No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA A. SOTTILE,
Petitioner,
v.
CITY OF PORTLAND,
Respondent

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Oregon

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PETITION FOR WRIT OF CERTIORARI

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December 17, 2025

QUESTION PRESENTED

Whether a law that criminalizes carrying a loaded firearm in public, subject to exceptions raised only as affirmative defenses, violates the Second Amendment to the United States Constitution.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Joshua A. Sottile, respectfully asks this Court to issue a writ of certiorari to review the opinion and judgment in this case.

RELATED CASES AND OPINIONS BELOW

The Oregon Supreme Court's order denying review appears at App. D to the petition and is reported at 576 P.3d 977 (Or. 2024).

The Oregon Court of Appeals' opinion appears at App. A to the petition and is reported at 561 P.3d 1159 (2024). The Oregon Court of Appeals' order denying reconsideration appears at App C.

The trial court's judgment appears at App. B to the petition and is unpublished.

JURISDICTION

The Oregon Supreme Court denied discretionary review on September 18, 2025. A copy of that decision appears at App. D. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The Code of the City of Portland, Oregon, (PCC) 14A.60.010(A) prohibits any person from possessing a loaded firearm in a public place. It provides in part: "It is unlawful for any person to knowingly possess or carry a firearm, in or upon a public place, including while in a vehicle in a public place, recklessly having failed to remove all the ammunition from the firearm."

PCC 14A.60.010(C) identifies fourteen affirmative defenses a person could pursue after being charged with carrying a loaded firearm in public, including a defense for people who are "licensed to carry a concealed handgun." PCC 14A.60.010(C)(3).

In Oregon, a person can obtain a license to carry a concealed handgun pursuant to ORS 166.291, which states that "[t]he sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license[.]" Relevant Statutes attached at Appendix E.

STATEMENT OF THE CASE

I. The Code of the City of Portland, Oregon, criminalizes possessing or carrying a loaded firearm in public.

Portland City Code imposes criminal liability against any otherwise law-abiding citizen who possesses or openly carries an ordinary loaded firearm in an unremarkable public place. PCC 14A.60.010(A) provides: "It is unlawful for

any person to knowingly possess or carry a firearm, in or upon a public place, including while in a vehicle in a public place, recklessly having failed to remove all the ammunition from the firearm." That is, PCC 14A.60.010(A) prohibits carrying concealed and openly displayed weapons alike. The prohibition is not limited to sensitive places. Nor does it ban carrying only "dangerous or unusual weapons." The ordinance is not limited to felons, drug-users, or the mentally ill but applies to all ordinary citizens.

PCC 14A.60.010(C) provides 14 affirmative defenses, including, among others, that the armed person is a peace officer, member of the military, or is "licensed to carry a concealed handgun." In Oregon, a criminal defendant has the burden of proving an affirmative defense "by a preponderance of the evidence." ORS 161.055.

II. Factual Background: Sottile had a loaded firearm with him while parked in a vehicle in downtown Portland, Oregon, and had no criminal record.

On November 24, 2021, Joshua Sottile was asleep in his vehicle in Portland's Old Town neighborhood. Tr. 38-39. Nearby police officers performed a "welfare check" on Sottile by knocking on the window and rousing him. Tr. 40. After determining that he was "okay," the officers instructed Sottile that he would be "good to go" if he exited and walked around his vehicle. Tr. 46.

When Sottile exited his vehicle, the officers observed "a very obvious sign of a firearm" in Sottile's pocket. Tr. 42. The officers arrested him and seized what turned out to be a loaded firearm. Tr. 42.

At the time, Sottile had no criminal record. Tr. 139, 453. He had been issued a concealed carry permit, but its current validity was disputed. Tr. 269-70, 379-80. An officer testified that his computer system told him Sottile's permit was "revoked," while Sottile testified that he believed it was active. Tr. 269-70, 379-80.

III. Procedural Background: Sottile challenged the constitutionality of the Portland City Code provision prohibiting possessing or carrying a loaded firearm.

The City of Portland and State of Oregon charged Sottile with violating PCC 14A.60.010 and ORS 166.250, which prohibited carrying "any firearm concealed upon the person." App. 2a.

Before trial, Sottile demurred against the charging instrument, arguing that both PCC 14A.60.010 and ORS 166.250 are unconstitutional under the Second and Fourteenth Amendments to the United States Constitution. App. 2a. The trial court denied Sottile's demurrer. App. 2a.

At trial, a jury acquitted Sottile of unlawfully possessing a concealed firearm under ORS 166.250 but convicted him of possessing a loaded firearm in a public place, PCC 14A.60.010. Tr. 449.

Sottile appealed to the Oregon Court of Appeals. He continued to argue that PCC 14A.60.010 was facially unconstitutional because there are no historical analogs to a blanket ban on carrying loaded weapons in public. App. 2a.

The Oregon Court of Appeals affirmed Sottile's conviction. App. 1a. The court identified the relevant question as "whether PCC 14.60.010's prohibition on possessing a loaded firearm in public, subject to exceptions for, among other things, being licensed to carry a concealed handgun, is consistent with the nation's tradition of firearm regulation." App. 7a. Because Sottile made a facial challenge, the court reasoned that it "need only find that the ordinance is capable of constitutional application in any scenario." App. 7a-8a. It upheld the city ordinance under that analytical framework:

> "The manner of regulation of carrying firearms under the ordinance, as it relates to defendant's own conduct, has existed throughout our nation's history; limiting a person's ability to carry a loaded concealed weapon—particularly where the state has a shall-issue licensing regime, as Oregon does—is consistent with the nation's history of regulating firearm possession."

App. 9a-10a.

Sottile petitioned the Oregon Court of Appeals for reconsideration on two grounds. First, he argued that the court erred in applying the law because it failed to analyze the text of the challenged ordinance, PCC 14A.60.010, and instead, considered only a hypothetical law. Second, he argued that, even if the

court's legal application was correct, it erred when it relied on the premise that defendant was carrying a concealed firearm because the jury acquitted him of unlawful possession of a firearm. The Court of Appeals denied defendant's petition without analysis. App. 12a.

Defendant filed a petition for review to the Oregon Supreme Court. It denied review. App C.

REASONS FOR GRANTING THE PETITION

This Court should allow review because the Oregon courts have interpreted and applied the Second Amendment of the United States Constitution in a way that conflicts with the Amendment's history and this Court's decisions animating that history; and whether a political entity can permissibly criminalize carrying an operable firearm in public, subject only to exceptions raised as an affirmative defense, presents a legal question that this Court should settle.

I. The Second Amendment protects a citizen's right to carry an operable and loaded firearm in public.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The "operative clause" of the Second Amendment is that "the right of the people to keep and bear Arms, shall not be infringed." *District of Columbia v. Heller*, 554 U.S. 570, 578 (2008). It

"guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id*. at 592; *see also id.* at 599 ("[S]elf-defense had little to do with the right's *codification;* it was the *central component* of the right itself." (emphasis in original)).

The "constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022). It is one of the "fundamental rights necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778 (2010). Just as with restrictions of other fundamental rights like speech, "the Government bears the burden of proving the constitutionality of its actions" that encroach upon an individual's Second Amendment rights. *Bruen*, 597 U.S. at 24 (quoting *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000)).

In *Bruen*, the Court considered the constitutionality of New York's "proper cause" licensing regime, which restricted licenses for carrying firearms in public to those who "demonstrate[d] a special need for self-protection distinguishable from that of the general community." 597 U.S. at 12. The Court held that this "proper cause" requirement was unconstitutional because the text of the Second Amendment "presumptively guarantees" the "'right to 'bear' arms in public for self-defense," and New York did not meet its burden to demonstrate that the "proper-cause requirement [was] consistent with this

Nation's historical tradition of firearm regulation." *Id*. In reaching that conclusion, the Court conducted an exhaustive historical survey, finding no "historical limitation" that "operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose." *Id.* at 60. Rather, the Court identified an "enduring American tradition permitting public carry." *Id.* at 67. Only in "exceptional circumstances," such as when appearing before justices of the peace and other government officials, could governments mandate that ordinary, law-abiding citizens "not carry arms." *Id.* at 70.

To protect that enduring American tradition, *Bruen* announced a two-part test that requires the government to prove that any restriction on a person's protected Second Amendment conduct is consistent with the nation's historical tradition of firearm regulation:

> "[T]he standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command."

Id. at 24 (internal citation omitted). *see also United States v. Rahimi*, 602 U.S. 680, 691 (2024) (applying that same standard).

The primary method for the state to meet its burden is reasoning by historical analogy. *Bruen*, 597 U.S. at 28. The state must show that a historical analogue is "relevantly similar." *Id*. at 29. And while *Bruen* does not "provide an exhaustive survey" of all the factors that might guide a court's historical reasoning, it emphasized that the primary metrics are "how and why" the respective regulations burden the right to possess arms for self-defense:

> "'[I]ndividual self-defense is "the *central component*" of the Second Amendment right.' Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are '*central*' considerations when engaging in an analogical inquiry."

Id. (emphasis in original) (citations omitted).

The Court further explained that analogical reasoning is "neither a regulatory straightjacket nor a regulatory blank check." *Id*. at 30. Courts should neither "uphold every modern law that remotely resembles a historical analogue," which would "endors[e] outliers that our ancestors would never have accepted," nor require the state to establish "a historical *twin*," as opposed to a "well-established and representative historical *analogue*[.]" *Id*. (emphasis in original) (quotations omitted).

To illustrate an example, *Bruen* accepted that although "the historical record yields relatively few 18th- and 19th-century 'sensitive places' [such as legislative assemblies, polling places, and courthouses] where weapons were

altogether prohibited," the Court was also "aware of no disputes regarding the lawfulness of such prohibitions," and thus, they could assume that the Second Amendment permits prohibiting arms at those places. *Id*. And a court "can use analogies to those 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*. at 30-31 (emphasis in original). However, the analogy could not be extended to "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available" because that would "exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense * * *." *Id*. at 31.

Rahimi upheld *Bruen*'s analytical model, explaining that a court must "consider[ ] whether the challenged regulation is consistent with the principles that underpin our regulatory tradition" and "ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 26-31).

II. The Portland City Code provision criminalizing carrying a loaded firearm in public violates this Court's decisions animating the Second Amendment and is facially unconstitutional.

Under the *Bruen* framework, the Portland City Code provision restricting carrying a loaded firearm is unconstitutional on its face. Possession of a loaded

firearm falls within the Second Amendment's plain text, and the city is unable to provide any historical tradition of a similar restriction. Thus, Portland's ordinance is unconstitutional.

The Portland City Code criminalizes conduct plainly protected by the Second Amendment. Here, Sottile had a firearm with him as he slept in his car. Possessing a firearm constitutes "keep[ing]" and "bear[ing]" arms. *See Heller*, 554 U.S. at 628-29 (holding statute that barred possession of handguns in the home unconstitutional). Thus, the Portland City Code prohibited conduct that was central to the holding in *Bruen* and the Second Amendment—that is, "carrying handguns publicly for self-defense." *Bruen*, 597 U.S. at 32. Likewise, possessing an operable or loaded firearm, is also protected by the Second Amendment. This Court has recognized that requiring a firearm to be inoperable "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Heller*, 554 U.S. at 630. Thus, the Second Amendment's plain text clearly covers the conduct prohibited by PCC 14A.60.010 and the ordinance is presumptively unconstitutional.

To rebut the presumption, the City of Portland must establish that PCC 14A.60.010 "is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. The city must show a robust tradition of "distinctly similar historical regulation[s]." *Id*. The city did not, and cannot, meet that burden here. Instead of holding the city to its burden, the Oregon

Court of Appeals construed a hypothetical prohibition on carrying concealed firearms without a permit, cited dicta from this court that stated that some regulations on carrying firearms are likely constitutional, and affirmed the trial court. App. 2a. The court did not point to any specific historic examples of a regulation banning the carrying of a loaded firearm in public. Thus, the Oregon Court misunderstood how to analyze a "facial" constitutional challenge and failed to provide justifications for such a sweeping prohibition. The court stated that "[i]f the city can establish, for instance, that the PCC is capable of constitutional application to people, like defendant, who carry loaded concealed firearms without lawful authorization, then defendant's facial challenge necessarily fails." App. 4a. But that mistakes the proper legal analysis for a facial challenge under the Second Amendment.

If that were the case, then, under the Oregon courts' application, there could be no facially unconstitutional firearms restriction because this Court has acknowledged that some restrictions on possession are valid, such as prohibiting individuals subject to domestic violence restraining orders. *Rahimi*, 602 U.S. at 693. But *Bruen* itself demonstrates rejects that form of argument.

As this Court has explained, "'[A] facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications,' regardless of the individual circumstances." *United States v. Veasley*, 98 F.4th 906, 909 (2024) (quoting *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019)). In

Washington State Grange v. Washington State Republican Party, this Court noted that for a facial challenge to succeed, a plaintiff must establish "that *the law* is unconstitutional in all its applications." 552 U.S. 442, 449 (2008) (citing *United States v. Salerno*, 481 U.S. 739 (1987)) (emphasis added). The Court further noted that it "must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Washington State Grange*, 552 U.S. at 450 (citing *United States v. Raines*, 362 U.S. 17, 22 (1960)).

Thus, the relevant question is not whether some person's acts could constitutionally be prohibited under some other more specific law as the Oregon court found; it is whether the regulation itself can be applied in a constitutional manner. Courts should not "go beyond the statute's facial requirements" and imagine whether a differently written law would be constitutional. The only question, here, is whether PCC 14A.60.040 as written—a ban on carrying a loaded firearm in a public place—is consistent with the nation's history of firearm regulation. *Bruen* instructs that it is not.

III. Oregon's concealed carry permitting system does not save the ordinance's constitutionality because it puts the burden on the citizen to demonstrate that his conduct is constitutional.

ORS 166.291 to ORS 166.293 authorize a person to obtain a concealed handgun permit. ORS 166.291 provides that a sheriff "shall issue" a concealed handgun permit provided an applicant meets 16 eligibility criteria. An

applicant must "[d]emonstrate[] competence with a firearm by completing a course or "equivalent experience"; be free from various pending and completed criminal sanctions; never have been civilly committed; and not have any other possible order restricting firearm possession. ORS 166.291 also imposes fees for a person to access fundamental Second Amendment rights that restrict the indigent from access to a permit.

However, even if an applicant meets those all of those requirements, a sheriff

> "may deny a concealed handgun license if the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence."

ORS 166.293(2).

ORS 166.292 provides that if the sheriff approves the application, the sheriff "shall" mail the license within 45 days of the application. An applicant may appeal a sheriff's decision to a circuit court, who must resolve whether the sheriff had "reasonable grounds for denial" within 15 days. ORS 166.293(5)-(6).

In a footnote, *Bruen* noted that it was *not* declaring some states' "shall cause" licensing schemes unconstitutional:

> "[N]othing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing

> regimes, under which 'a general desire for self-defense is sufficient to obtain a [permit].' Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry. Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.' And they likewise appear to contain only 'narrow, objective, and definite standards' guiding licensing officials, rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion,'—features that typify proper-cause standards like New York's. That said, because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry."

Bruen, 597 U.S. at 39. The Court described Oregon as being among the "43 by our count" jurisdictions with "shall issue" licenses. *Id*. at 13 n 1. The Court also observed that some states had discretionary criteria but operated similarly to "shall issue" jurisdictions. *Id.* For example, Connecticut officials may deny a concealed-carry permit to anyone who is not a "suitable person * * * whose conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon." *Id.* (citing Conn. Gen. Stat. § 29-28(b) (2021)). The Court further justified its note by explaining that many of the "shall issue" states had "constitutional carry" provisions that allowed open carrying without a license. *Id.* Oregon is not one of them. *Id*.

However, the bare fact that Oregon employs the statutory phrase "shall issue" does not make it a shall-issue state. The New York laws at issue in *Bruen* provided that licenses "shall be issued" if applicants meet objective requirements and have certain kinds of employment, and that licenses "shall be issued" for all other applicants that showed "proper cause." N.Y. Penal Law §400.00(2)(c)-(f). This Court struck them down because "authorities have discretion to deny … licenses even when the applicant satisfies the statutory criteria." *Bruen*, 597 at 14-16.

Oregon's licensing and carry scheme hardly meets *Bruen*'s suggestion of a law with "'narrow, objective, and definite standards' guiding licensing officials" instead of "appraisal of facts, the exercise of judgment, and the formation of an opinion." A sheriff may deny any application where the sheriff has "reasonable grounds to believe" the person "has been or is reasonably likely to be" a danger to themselves or the community as a result of the person's "mental or psychological state" or past behavior. A court may only review "the reasonable grounds" that led the sheriff to believe that a person is reasonably likely to endanger themselves or others. And because the denial applies to persons with a past history of such mental states, the deprivation of Second Amendment rights is likely permanent. That hardly treats meets the Court's admonition that the Second Amendment is not a "second-class right" that courts may treat differently than other fundamental liberties, such as the rights to free

speech, religious exercise, or confrontation. *Id.* at 70 (quoting *McDonald*, 561 U.S. at 780).

Further, even if an ordinary "shall issue" licensing regime rendered a broad ban on carrying firearms constitutional, Portland's ordinance goes a step further, making the possession of a concealed carry permit an affirmative defense, placing the additional burden on a defendant to prove he or she has a valid permit by a preponderance of the evidence. *See* ORS 161.055 (laying out standard). As the Court has repeatedly found, the Due Process Clause of the Fourteenth Amendment limits when a state may shift the burden to a criminal defendant to negate an element of a crime. *See, e.g.*, *Bieganski v. Shinn*, 149 F.4th 1055, 1068-70 (9th Cir. 2025) (analyzing this Court's cases regarding due process and affirmative defenses).

The city must demonstrate that this additional burden is consistent with the nation's history of firearm regulation. *Bruen*, 597 U.S. at 28-29. It has not met its burden here.

IV. Lower courts are conflicted on the constitutionality of prohibiting the open carry of firearms without a license.

Although only a dwindling number of jurisdictions ban openly carrying a firearm—with or without a license exception—state courts are divided on how to apply *Bruen* to those bans.

Some state courts have upheld the validity of open-carry bans. *See e.g.*, *People v. Thompson*, 2025 IL 129965 (Ill. 2025) (upholding the New Jersey's open carry prohibition because the state has a "shall issue" permit system); *People v. Johnson*, 2025 N.Y. Slip Op 06528 (N.Y. 2025) (rejecting challenge to New York's firearm possession law because the "proper cause" aspect of the state's licensing scheme found unconstitutional in *Bruen* could be severed from the rest of the law); *Harrison v. State*, 2025 WL 1936711 (Md. App. Ct. 2025) (denies a facial challenge to Maryland's ban on openly carrying without a permit, finding that the state's "shall issue" permitting system was valid); *see also Baird v. Bonta*, 709 F.Supp.3d 1091, 1119 (E.D. Cal 2023), *appeal docketed*, No 24-565 (9th Cir. Feb 01, 2024) (rejecting a facial challenge to California's licensing requirements).

But, following *Bruen*, the Massachusetts Supreme Court altered how that state's ban on openly carrying without a license law operated. Prior to *Bruen*, the possession of a license was treated as an affirmative defense which put the burden on the defendant to establish they had a license to carry. *Commonwealth v. Gouse*, 965 N.E.2d 774, 790 (Mass. 2012). In *Commonwealth v. Guardado*, the Massachusetts's Supreme Court held that due process required the state to bear the burden of proving—as an element of the crime—that a defendant did not comply with licensure requirements. 206 N.E.3d 512, 538-39 (Mass. 2023). Thus, the lower courts are divided on the

issue and this case would give this Court an opportunity to provide guidance on this divisive area of law.

CONCLUSION

For the foregoing reasons, petitioner respectfully asks this court to grant this petition for a writ of certiorari.

Respectfully submitted,

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