No. 25-5961

In the Supreme Court of the United States

EVA MARIE GARDNER,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Maryland

BRIEF OF VIRGINIA, NEW HAMPSHIRE AND 22 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI AND INTRODUCTION[1]

A core principle of our federal system is that federal constitutional rights do not change when travelling between the several States. See U.S. Const. art. VI. Just as the Fourth Amendment protects every American's right to be free from unreasonable searches and seizures in both Nebraska and California, or the First Amendment protects every American's right to speak freely in both Delaware and Louisiana, the Second Amendment protects every American's right to carry firearms for self-defense in both Virginia and Maryland.

Maryland has chosen to ignore that cornerstone of constitutional federalism by *prosecuting* a law-abiding Virginia citizen for possessing a loaded firearm and displaying it to deter an assailant. Worse, Maryland's basis for the prosecution was a concededly unconstitutional may-issue licensing regime. Applying this unconstitutional licensing regime to a Virginia citizen with a valid Virginia concealed carry license merely because she was attacked in Maryland flaunts this Court's precedents and basic constitutional principles. Maryland may not require Virginia citizens to obtain a speech license—granted only to those espousing Maryland-approved viewpoints—before speaking. Similarly, it cannot require Virginia citizens to

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[1] Counsel of Record for both parties were notified of amici's intent to file this amici curiae brief on December 5, 2025. Although notice was given fewer than 10 days before the filing of this brief, see Sup. Ct. R. 37.2, both parties consented to this filing. Nor will any delay in notifying the parties prejudice Respondent, as its deadline to file a response is over a month away (January 26, 2026). No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel contributed money intended to fund the preparation or submission of this brief.

undergo an unconstitutional licensing process before carrying firearms for self-defense.

This case represents a serious and recurring problem in which some States claim the authority to curtail the constitutional rights of out-of-State citizens when they travel within that State's borders. See *Commonwealth* v. *Marquis*, 252 N.E.3d 991 (Mass. 2025); *Marquis* v. *Massachusetts*, No. 25-5280. The time for correction is now. Amici States understand that when they "enter[ed] the Union," they "surrender[ed] certain sovereign prerogatives." *Massachusetts* v. *EPA*, 549 U.S. 497, 519 (2007). But that bargain came with a promise that the federal Constitution would secure the rights of *all* Americans in *all* States. Yet Maryland's courts have held otherwise, elevating that State above the others by blessing the State's authority to prosecute a Virginia citizen bearing a valid Virginia concealed carry license for exercising her Second Amendment rights. Amici States therefore file this brief to protect the fundamental constitutional rights of their citizens and to reassert the predicate terms of our Union.

STATEMENT OF THE CASE

Petitioner Eva Marie Gardner, a then-Virginia resident with a valid concealed carry permit, was assaulted when traveling through Montgomery County, Maryland on Interstate 270. Pet. 11. Another driver struck Gardner's car and forced her off the road. *Ibid.* After coming to a stop, the other driver exited his car "and rushed toward" Gardner's car. *Ibid.* Gardner first "screamed to deter him," but he "continued advancing." *Ibid.* As lesser measures proved futile, Gardner "displayed her loaded handgun in self-defense to protect against the imminent threat." *Ibid.* Police arrived but, instead of arresting the individual

who rammed Gardner's car, forced her off the road, and rushed her car, the police arrested Gardner for possessing a loaded firearm. *Ibid.*

At the time, Maryland law prohibited both carrying a handgun on one's person and knowingly transporting a handgun in a vehicle, whether that handgun was loaded or not. Md. Code, Crim. L. § 4-203(a) (2018). First-time violators faced up to three years' imprisonment, despite the offense being "a misdemeanor." *Id.* at (c)(2)(i). Maryland exempted, however, those who complied with various other limitations, including those who had a permit to carry a handgun. *Id.* at (b)(2). Maryland had a may-issue regime, in which a citizen must demonstrate a "good and substantial reason to" possess a handgun. Md. Code, Pub. Safety § 5-306(a)(6)(ii) (2018). Maryland also required applicants to complete "a minimum of 16 hours of instruction by a qualified handgun instructor" and additional "classroom instruction on" state law, firearm safety, and handgun operation. *Id.* at (a)(5); see App. 17a–19a. And although Maryland has since amended its laws to not impose an explicit may-issue licensing regime, it maintains many of these onerous requirements to exercise a constitutional right. See I.A., *infra*.

Maryland prosecuted Gardner for "carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in a vehicle." App. 7a. Gardner filed a motion to dismiss asserting, among other arguments, that the Second Amendment protects the right to bear a firearm in self-defense. App. 10a. The trial court denied that motion but, while the case was ongoing, this Court held "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the

home." *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 10 (2022). And in doing so, it struck down New York's may-issue licensing regime as unconstitutional. *Ibid*. Gardner, now represented, filed a supplemental motion to dismiss as *Bruen* had made clear that Maryland was prosecuting her under an unconstitutional law. App. 10a. The trial court dismissed that argument out of hand, claiming that this Court had not disapproved of "these types of statutes," App. 11a, despite this Court holding New York's may-issue regime unconstitutional in *Bruen*, 597 U.S. at 10. A jury found Gardner guilty of carrying a loaded handgun and transporting the same in her vehicle. App. 12a.

Gardner appealed, but the Appellate Court of Maryland affirmed. It acknowledged that the prior licensing regime was unconstitutional under *Bruen*. App. 13a. It then refused to "give reciprocity to another state's valid handgun permit." *Ibid*. And despite acknowledging that the statute that Gardner was convicted of violating "incorporat[ed]" a "plainly . . . unconstitutional" licensing regime, App. 14a, and despite Gardner having had criminal sanctions imposed on her under that statute, the court dismissed Gardner's Second Amendment challenge for a lack of *standing*, App. 15a. The Supreme Court of Maryland denied Gardner's petition for a writ of certiorari. App. 3a.

SUMMARY OF ARGUMENT

The Second Amendment provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The right to keep and bear arms embodied in most of

the Amici State Constitutions are just as emphatic. *E.g.*, Va. Const. art. I. § 13; N.H. Const. Pt. I, Art. 2-a.

The Second Amendment secures for *all* Americans a means of self-defense. *Bruen*, 597 U. S. at 17. The right to keep and bear arms "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Id.* at 6 (quoting *McDonald* v. *City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.)). Instead, under this Court's precedents, the Second and Fourteenth Amendments "elevate[] above all other interests the right of law-abiding, responsible citizens to use arms in defense," *District of Columbia* v. *Heller*, 554 U.S 570, 635 (2008), including self-defense "outside the home," *Bruen*, 597 U.S. at 10.

To justify any restriction on the right to bear arms where an individual's conduct falls under the plain text of the Second Amendment, the government must show that the restriction is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. The absence of widespread historical laws addressing the same conduct or circumstances is evidence that the Founders understood the Second Amendment to preclude such a regulation. *Ibid*. Modern circumstances or considerations that did not exist at the time of the Founding may require an analogical analysis of the government's proffered historical record, but that analysis must still be grounded in the Founding. *Id*. at 28–29; see *United States* v. *Rahimi*, 602 U.S. 680 (2024).

The Appellate Court of Maryland thus erred in two ways. First, it erred in holding that Maryland could prosecute Gardner for bearing arms in self-defense simply because circumstances forced her to do so in Maryland rather than Virginia—or any number of

other States that respect the Second Amendment's "unqualified command." *Bruen*, 597 U.S. at 17 (quotation omitted).

Second, it erred in holding that Gardner lacked standing to challenge the laws being used to prosecute her simply because she did not attempt to obtain a license before being charged. An unconstitutional law cannot form the basis for a conviction. *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879). And it should be obvious that a defendant in a criminal case has standing to assert (or, put differently, can defend herself on the basis) that the laws she is accused of breaking are unconstitutional. See, *e.g.*, *Turner* v. *State*, 474 A.2d 1297, 1301 (Md. 1984) (holding that "a criminal conviction" is a "direct injury" that confers standing). But that is evidently no longer the case in Maryland.

Maryland claims the power to incarcerate other States' citizens for exercising their Second Amendment rights, while simultaneously prohibiting those defendants from challenging the concededly unconstitutional basis for their convictions. That arrangement relegates the Second Amendment to second-class status and puts law-abiding citizens in a Kafkaesque bind. And because Maryland's current licensing regime remains unconstitutional, its prosecutions of American citizens for exercising their Second Amendment rights—in full compliance with their home States' laws—will continue. This Court must step in.

REASONS TO GRANT THE PETITION

I. This case presents an important and recurring Second Amendment issue with significant implications for law-abiding citizens' everyday activities and, in turn, their liberty

The Second Amendment prohibits prosecuting law-abiding citizens from one State for bearing arms while traveling through another. Even the Appellate Court of Maryland admitted that Maryland's licensing regime was "plainly" unconstitutional when Gardner was charged. App. 20a. But travelers from other States still face unconstitutional prosecution under *current* Maryland law, as Maryland's post-*Bruen* changes do not cure its licensing regime's constitutional infirmities. If this Court does not step in, unconstitutional prosecutions will continue.

A. Maryland maintains an onerous non-reciprocal licensing regime

To this day, Maryland does not reciprocally recognize licenses to carry a firearm issued by *any* State. See *Maryland Concealed Carry Reciprocity Map & Gun Laws*, https://tinyurl.com/2v2hmm9c. Thus, Maryland still prohibits any person who does not have a Maryland license from carrying a handgun, "whether concealed or open," and whether "loaded with ammunition" or not. Md. Code, Crim. L. § 4-203(a). And the current statute increased the maximum penalty to *five* years' imprisonment for first-time offenders. *Id.* at (c)(2).

Nor is Maryland's current permitting process truly a shall-issue regime. Maryland officials need not issue a permit to anyone under "21 years old," for example. Md. Code, Pub. Safety § 5-306(a)(1)(i). Yet adults younger than 21 are indisputably part of "the people"

to which the Second Amendment grants the right to bear arms, just as they are part of "the people" that the Fourth Amendment protects from unreasonable searches and seizures. See *Heller*, 554 U.S. at 580–81 (discussing these provisions and explaining that "the people . . . unambiguously refers to all members of the political community, not an unspecified subset"); *Reese* v. *Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 591 (5th Cir. 2025) (applying that logic in considering a challenge to an age-based firearm restriction).

Another example is Maryland's requirement that, to obtain a permit, the applicant must "demonstrate . . . shooting proficiency with a handgun." Md. Code, Pub. Safety § 5-306(a–1)(3). But a journalist need not prove—to the satisfaction of the State—proficiency with the pen before exercising the freedom of the press, so it is unclear why Maryland thinks that it can so burden Second Amendment rights. See *Bruen*, 597 U.S. at 70 (explaining that the Second Amendment is not "subject to an entirely different body of rules than the other Bill of Rights guarantees" (quotation omitted)); *Rahimi*, 602 U.S. at 692 (explaining that "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding").

And even if Maryland's requirements truly reflect a shall-issue regime, they are still onerous and unconstitutional in this context. Applicants must pay a $50 fee for the initial license, and $20 for each renewal. Maryland Department of State Police, *Handgun Qualification License*, https://tinyurl.com/46tur8cc (last visited Dec. 11, 2025). But "[a] state may not impose a charge for the enjoyment of a right granted by

the Federal Constitution." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113 (1943); see *Blue Island* v. *Kozul*, 41 N.E.2d 515, 519 (Ill. 1942) (holding that a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution"). And Maryland's fee cannot even be justified by asking "whether the state has given something for which it can ask a return." *Murdock*, 319 U.S. at 115. "The [fee] is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the Federal Constitution." *Ibid.*

Moreover, applicants must undergo extensive training to exercise their fundamental right to bear arms in Maryland. Maryland requires that applicants satisfy "a minimum of 16 hours of in-person instruction by a qualified handgun instructor" for the initial application, and 8 hours "for a renewal application." Md. Code, Pub. Safety § 5-306(a–1)(1). Applicants must also take "classroom instruction" on numerous topics, including "State and federal firearm laws," "handgun mechanisms and operations," "anger management," "suicide prevention," and "conflict de-escalation and resolution." *Id.* at (a–1)(2). Again, it is unclear how Maryland can erect such barriers to exercising a constitutional right. The government cannot, for example, require individuals to take State-mandated classes on religion in order to obtain a license to practice their religion, nor can it require individuals to take State-mandated classes on responsible citizenry, anger management, or conflict de-escalation and resolution before allowing them to write op-eds, produce podcasts, or give public speeches. U.S. Const.

amend. I.

Thus, Maryland's regime requires a resident of a sister State—who may, like Petitioner, already have a valid concealed carry license—to undergo likely *days* of training and instruction, pay a fee, undergo Maryland's background check system, demonstrate proficiency with a handgun to Maryland's satisfaction, and be over 21 years of age in order to obtain Maryland's approval to exercise a fundamental constitutional right in Maryland for the brief period of time in which she is traveling through the State.

In other words, Amici States' citizens, particularly travelers living close to the Maryland border, must choose between: (1) exercising their Second Amendment rights within Maryland without a license and risking imprisonment; (2) relinquishing their Second Amendment rights at the Maryland border; or (3) satisfying Maryland's onerous requirements to obtain the State's permission to exercise a constitutional right. The first two are no choice at all, and the third is little better because it impermissibly burdens fundamental rights.

B. Our nation's historical tradition of firearm regulation recognizes a right to use arms in self-defense, including when traveling

The Bill of Rights protects "unalienable Rights" of the People that "are endowed by their Creator," not privileges that a State deigns to confer. The Declaration of Independence (U.S. 1776). The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This provision "unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580. It also "protects the

possession and use of weapons that are in common use at the time." *Bruen*, 597 U.S. at 21 (quotation omitted). And it "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id.* at 32 (quoting *Heller*, 554 U.S. at 592). Similarly, the Virginia Constitution holds the right to bear arms to be "the proper, natural, and safe defense of a free state," Va. Const. art. I, § 13, while the New Hampshire Constitution declares that "[a]ll persons have the right to keep and bear arms in defense of themselves, their families, their property and the state," N.H. Const. Pt. I, Art. 2-a.

To justify any restriction on the fundamental rights conferred by the Second Amendment, the government must show the restriction does not contradict "the Second Amendment's unqualified command." *Bruen*, 597 U.S. at 17 (quotation omitted). Thus, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 24. If so, the government must "demonstrat[e]" that a regulation "is consistent with the Nation's historical tradition of firearm regulation" before "a court [may] conclude that the" regulation is permissible. *Ibid.*

In this case, Gardner displayed a firearm to deter an assailant. Pet. 10. The "*central component* of the right" to bear arms is "self-defense." *Heller*, 554 U.S. at 599; *id.* at 628 ("[T]he inherent right of self-defense has been central to the Second Amendment right."). Gardner's conduct therefore falls within the plain text of the Second Amendment, and it was "presumptively" unconstitutional to prosecute her. *Bruen*, 597 U.S. at 24. And although modes of transportation have changed since the Founding, "efforts to curb violence committed by those who are traveling certainly are

nothing new." *State* v. *Barber*, 265 N.E. 3d 254, 268 (Ohio Ct. App. 2025). Accordingly, Maryland must demonstrate that its scheme of strictly enforcing its license-to-carry regime against travelers using criminal liability is "relevantly similar" to "laws that our tradition is understood to permit." *Rahimi*, 602 U.S. at 681 (quotation omitted). It cannot.

This Nation's history and tradition surrounding firearms regulations for travelers and permitting regimes does not support Maryland's application of its permitting regime, with the help of the criminal law and threat of incarceration, to transitory non-residents. At the Founding, ordinary Americans would have understood the Second Amendment to protect the right to travel with a firearm because traveling without one presented significant dangers. See *Moore* v. *Madigan*, 702 F.3d 933, 936–37 (7th Cir. 2012). As this Court has recognized, "[m]any Americans hazard greater danger outside the home than in it." *Bruen*, 597 U.S. at 33; see also *Moore*, 702 F.3d at 936–37 (recognizing that a person is "a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment").

Indeed, a 1623 Virginia law, which was reissued in 1632, required "[t]hat no man go or send abroad without sufficient partie will armed . . . . That men go not to worke in the ground without their arms (and a centinell upon them)[.]" 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* (1823) 1:127, 198.

In 1636, Massachusetts adopted a statute stating that "no person shall travell above one mile from his dwelling house, except in places wheare other houses are neare together, without some armes, upon paine

of [a different statute] for every default . . . ." Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston: William White, 1628–41, 1853), 1:190.

A 1639 Rhode Island law reads: "It is ordered, that noe man shall go two miles from the Towne unarmed, eyther with Gunn or Sword . . .[.]" John Russell Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations, in New England* (Providence, R.I.: A. Crawford Greene and Brother, 1856) 1:94. Failure to adhere to the law carried a fine of five shillings. *Ibid*.

And ironically, a 1642 Maryland statute required that "[n]oe man able to bear arms [could] goe . . . any considerable distance from home without fixed gunn and 1 Charge at least of powder and Shott." William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1885) 3:103.

Moreover, to the extent that colonies or states *did* regulate the carriage of firearms at the Founding, "history reveals a consensus that States could *not* ban public carry altogether." *Bruen*, 597 U.S. at 53; see *Nunn* v. *State*, 1 Ga. 243, 251 (1846) (holding that a law prohibiting carrying arms "secretly" was permissible, but insofar as it contained "a prohibition against bearing arms *openly*, [was] in conflict with the Constitution, and void . . ."). And even "concealed-carry prohibitions" typically included exceptions for travelers. *Barber*, 265 N.E. 3d at 264 (citing examples).

For example, an 1831 Indiana statute prohibited "[e]very person, *not being a traveler*" from "wear[ing] or carry[ing] a" concealed "dirk, pistol, sword in a cane, or other dangerous weapon." *McIntire* v. *State*, 83 N.E. 1005, 1005 (Ind. 1908) (emphasis added).

In 1871, Texas enacted a statute forbidding "any person" from carrying "about his person, saddle, or in his saddle bags, any pistol," but the statute exempted "'persons traveling' to and from Texas." *Suarez* v. *Paris*, 741 F. Supp. 3d 237, 260 (M.D. Pa. 2024) (citation omitted) (quoting An Act to Regulate the Keeping and Bearing of Deadly Weapons, 12th Leg., R.S., ch. 34, § 1, 1871 Tex. Gen. Laws 25, 25).

California's 1863 "armed carriage law" also included a "travelers" exception, as did an 1870 statute in Tennessee. See Patrick J. Charles, *The Second Amendment and the Basic Right to Transport Firearms for Lawful Purposes*, 13 CHARLESTON L. REV. 125, 150–53 (2018).

In 1887, the then-territory of New Mexico enacted a law prohibiting the carriage of any deadly weapon, "either concealed or otherwise," but allowed travelers to "carry arms for their own protection while actually prosecuting their journey." See *id*. at 153 (quoting *An Act to Prohibit the Unlawful Carrying and Use of Deadly Weapons,* Feb. 18, 1887, *in* Act of the Legislative Assembly of the Territory of New Mexico 55, 55, 57 (1887)). The New Mexico statute required travelers to "remove all arms from their person" if they "stop[ped]" their journey "for a longer time than fifteen minutes," but allowed travelers to "resume the same" upon the "eve of departure." *Ibid* (quoting *An Act to Prohibit the Unlawful Carrying and Use of Deadly Weapons,* Feb. 18, 1887, *in* Act of the Legislative Assembly of the Territory of New Mexico 55, 57 (1887)).

In 1890, contemporaneous with the adoption of the Wyoming Constitution, the state legislature enacted a statute prohibiting the concealed carry of "pistol[s]" and "other dangerous or deadly weapon[s]" by any

person, except "traveler[s]." See *King* v. *Wyoming Div. of Crim. Investigation*, 89 P.3d 341, 351 (Wyo. 2004) (quoting 1890 Wyo. Territorial Sess. Laws, Ch. 73 § 96 (11th Legislative Assembly)).

As this Court instructed in *Bruen*, "postenactment history" should not be given "more weight than it can rightly bear." 597 U.S. at 35. But these 19th-century laws including travelers' exceptions demonstrate that the colonial-era tradition of traveling with a firearm *persisted* through the Reconstruction era.

Additionally, the Founding generation was familiar with the concept of regulating activities involving firearms through licensing regimes. For example, colonies such as Virginia and Maryland also maintained licensing regimes related to hunting with firearms at various times. See 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* (New York: R. & W. & G. Bartow, 1823) 3:69, 180; William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1885) 3:255. Nevertheless, Amici States are aware of no historical evidence to support the assertion that colonies or states around the time of the Founding broadly required people to obtain a license from the government to simply carry a firearm in public or while traveling. See *Bruen*, 597 U.S. at 26 ("[T]he lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.").

Therefore, there is no historical evidence for Maryland's statutory scheme of requiring transitory nonresidents to obtain a permit by satisfying onerous requirements before they can carry firearms, and incarcerating them if they fail to do so. Indeed, history is to

the contrary. Maryland's licensing regime and its enforcement through the criminal law is unconstitutional both now and when Maryland prosecuted Gardner.

Finally, there is no basis for Maryland to justify its law based on dangerousness, as it would be absurd to claim that all citizens without a license to carry issued by Maryland "pose a credible threat to the physical safety of another." *Rahimi*, 602 U.S. at 702. Maryland's licensing regime is nothing like surety or going armed laws discussed in *Rahimi*. *Id.* at 695–98. Indeed, the two sets of laws do not even begin from the same premises. Maryland's law purports to grant permission to exercise one's Second Amendment rights upon satisfaction of onerous regulatory conditions, which Maryland applies regardless of what conditions an applicant has already satisfied in her home State. Surety and going armed laws, however, revoked the right to carry a weapon for self-defense upon particularized judicial proceedings determining that an individual could be disarmed because that individual, in fact, posed a credible threat. Thus, the former purports to grant a right that the People already possess, while the latter purports to strip away a right of the People under specific circumstances.

Surety laws were a form of "preventative justice." See *Rahimi*, 602 U.S. at 695. Under surety laws, a magistrate could "oblige those persons, of *whom there is a probable ground to suspect of future misbehaviour*, to stipulate with and to give full assurance that such offence shall not happen, by finding pledges or securities." *Ibid.* (cleaned up; emphasis added). *Rahimi* emphasized that those historical laws did "not broadly restrict arms use by the public generally," and that their application "involved judicial determinations of

whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 698–99.

Similar to surety laws, "going armed" laws provided a mechanism for punishing those who had first terrified others with firearms or other weapons. *Bruen* 597 U.S. at 50. "But as with the earlier periods, there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry." *Id.* at 50–51. In short, "surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi*, 602 U.S. at 698.

By contrast, Maryland law bans outright the carrying of loaded or unloaded handguns, whether openly or in concealment, without a Maryland license. Md. Code, Crim. L. § 4-203(a) (2018). That is a far cry from the individualized determination of a surety or going armed law. See *Rahimi*, 602 U.S. at 699. Thus, no *Rahimi*-blessed determination of dangerousness occurred here. An assailant rammed Gardner's car, forced her off the road, and "rushed" at her. Pet. 10. Maryland did not accuse or convict Gardner of assault or other dangerous behavior. Instead, Gardner was convicted of knowingly possessing and transporting a loaded handgun. App. 7a. No court ever determined that Gardner was dangerous.

Nor can dangerousness justify Maryland's licensing scheme writ large. Maryland cannot reasonably argue that all Amici State citizens carrying firearms are "suspect of future misbehaviour." *Rahimi*, 602

U.S. at 695.

C. Maryland's burdening of the right to bear arms guarantees that cases like this one will recur

In line with *Bruen*, Virginia and New Hampshire allow any person not otherwise prohibited by law from possessing a firearm to openly carry a firearm for self-defense without obtaining permission from the government. See Virginia State Police, *Firearms/Concealed Weapons FAQ*, https://tinyurl.com/4kej7rpr (last visited Dec. 11, 2025) ("A firearm may be carried openly in Virginia except where prohibited by statute"); N.H. Rev. Stat. Ann. § 159:6(III); N.H. Const. Pt. I, Art. 2-a. Virginia and New Hampshire provide reciprocity to other States's citizens who wish even to carry a concealed handgun. See Va. Code § 18.2-308.014 (recognizing licenses from other States); N.H. Rev. Stat. Ann. §159:6(III) (not requiring licenses from other States). Other Amici States similarly extend concealed-carry reciprocity to other States. *E.g.*, Mo. Rev. Stat. § 571.107(1).

Accordingly, the citizens of the Amici States rightly expect to exercise their Second Amendment rights without fear of prosecution. Yet Maryland's militantly enforced criminal laws transform the briefest or most inadvertent crossing of its border with a firearm into a crime with a potential sentence of five years' imprisonment. Thus, absent this Court's intervention, citizens of the Amici States confront an intolerable ultimatum: submit to flagrantly unconstitutional regulations that fly in the face of *Bruen* or abandon their Second Amendment rights at Maryland's border.

This poses a particularly significant concern to Virginia and other States that border Maryland. Many

Virginians commute across the Potomac to the District of Columbia for work. Thus, a Virginian living in Alexandria who takes the Beltway to work may cross the Woodrow Wilson Memorial Bridge, and a Virginian living in McLean might do the same over the American Legion Memorial Bridge. Both would inevitably travel through Maryland. If either of those Virginians were carrying a firearm, that would be constitutionally protected activity on the right bank of the Potomac but criminal conduct on the left bank.

That cannot be how our federal system works. If every State is free to define which constitutional rights can be freely exercised within its borders, and which others cannot be exercised without paying a filing fee and undergoing an extensive process to obtain a license, then the Constitution is no longer "the supreme Law of the Land." U.S. Const. Art. VI.

The activity protected by the Second Amendment is the only activity protected by the Bill of Rights that, according to Maryland, can become a criminal offense bearing a potential penalty of years in prison with nothing more than slight geographic movement. That is because, even post-*Bruen*, not every State in this country treats the Second Amendment as the inalienable, fundamental right that it is.[2]

The Amici States stand unyielding in defense of the liberties that our Founders declared inviolate. Yet Maryland compels travelers to either surrender their birthright or bow to an onerous permit regime—a

[2] The sole authority that the Appellate Court of Maryland cited for its authority to treat the Second Amendment this way is an error-ridden Massachusetts case, which is already pending before this Court. App. 19a (citing *Commonwealth* v. *Marquis*, 252 N.E.3d 991 (Mass. 2025)); see *Marquis* v. *Massachusetts*, No. 25-5280.

scheme that treats inherent rights as negotiable privileges. This Court should step in and clarify that Maryland may not impose such a Hobson's choice on law-abiding Americans or criminalize the exercise of a fundamental right enshrined by the Constitution.

II. This case presents the important question of whether a conviction can be validly affirmed when the crime of conviction rests upon an unconstitutional requirement

The Appellate Court of Maryland admitted that its licensing regime at the time Maryland charged Gardner was "plainly . . . unconstitutional." App. 20a. And it recognized that the criminal statute under which Gardner was convicted "incorporat[ed]" that unconstitutional regime. *Ibid*. But it held that Gardner lacked *standing* to challenge the very basis for her conviction because she did not apply for a permit. App. 21a. That holding puts Amici States' citizens in an impossible position in which they must bow to Maryland's unconstitutional licensing scheme, be denied a license, and be charged under Maryland's ban on carrying a handgun without a license in order to defend themselves in a criminal prosecution. That cannot be the law.

The lower court's holding ignores the basic principle that "[a]n unconstitutional law is void, and is as no law." *Ex parte Siebold*, 100 U.S. at 376. Thus, any "conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of" criminal liability. *Id*. at 376–77. Moreover, it is beyond dispute that a *criminal defendant* has standing to challenge the law under which that defendant is being prosecuted or has been convicted. *E.g.*, *Bond* v. *United States*, 564 U.S. 211, 217 (2011) (explaining that criminal liability "constitutes a concrete injury, caused by the conviction and redressable by invalidation of the

conviction" (quotation omitted)); *Turner*, 474 A.2d at 1301 (holding that an individual has standing to challenge a law that "has actually resulted in direct injury in the form of a criminal conviction and the imposition of a fine").

In other words, the Appellate Court of Maryland missed a crucial distinction. Gardner was not challenging the constitutionality of the licensing scheme as a private plaintiff through a civil lawsuit (in which case a failure to apply for a license might render the challenge a generalized grievance). Rather, she was challenging it as a criminal defendant who was being prosecuted for failure to obtain a license to exercise a fundamental constitutional right, and was defending against her prosecution on that basis. Maryland's courts once held that "[e]very person accused of crime has the right to be tried under what has been determined to be the law of the land." *State* v. *Madison*, 213 A.2d 880, 882 (Md. 1965). Unfortunately, Maryland failed to apply that principle in this case. Because Maryland's licensing regime was—and remains—unconstitutional, Gardner's conviction "is not merely erroneous, but is illegal and void." *Ex parte Siebold*, 100 U.S. at 376. This Court should intervene to save Gardner from her void conviction and reaffirm that a State may not ignore the unconstitutionality of its laws to uphold such a conviction.

CONCLUSION

Maryland's overzealous application of its unconstitutional license-to-carry regime severely encroaches on the rights of Amici State residents to carry firearms for self-defense while traveling through Maryland. Unless this Court answers the question presented by this case, the Second Amendment rights of Amici State citizens are at the mercy of Maryland and

other States with similar regimes, see *Commonwealth* v. *Marquis*, 252 N.E.3d 991 (Mass. 2025). American citizens should not risk incarceration for constitutionally protected conduct. The Court should grant the petition.

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