, Ex. A, Opinion of the Chief Counsel of ATF, No 23362 (Dec. 5, 1983) (hereinafter the “ATF Opinion Letter”).

IV. DISCUSSION

Because adults between eighteen and twenty years old are statutorily precluded by 18 U.S.C. §§ 922(b)(1) and (c)(1) from buying handguns and handgun ammunition from a licensed dealer, Plaintiffs challenge the statutes as facially unconstitutional and as applied to them. Plaintiffs also request an injunction barring enforcement of the statute for the same reason.

Defendants filed the pending motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and argue Plaintiffs lack standing to bring this action, and even if they have standing, the historical background of the Second Amendment supports the government’s restriction of the purchase of handguns and handgun ammunition to lawful adult citizens over the age of twenty-one. ECF Nos. 23, 24.

Plaintiffs filed their motion for summary judgment and response in opposition to Defendants’ motion to dismiss,

Appendix C

contending they have standing to sue and 18 U.S.C. §§ 922(b)(1) and (c)(1) are both facially unconstitutional and unconstitutional as applied to them because the statutes are inconsistent with the Nation's historical tradition. ECF Nos. 28, 29.

A. Standing

The Court, of course, starts with jurisdiction particularly given Defendants advance a standing challenge to Plaintiffs' claims. The judicial power vested by Article III of the Constitution extends only to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. Because federal court jurisdiction is limited to cases or controversies, plaintiffs must "establish they have standing to sue." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997)). Thus, the Court must first address Plaintiffs' standing to bring suit as challenged in Defendants' motion. See *Baehr v. Creig Northrop Team, P.C.*, 953 F.3d 244, 252 (4th Cir. 2020) ("Article III standing is 'part and parcel of the constitutional mandate that the judicial power of the United States extend only to "cases" and "controversies".'" (internal citation omitted). Article III standing is proven when plaintiffs have established an injury-in-fact, causation, and redressability. *Baehr*, 953 F.3d at 252 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). The burden to establish standing is on the party asserting it. *Lujan*, 504 U.S. at 560-61, 112 S.Ct. 2130.

Appendix C

“An association has associational standing when at least one of its ‘identified’ members ‘would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Outdoor Amusement Bus. Ass’n v. Dep’t of Homeland Sec.*, 983 F.3d 671, 683 (4th Cir. 2020) (internal citation omitted). Defendants allege Plaintiffs lack standing because they have failed to demonstrate an injury-in-fact.²

To establish an injury-in-fact, a plaintiff must “show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 332, 136 S.Ct. 1540, 194 L.Ed.2d 635 (2016) (citing *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130). An injury is particularized if it “affect[s] the plaintiff in a personal and individual way,” and it is concrete if it is “‘de facto’; that is, it must actually exist.” *Id.* at 339-40, 136 S.Ct. 1540 (citations omitted).

Brown and Weekley contend they have suffered an injury-in-fact because they wish to purchase handguns and handgun ammunition from FFLs but are precluded

2. The Government does not challenge either the causation or redressability prongs of the standing analysis. The burden of showing standing rests on Plaintiff. *See Heater v. General Motors, LLC*, 568 F. Supp.3d 626, 643 (N.D.W. Va. 2021) (citing *Lujan*, 504 U.S. at 560-61, 112 S.Ct. 2130) (Keeley, J.). The Court, upon review of the record, finds that burden has been met on both causation and redressability.

Appendix C

by statute because of their ages. Brown and Weekley have each attempted to purchase handguns and associated ammunition from FFLs but have been turned away. ECF No. 28-3, Brown Decl.; ECF No. 28-2, Weekley Decl. Defendants argue Brown and Weekley have not suffered an injury at all because federal statutes and regulations do not preclude 18-, 19-, and 20-year-olds from *possessing* handguns and handgun ammunition, so long as Plaintiffs' parents or guardians purchase them from FFLs as a bona fide gift. ECF No. 24.

Defendants generally miss the point and Plaintiffs' injury is clear. Plaintiffs do not dispute that 18-to-20-year-olds who are law-abiding adults and not otherwise banned from firearm possession are not prohibited from possessing handguns. Brown and Weekley's injury prompting the filing of this suit is that they cannot *purchase* handguns and handgun ammunition from FFLs as a result of the age-based ban.

Defendants' specific arguments are likewise unavailing. First, the suggestion Plaintiffs suffer no injury because a parent or guardian can simply purchase the gun and give it to an 18-to 20-year-old overly minimizes Plaintiffs' plight. Deprivation of a constitutional right is a deprivation and, necessarily, an injury in fact, no matter if an "easy" and lawful work-around exists. Moreover, the Supreme Court of the United States previously rejected the Government's reasoning in a different context. In *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 802, 131 S.Ct. 2729, 180 L.Ed.2d 708 (2011) the Supreme Court, deciding a First Amendment issue, struck down a California law prohibiting the sale (but not

Appendix C

the possession) of violent video games to children under the age of 18. Like this statute, the California law allowed parents (or aunts and uncles) to purchase and provide the games to children. *Id.* Yet, the Supreme Court found this prohibition on the sale of games implicated children’s First Amendment rights and proceeded to strike down the regulation under a **strict scrutiny** analysis. *Id.* at 805, 131 S.Ct. 2729 (emphasis added).

Brown and Weekley’s injury, therefore, is not solved by the ability to receive a gift of a handgun from a parent or guardian. *See Fraser v. ATF*, 672 F.Supp.3d 118 (E.D. Va. 2023) (holding 18-to-20-year-olds have standing to challenge the age-based handgun ban and the statutory age prohibition violates the Second Amendment); *see also Nat. Rifle Ass’n of Am., Inc. v. ATF*, 700 F.3d 185, 191-92 (5th Cir. 2012) (“by prohibiting FFLs from selling guns to 18-to-20 year-olds, the laws cause those persons a concrete particularized injury-i.e., the injury of not being able to purchase handguns from FFLs.”).

The Government’s suggestion erroneously draws too large a distinction between the right to possess and the right to purchase a firearm. Although the Second Amendment does not expressly protect the right to “purchase” firearms, that right must exist by implication if the right to “keep and bear arms” is to have its full meaning and effect. “Commonsense and logic tell us that, unless one is a maker of guns, the right to ‘keep’/have a gun necessarily means that one must purchase it, steal it, be given it by another, or find one that another has lost.” *Fraser v. ATF*, 689 F.Supp.3d 203, 215-16 (E.D.Va. 2023).

Appendix C

Judge Payne’s analysis in *Fraser* proved prescient. Unlike him, the Court now has the benefit of the Fourth Circuit’s decision in *Maryland Shall Issue, Inc. v. Moore*.³ There, in the context of determining whether purchasing a firearm falls within the scope of the Second Amendment’s protection, *see infra*, the Fourth Circuit found the issue “not complicated.” *Id.* at 1043. “If you do not **already** own a handgun, then the only way to ‘keep’ or ‘bear’ one is to get one, either through sale, rental, or gift.” *Id.* (emphasis in original). The Fourth Circuit also dismissed the suggestion that the 30-day waiting period at issue there under Maryland law was not a sufficient deprivation to run afoul of the Second Amendment. Discussing the Founders’ use of “infringed” in the Amendment’s text, the court left the issue undecided but noted the “Second Amendment’s scrutiny is not exclusively reserved for laws that wholly or effectively prohibit firearm possession.” *Id.* at 1044 n.8.⁴

This Court, therefore, has no hesitation concluding Plaintiffs’ have sufficiently pled and demonstrated an injury-in-fact. The ban 18 U.S.C. § 922 imposes on 18-to-20-year-old law-abiding citizens is a more significant

3. The Court was finalizing this Memorandum Opinion as the *Maryland Shall Issue* opinion was published on November 21, 2023.

4. In addition, the decision of the Fourth Circuit in *Lane v. Holder*, 703 F.3d 668 (4th Cir. 2012), although not directly dispositive, is instructive. In *Lane*, the court assessed the issue of standing in the Second Amendment context. Although the Fourth Circuit ultimately held the *Lane* plaintiffs (would-be firearms purchasers) had no standing, it contrasted the regulations in question there with regulations that would burden consumers “directly.” *Id.* at 672. The statute and regulations Plaintiffs challenge here do just that.

Appendix C

deprivation than the 30-day waiting period in *Maryland Shall Issue*. There, the Fourth Circuit concluded “the temporary deprivation that Plaintiffs allege is a facially plausible Second Amendment violation.” *Maryland Shall Issue, Inc.*, 86 F.4th at 1045. Thus, the individual Plaintiffs have standing.

Because the individual plaintiffs have established Article III standing, and they are members of WVC DL, WVC DL has standing. *Outdoor Amusement Bus. Ass’n*, 983 F.3d at 683; *see also Firearms Policy Coalition, Inc. et al. v. McCraw*, 623 F. Supp.3d 740, 746-47 (N.D. Tex. 2022). Because Plaintiffs have standing to bring suit, Defendants’ Rule 12(b)(1) motion is **DENIED** on this ground.

B. Plaintiffs’ Constitutional Challenge to 18 U.S.C. § 922(b)(1) and 18 U.S.C. § 922(c)(1)

1. The act of purchasing a firearm is protected by the Second Amendment.

First, the Court must determine whether the act of purchasing a firearm is within the Second Amendment’s “right to keep and bear arms.” *See Bruen*, 142 S. Ct. at 2126; *see also Maryland Shall Issue, Inc.*, 86 F.4th at 1044 (“So [Plaintiffs] just need to show that the law regulates a course of conduct that falls within the Amendment’s plain text, i.e., their ability ‘to possess and carry weapons in case of confrontation.’” (quoting *Heller*, 554 U.S. at 592, 128 S.Ct. 2783)). If it does, “the Constitution presumptively protects that conduct.” *Bruen*, 142 S. Ct. at 2126. Plaintiffs maintain “[t]he right to keep arms necessarily implies there is a right to acquire arms.” ECF No. 29 at 12.

Appendix C

It appears the Fourth Circuit now agrees. Again, in *Maryland Shall Issue, Inc.*, Judge Richardson observed:

To start, you might note that the Amendment’s text protects only the right to “keep and bear” arms. U.S. Const. amend. II. But, on its face, the challenged law says nothing about whether Plaintiffs may “keep” or “bear” handguns. It only restricts Plaintiffs’ ability to “purchase, rent, or receive” them. § 5-117.1(c). How, then, does the law regulate the right to keep and bear arms?

The answer is not complicated. If you do not **already** own a handgun, then the only way to “keep” or “bear” one is to get one, either through sale, rental, or gift. And the challenged law cuts off all three avenues—at least, for those who do not comply with its terms.

Maryland Shall Issue, Inc., 86 F.4th at 1043 (emphasis in original). The Court notes that *Maryland Shall Issue, Inc.* “appears” to answer the question presented here as that case focused more on the perceived tension between temporary or permanent bans on possession or acquisition of firearms. Thus, the Court continues its analysis of this question which leads to the same conclusion required under Judge Richardson’s recent opinion.

At the first step, *Bruen* requires a court to conduct a “textual analysis” that is “focused on the ‘normal and ordinary’ meaning of the Second Amendment’s

Appendix C

language.” *Id.* at 2127 (quoting *Heller*, 554 U.S. at 576-77, 128 S.Ct. 2783); *see also Maryland Shall Issue, Inc.*, 86 F.4th at 1042 (“The first question *Bruen* asks is whether Plaintiffs’ proposed course of conduct is protected by the Second Amendment’s plain text.” (citation omitted)). This inquiry into the “normal meaning” of the “words and phrases used” is backward looking, focused on what those words meant in 1791 when the Second Amendment was ratified, and “excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.” *Heller*, 554 U.S. at 576-77, 128 S.Ct. 2783. A court applying the first step of “*Heller*’s methodological approach,” *Bruen*, 142 S. Ct. at 2127, can employ several tools in discerning the text’s normal and ordinary meaning. These may include: (1) comparison of a phrase within the Second Amendment to the same or similar language used elsewhere in the Constitution, *Heller*, 554 U.S. at 579-81, 128 S.Ct. 2783 (comparing “right of the people” in the Second Amendment to the same and similar language in the First, Fourth, and Ninth Amendments); (2) consideration of historical sources, including dictionaries, founding-era statutes, 18th-century legal treatises, and others, that could suggest a common understanding of the terms used, *id.* at 581-92, 128 S.Ct. 2783 (examining the meaning of “keep and bear arms”); and (3) evaluation of the historical background leading to the Second Amendment’s adoption, *id.* at 592-95, 128 S.Ct. 2783. *See also Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco, and Explosives*, 5 F.4th 407, 418-19, 421-23 (4th Cir. 2021) (discussing sources relevant to understanding the original public meaning of the Second Amendment), *vacated as moot*, 14 F.4th 322, 328 (4th Cir. 2021); *Nat’l*

Appendix C

Rifle Ass’n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 714 F.3d 334, 337 (5th Cir. 2013) (“NRA II”) (Jones, J., dissenting from denial of rehearing en banc) (“First, the text of the Constitution was interpreted [in *Heller*] in light of historical documents bearing on each phrase and clause of the Second Amendment as those were understood at the time of its drafting.”).⁵

Being a functional prohibition on handgun buyers, the statutes at issue “make it considerably more difficult for a person lawfully to *acquire* and keep a firearm, including a handgun, for the purpose of self-defense in the home—the ‘core lawful purpose’ protected by the Second Amendment.” *Heller v. District of Columbia*, 670 F.3d 1244, 1256 (D.C.C. 2011) (emphasis added). Common sense also tells us that the right to keep and bear arms includes the right to purchase them. *See also Fraser*, 672 F.Supp.3d at 130 (finding “consistent with the text and logic of the Second Amendment . . . the right to purchase a gun falls within the Second Amendment’s plain text.”). The Court finds Judge Payne’s reasoning here particularly astute and, therefore, persuasive.

The Second Amendment accords protection of “the right of the people to keep and bear Arms,” by providing that the right “shall not be **infringed**.” U.S. Const. Amend. II (emphasis

5. Judge Jones’ opinion was a dissenting one; however, her reasoning, including her discussion of *Heller*’s analytical approach, largely tracks the test clarified in *Bruen*. Furthermore, as Plaintiffs note in their briefing, her discussion of the historical framework surrounding ratification of the Second Amendment stands unassailed.

Appendix C

added). The Second Amendment is unique in its use of “infringed” for the word does not appear anywhere else in the Constitution. Despite its uniqueness, the term “infringed” has received little attention by scholars or courts. However, *Heller* took the view that “infringed” “implicitly recognizes the pre-existence of the right.” 554 U.S. at 592 [128 S.Ct. 2783]. As articulated in *Heller*, the Second Amendment does not serve to grant a right but rather preserves a right that the people already possessed. Therefore, to “keep and bear” serves to identify the right protected, not to define the right in the first instance.

The definition of “infringe” further supports the conclusion that the pre-existing right includes a right to purchase. “Infringe” is defined in modern dictionaries as “to encroach upon in a way that violates law or the rights of another.” “Infringe,” *Merriam-Webster.com*. “Encroach,” in turn, has two definitions: “to enter by gradual steps or by stealth into the possessions or rights of another” and “to advance beyond the usual or proper limits.” “Encroach,” *Merriam-Webster.com*. Those words have possessed the same meaning since the sixteenth century and the Founders would have understood them in the same way. Not simply protecting the heartland of the preserved right, the Second Amendment protects the environs surrounding it to prevent any encroachment on the core protections.

Appendix C

Thus, by virtue of the word “infringed,” the Second Amendment’s protective textual embrace includes the conduct necessary to exercise the right (“to keep and bear”) and that, as explained above, includes the right to purchase arms so that one can keep and bear them.

Id. at 128-29.

The Court’s conclusion here is in line with decisions of multiple federal courts of appeal⁶ which, when ascertaining the textual reach of the Second Amendment, “have held that the Second Amendment protects ancillary

6. Again, the Fourth Circuit in *Maryland Shall Issue, Inc.* appears to have recently addressed this question. Nonetheless, its prior decisions also provide support for the conclusion reached here. In *United States v. Hosford*, the Fourth Circuit concluded the Second Amendment does not provide a constitutional right to **sell** firearms. 843 F.3d 161, 166 (4th Cir. 2016). There, the court held, consistent with the *Heller* exceptions, “the prohibition against unlicensed firearm dealing is a longstanding condition or qualification on the commercial sale of arms and is thus facially constitutional.” *Id.* *Hosford* distinguished the constitutional regulations in question governing the commercial sale of firearms, from regulations infringing on individuals’ ability to “purchase or sell firearms owned for personal, self-defensive use.” *Id.* at 168. This leads to the natural and logical conclusion the Fourth Circuit considers the right to purchase a firearm commensurate to the right to keep a gun. See Sitzmann, “High-Value, Low-Value, and No-Value Guns,” 86 U. Chi. L. Rev. at 2023 (“the Fourth, Ninth, and Seventh Circuits all support a single, underlying message: there is no individual right to sell a firearm conferred by the Constitution, even though there is a right to acquire and use one”).

Appendix C

rights necessary to the realization of the core right to possess a firearm for self-defense.” *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017). Among these rights is “the ability to acquire arms.” *Id.* at 677-78 (citing to *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)). District courts have concluded the same. *See United States v. Quiroz*, 629 F.Supp.3d 511, 516 (W.D. Tex. 2022); *Ill. Ass’n of Firearms Retailers v. City of Chi.*, 961 F.Supp.2d 928, 930 (N.D. Ill. 2014); *see also Fraser*, 672 F.Supp.3d at 129-30; *McCraw*, 623 F. Supp.3d 740; and, *Worth v. Harrington*, Case No. 21-CV-1348, 666 F.Supp.3d 902 (D. Minn. March 31, 2023). As the Northern District of Illinois concluded, “the ban on guns sales and transfers prevents [individuals] from fulfilling . . . the most fundamental pre-requisite of legal gun ownership—that of simple acquisition.” *Ill. Ass’n of Firearms Retailers*, 961 F.Supp.2d at 938.

Because “the substance of the challenged laws dictates that they are a functional prohibition on buyers,” *Hirschfeld*, 5 F.4th at 417, *vacated by* 14 F.4th 322 (4th Cir. 2021), and the act of purchasing a handgun is within the bounds of the Second Amendment, *Heller*, 670 F.3d at 1256, the Court turns to whether 18-to-20 year olds are included in “the people” of the Second Amendment. *See Maryland Shall Issue, Inc.*, 86 F.4th at 1042-43 (summarizing the two-part assessment—“course of conduct” and “the people”).

*Appendix C***2. 18-to-20-year-old law abiding citizens are part of “the people” whom the Second Amendment protects.**

Next the Court analyzes whether, under the Second Amendment, “ordinary, law-abiding, adult citizens” between the ages of 18-to-20 years, are “part of ‘the people’ whom the Second Amendment protects.” *Bruen*, 142 S. Ct. at 2119. The Court finds that they are.

Initially, and as *Bruen* requires, the Court starts with the actual text of the Second Amendment which is silent as to any age requirements or restrictions on the rights enshrined therein. That omission is significant when compared to other Constitutional provisions. For example, minimum age requirements are constitutionally imposed on membership in the House of Representatives (25 years of age), the United States Senate (30 years age) and, of course, the office of President of the United States (35 years of age). *See* U.S. Const. art I, § 2; art. I, § 3 and art. II, § 1. Clearly, the authors of the original Constitution and the Bill of Rights contemplated age restrictions during their drafting work. The Second Amendment only refers to “the people.” *Heller* labeled “the people” a term of art encompassing “all members of the political community, not an unspecified subset.” *Heller*, 554 U.S. at 580, 128 S.Ct. 2783.

Although the Supreme Court “has not precisely defined” the meaning of “the people” in the Second Amendment, it has provided guidance as to the reach of the term as used in the Constitution. *See United States v.*

Appendix C

Jackson, No. ELH-22-141, 661 F.Supp.3d 392, 401-02 (D. Md. March 13, 2023). For example, the Supreme Court has noted

“the people” protected by the Fourth Amendment, and by the First and Second 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.

United States v. Verdugo-Urquidez, 494 U.S. 259, 265, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990). Specific to the Second Amendment, the Court is mindful of *Heller*’s command that “a strong presumption [exists] that the Second Amendment right is exercised individually and belongs to **all Americans**.” *Heller*, 554 U.S. at 581, 128 S.Ct. 2783 (emphasis added).

Other constitutional provisions lend credence to a broad interpretation of the phrase “the people.” The First and Fourth Amendments, like the Second, refer to “the people.” And both *Heller* and *Verdugo-Urquidez* strongly suggest that the term “the people” is defined consistently throughout the Constitution. On this point, the First Amendment has been interpreted to apply to all persons, even those under the age of 18. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (free speech); *see also W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (free exercise). And while

Appendix C

the First Amendment is limited in some contexts (such as the forum or content of the speech), age does not serve as a basis for limiting the constitutionally protected right. *See Tinker*, 393 U.S. at 506, 89 S.Ct. 733 (“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

The Fourth Amendment likewise protects individuals regardless of age. *See New Jersey v. T.L.O.*, 469 U.S. 325, 334, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Certainly, the context of a search—e.g., whether on or off school property—can affect the expectations of privacy. *Id.* at 337-40, 105 S.Ct. 733. But the expectation of privacy is not affected based on the age of the person being searched. Rather, the context of a search is the distinguishing factor. *See id.*

Therefore, because neither the First nor Fourth Amendments exclude, nor have been interpreted to exclude, 18-to-20-year-olds, the Court can discern no reason to read an implicit age restriction into the Second Amendment’s plain text either.

Beyond the First and Fourth Amendments, other constitutional provisions, which do not specifically mention “the people,” support the Court’s conclusion that “the people” protected by the Second Amendment include 18-to-20-year-olds. On this point, neither the Fifth Amendment nor the Fourteenth Amendment exclude—or

Appendix C

have been interpreted to exclude—18-to-20-year-olds. *See, e.g., Fisher v. Univ. of Tex.*, 579 U.S. 365, 136 S. Ct. 2198, 2210, 195 L.Ed.2d 511 (2016) (equal protection); *Goss v. Lopez*, 419 U.S. 565, 574, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) (due process); *Kent v. Dulles*, 357 U.S. 116, 125-26, 78 S.Ct. 1113, 2 L.Ed.2d 1204 (1958) (travel); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (equal educational opportunities). Likewise, regarding the Eighth Amendment, the Supreme Court has said that where “a line must be drawn,” “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood.” *Roper v. Simmons*, 543 U.S. 551, 574, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). In short, neither the Second Amendment’s text itself nor the ample Supreme Court precedent interpreting other constitutional provisions referring to “the people” support any conclusion other than the one made here.

The Court likewise considers the Fourth Circuit’s guidance⁷ on this question.

7. Of course, this Court is bound to faithfully apply Fourth Circuit precedent when applicable. *See Rettig v. All. Coal, LLC*, No. 2:21-CV-08, 2023 WL 5673961, at *3 (N.D.W. Va. Sept. 1, 2023) (citing *United States v. Brown*, 74 F. Supp. 2d 648, 652 (N.D.W. Va. 1998) (“[A] district court is bound by the precedent set by its Circuit Court of Appeals, until such precedent is overruled by the appellate court or the United States Supreme Court.”)). The *Hirschfeld* opinion, having been vacated, is no longer binding precedent but remains instructive. *See Maryland Shall Issue, Inc.*, 86 F.4th at 1047-48 (relying on *Hirschfeld* to summarize Founding Era militia laws).

Notably, since *Hirschfeld*, the Fourth Circuit marked the significance of the “the people” prong of *Bruen*’s analysis. Leaving the specific contours of that definition to another day because the

Appendix C

First, nothing in the text of the Second Amendment limits its application by age. Second, the most analogous rights to the Second Amendment, those in the First and Fourth Amendments, similarly contain no age limits. Third, most other constitutional rights are not age limited. And fourth, the few rights that may not apply to those under 18 or that change by age are not analogous to the Second Amendment, and most of those rights become applicable at age 18, not 21.

Hirschfeld, 5 F.4th at 421, *vacated by* 14 F.4th 322 (4th Cir. 2021). Indeed, the Fourth Circuit found the statutorily prohibited age group of 18-to-20-year-olds are part of “the people” included in the Second Amendment’s protection. *Id.* The Fourth Circuit reasoned “[t]he Second Amendment refers to the ‘right of the people,’ which is a phrase also used in the First and Fourth Amendments to denote an individual right,” neither of which delineate age groups and instead “codify a pre-existing, fundamental, inalienable individual right.” *Id.* at 422 (citing *Heller*, 554 U.S. at 579, 592, 128 S.Ct. 2783). Of course, “ ‘minors’ First Amendment rights are qualified to some degree, *see Tinker*, 393 U.S. at 506, 513, 89 S.Ct. 733, but those

parties had stipulated to it, the *Maryland Shall Issue, Inc.* court observed “[t]his is not necessarily to say that ‘the people’ is limited to ‘ordinary, law-abiding, adult citizens.’ Post-*Bruen*, several courts have held that ‘the people’ refers to all Americans, and is not limited to ordinary, law-abiding adult citizens.” *Maryland Shall Issue, Inc.*, 86 F.4th at 1043 n.5 (citing as an example *United States v. Silvers*, No. 5:18-cr-50-BJB, 671 F.Supp.3d 755, 763-65 (W.D. Ky. May 3, 2023)).

Appendix C

qualifiers do not eliminate the rights altogether.” *Id.* From this, the Fourth Circuit “emphasize[d] that the First and Fourth Amendments’ protection of ‘the people,’ including those under 18, confirms that ‘the people’ protected by the Second Amendment includes at least those 18 and older.” *Id.* “Indeed, it would be odd to treat the Second Amendment like marriage and sex rather than contemporaneously ratified rights such as the First and Fourth Amendments that have been described as fundamental pre-existing rights analogous to the Second Amendment.” *Id.* at 423. “[I]t is hard to conclude that 18-to 20-year-olds have no Second Amendment rights when almost every other constitutional right affords them protection.” *Id.* at 424.

Considering this analysis, the Court concludes 18-to-20-year-old law abiding citizens are part of “the people” who the Second Amendment protects. Plaintiffs themselves and the activity which federal law and regulation currently prevent them from undertaking are covered under the Second Amendment’s umbrella of constitutional freedoms. Thus, the burden shifts to Defendants who must demonstrate the challenged statutes are constitutionally permissible under *Bruen*. See *Maryland Shall Issue, Inc.*, 86 F.4th at 1045 (“At *Bruen*’s second step, [the Government] must provide historical evidence that justifies its law.”).

Appendix C

3. The Government cannot meet its burden to show 18 U.S.C. §§ 922(b)(1) or 922(c)(1) are consistent with our Nation’s historical tradition of firearm regulation.

If the normal and ordinary meaning of the Second Amendment’s text protects the individual’s proposed course of conduct, which the Court finds to be the case here, then the Amendment “presumptively guarantees” the individual’s right related to firearms, and the burden falls on the Government to justify the challenged regulation. *Bruen*, 142 S. Ct. at 2135. The Government bears the burden to show that the law is “consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126-27, 2135; *Heller*, 554 U.S. at 580, 128 S.Ct. 2783. “To do this, it may identify a ‘historical analogue’ demonstrating that its law falls within a historically recognized exception to the right to keep and bear arms.” *Maryland Shall Issue, Inc.*, 86 F.4th at 1045 (citing *Bruen*, 142 S. Ct. at 2132-33).

This necessarily requires the “reasoning by analogy” contemplated by the *Bruen* Court. *Bruen*, 142 S. Ct. at 2132. The Government must identify historical firearm regulations that are consistent with the modern, challenged regulation, and courts must decide whether a “historical regulation is a proper analogue” through “a determination of whether the two regulations are “ ‘relevantly similar.’” “ *Id.* (quoting C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 774 (1993)). Courts applying *Bruen* must consider “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden

Appendix C

is comparably justified.” *Id.* at 2133. However, the Court has cautioned that “[t]his does not mean that courts may engage in independent means-end scrutiny under the guise of analogical reasoning.” *Id.* at 2133 n.7.

In the Defendants’ attempt to “justify [the Government’s] regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation,” they cite to William Blackstone commentaries and other “longstanding” state laws prohibiting sales of firearms to persons under 21. ECF No. 24 at 14. Notably, Defendants argue that, historically, a person’s age of 21 is the age of majority. *Id.*; *see also* ECF No. 24-2, Ex. B. Our Nation’s history, however, points to a different conclusion.

Defendants spend time collecting state laws proscribing age barriers to the possession and purchase of firearms between the years of 1856 and 1993. ECF No. 24-2, Ex. B. However, “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.” *Heller*, 554 U.S. at 634-35, 128 S.Ct. 2783; *see also Bruen*, 142 S. Ct. at 2137 (“the scope of the protection applicable to the Federal Government . . . is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.”). Defendants’ reliance on mostly 19th century gun safety regulations as their justification in regulating the 18-to-20-year-old age group is misplaced under *Heller* and *Bruen*.⁸

8. Plaintiffs here challenge the constitutionality of federal statutes and regulations. While some Courts have been faced with the question of which date—the Bill of Rights including the Second

Appendix C

When later evidence “contradicts earlier evidence,” it “cannot provide much insight into the meaning of the Second Amendment.” *Bruen*, 142 S.Ct. at 2154.

At the time of the ratification of the Second Amendment in 1791, eighteen (18) was the age of majority for militia service throughout the nation. Although, in 1775, sixteen-year-olds were expected to fight in the Revolutionary War. *United States v. Blakeney*, 3 Gratt. 405, 441 (Va. 1847) (“During the war of the revolution, sixteen was the military age.”).

In 1792, the United States Congress “specified that ‘each and 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 is herein after excepted) shall severally and respectively be enrolled in the militia.’” *Heller*, 554 U.S. at 596, 128 S.Ct. 2783 (quoting Second Militia Act of 1792 § 1, 1 Stat. 271). Indeed,

[t]he Militia Act further required every member of the militia to “provide himself with a good musket or firelock . . . or with a good rifle.” *Id.* Over the next few years, every state revised its existing militia laws to conform with the federal statute. In each of these state statutes, the

Amendment was ratified in 1791 and the Fourteenth Amendment was ratified in 1868—should be more relevant considering the Fourteenth Amendment’s extension of the Second Amendment to the states, *see, e.g., Worth*, 666 F.Supp.3d at 918-19 that quandary is not presented in this case.

Appendix C

states adopted a militia age of 18 and required militiamen to arm themselves.

Fraser, 672 F.Supp.3d at 140 (quoting Second Militia Act of 1792 § 1) (collecting laws of states and commonwealths implementing militia majority age of 18 between the years of 1792 and 1807); *see also United States v. Miller*, 307 U.S. 174, 179, 59 S.Ct. 816, 83 L.Ed. 1206 (1939) (“And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.”). “[B]y the eve of the Civil War, only three states had passed any form of restrictions on the ability of minors to purchase firearms and each of these was passed 65 years or more after the ratification of the Second Amendment.” *Fraser*, 672 F.Supp.3d at 144; *see also McCraw*, 623 F. Supp.3d at 750 (citing *Nat’l Rifle Ass’n v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 714 F.3d 334 (5th Cir. 2013) (Jones, J., dissenting)) (“Likewise, at the time of the founding, most states had similar laws requiring militia service for 18-to-20-year-olds.”). Thus, the historical data close in time to ratification in 1791 confirms 18-to-20-year-olds have the right to keep and bear arms and are protected as part of “the people” under the Second Amendment.

Following briefing, the Government filed a Notice of Supplemental Authority [ECF No. 37] on March 9, 2023, alerting the Court to the Eleventh Circuit’s decision issued that same day in *National Rifle Association v. Bondi*, 61 F.4th 1317 (11th Cir. 2023). There, the Eleventh Circuit found a Florida statute limiting the ability of 18-to-20-

Appendix C

year-olds to purchase firearms did not violate the Second Amendment. *See id.* at 1332. The *Bondi* court focused on whether the ratification era of the Second or Fourteenth Amendment primarily informed its assessment of the historical tradition of American firearm regulation. *See id.* at 1321-1332. As discussed *supra* at n.6, that assessment is much less relevant here given Plaintiffs’ challenge to a federal statute.⁹

Regardless, the *Bondi* decision was **vacated** on July 14, 2023, when the Eleventh Circuit granted a petition for rehearing and decided to rehear the case en banc. 72 F.4th 1346 (Mem.) (11th Cir. 2023). Thus, the authority to which Defendants point the Court is no longer “authority.” To date, Defendants have inexplicably failed to update or withdraw their Notice of Supplemental Authority despite the fact that the Eleventh Circuit opinion—published over fourth months ago—vacates the *Bondi* panel’s opinion **and** dedicates significant time in their papers discounting the Fourth Circuit’s *Hirschfeld* opinion for the same reason.

The core issue the Court must answer under *Bruen* remains whether our Nation’s history and tradition contains “analogous” restrictions on the ability of 18-to-

9. The *Bondi* court undertook an extensive and thorough analysis compiling historical analogues relevant to its inquiry of the historical understanding at the time the Fourteenth Amendment was ratified during Reconstruction (1866). This Court finds further support for its conclusion that the Founding Era analogues weigh in favor of Plaintiffs’ position here as the *Bondi* opinion’s appendix tracks state laws regulating firearm purchases by 18-to-20-year-olds spanning origins from 1855 into 1897—well after the Second Amendment’s ratification date in 1791. *See id.* at 1333-38.

Appendix C

20-year-olds to purchase firearms. *Bruen*, 142 S. Ct. at 2133. Defendants have not presented any evidence of age-based restrictions on the purchase or sale of firearms from before or at the Founding or during the Early Republic. Defendants have likewise failed to offer evidence of similar regulation between then and 1791 or in a relevant timeframe thereafter. For that reason alone, Defendants have failed to meet the burden imposed by *Bruen*. The Court once again finds Judge Payne’s reasoning highly persuasive.

Finally, the lack of analogous evidence of Founding-era regulations demonstrates that the statutes and regulations at issue are inconsistent with the Second Amendment. Since time immemorial, teenagers have been, well, teenagers. The “general societal problem” of teenage impetuosity and rashness far preceded the Founding. *Bruen*, 142 S.Ct. at 2131. Yet, that fact notwithstanding, the Government has not demonstrated that the Founders dealt with this problem in a “distinctly similar” way to the statutes and regulations at issue. *Id.* The lack of analogous regulations permits a finding that the Founders considered age-based regulations on the purchase of firearms to circumscribe the right to keep and bear arms confirmed by the Second Amendment.

Fraser, 672 F.Supp.3d at 145. More succinctly stated, “[w]hile some gun regulations existed at the Founding, there were

Appendix C

no regulations restricting minors' ability to possess or purchase weapons until two states adopted such laws in 1856." *Hirschfeld*, 5 F.4th at 437.¹⁰

In summary, because Plaintiffs' conduct—the purchase of handguns—"fall[s] [within] the Second Amendment's 'unqualified command'" and the challenged statutes and regulations are not "consistent with the Nation's historic tradition of firearm regulation," the Court **FINDS** 18 U.S.C. §§ 922(b)(1) and (c)(1) facially unconstitutional and as applied to Plaintiffs. Plaintiffs having demonstrated there is no genuine dispute of material fact and that they are entitled to judgment as a matter of law, their Motion for Summary Judgment [ECF No. 28] is **GRANTED**. For the same reasons,¹¹ Defendants' Motion to Dismiss [ECF No. 24] is **DENIED**.

V. CONCLUSION

For the reasons discussed, the Court **DENIES** Defendant's Motion to Dismiss [ECF No. 23] and **GRANTS**

10. Again, although *Hirschfeld* itself was vacated, the historical analysis and summary detailed in that opinion remains accurate. *See Maryland Shall Issue, Inc.*, 86 F.4th at 1047-48 (relying on *Hirschfeld* for historical perspective). Thus, like Judge Jones' dissent in *NRA II*, the Court considers it both instructive and highly persuasive.

11. Rule 12 and Rule 56 obviously require the Court to employ different standards; however, for the same reasons the Court grants their summary judgment motion, Plaintiffs have obviously stated a plausible claim for relief in their Amended Complaint. *See Salazar v. Holder*, No. 3:14-CV-23, 2015 WL 574800, at *3 (N.D.W. Va. February 11, 2015) (Groh, J.) (outlining Rule 12(b)(6) standard).

Appendix C

Plaintiffs' Motion for Summary Judgment [ECF No. 28]. Defendants are **ENJOINED** from enforcing 18 U.S.C. §§ 922(b)(1) and (c)(1) against Plaintiffs and otherwise-qualified 18-to-20-year-olds.

Pursuant to Federal Rule of Civil Procedure 54(b) and finding no just reason for a delay of the appeal of this Order, the Court **DIRECTS** entry of a final judgment in favor of Plaintiffs, and to **STRIKE** this case from the Court's active docket.

It is so **ORDERED**.

Pursuant to Rule 54(b), the Court **DIRECTS** the Clerk to enter a separate judgment order. It further **DIRECTS** the Clerk to transmit copies of this Memorandum Opinion and Order and the judgment order to counsel of record.

DATED: December 1, 2023

/s/
Thomas S. Kleeh, Chief Judge
Northern District of West Virginia

**APPENDIX D — RELEVANT
CONSTITUTIONAL PROVISIONS, STATUTES,
AND REGULATIONS INVOLVED**

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.

103a

Appendix D

18 U.S.C. § 922

* * *

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver –

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

* * *

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if –

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen

Appendix D

years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are _____

Signature Date"

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has –

(A) prior to the shipment or delivery of the firearm, forwarded a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, by –

(i) registered or certified mail (return receipt requested); or

(ii) verified electronic notification; and

105a

Appendix D

(B)(i) with respect to a delivery method described in subparagraph (A)(i) –

(I) received a return receipt evidencing delivery of the statement; or

(II) had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; or

(ii) with respect to a delivery method described in subparagraph (A)(ii), received a return receipt evidencing delivery of the statement; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

* * *

*Appendix D***27 C.F.R. § 478.96 Out-of-State
and mail order sales.**

* * *

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 478.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 478.124. The nonlicensee shall attach to such record a true copy of any permit or other information required pursuant to any statute of the State and published ordinance applicable to the locality in which he resides. The licensee shall prior to shipment or delivery of the firearm, forward by registered or certified mail (return receipt requested) a copy of the record, Form 4473, to the chief law enforcement officer named on such record, and delay shipment or delivery of the firearm for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the record to such chief law enforcement officer, or the return of the copy of the record to him due to the refusal of such chief law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the chief law enforcement officer shall be retained by the licensee as a part of the records required of him to be kept under the provisions of subpart H of this part.

* * *

107a

Appendix D

**27 C.F.R. § 478.99 Certain prohibited
sales, purchases, or deliveries.**

* * *

(b) Sales or deliveries to underaged persons. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall not sell or deliver (1) any firearm or ammunition to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 18 years of age, and, if the firearm, or ammunition, is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the importer, manufacturer, dealer, or collector knows or has reasonable cause to believe is less than 21 years of age. . . .

* * *

*Appendix D***27 C.F.R. § 478.124 Firearms transaction record.**

(a) A licensed importer, licensed manufacturer, or licensed dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, unless the licensee records the transaction on a firearm transaction record, Form 4473: Provided, that a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received; provided further, that a firearms transaction record, Form 4473, shall not be used if the sale or other disposition is being made to another licensed importer, licensed manufacturer, or licensed dealer, or a curio or relic to a licensed collector, including a sole proprietor who transfers a firearm to their personal collection or otherwise as a personal firearm in accordance with § 478.125a. When a licensee transfers a firearm to another licensee, the licensee shall comply with the verification and recordkeeping requirements in § 478.94 and this subpart.

* * *

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 478.102(a), and who is a resident of the State in which the licensee's business premises are located. The Form

Appendix D

4473 shall show the transferee's name, sex, residence address (including county or similar political subdivision and whether they reside within city limits), and date and place of birth; the height, weight, and race of the transferee; the transferee's country of citizenship; the transferee's DHS-issued alien number or admission number; the transferee's State of residence; and the title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered. The transferee shall also certify on the Form 4473 that the transferee does not intend to purchase or acquire any firearm for sale or other disposition to a person so prohibited or in furtherance of any felony or other offense punishable by imprisonment for a term of more than one year, a Federal crime of terrorism, or a drug trafficking offense. The licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. Where no manufacturer name has been identified on a privately made firearm, the words "privately made firearm" (or abbreviation "PMF") shall be recorded as the name of the manufacturer. The licensee shall prior to shipment or delivery of the firearm to such transferee, forward by registered or certified mail (return receipt requested) a copy of the Form 4473 to the principal law enforcement officer named in the Form 4473 by the transferee, and shall delay shipment or delivery of the firearm to the transferee for a period of at least 7 days following receipt by the licensee of the return receipt evidencing delivery of the copy of the Form 4473 to such principal law enforcement officer, or the return of the

110a

Appendix D

copy of the Form 4473 to the licensee due to the refusal of such principal law enforcement officer to accept same in accordance with U.S. Postal Service regulations. The original Form 4473, and evidence of receipt or rejection of delivery of the copy of the Form 4473 sent to the principal law enforcement officer, shall be retained by the licensee as a part of the records required to be kept under this subpart.

* * *