

In the
Supreme Court of the United States

ANDREA BECKWITH, ET AL.,

Petitioners,

v.

AARON M. FREY, ATTORNEY GENERAL OF MAINE,

Respondent.

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

**BRIEF OF AMICI CURIAE SECOND
AMENDMENT FOUNDATION AND NATIONAL
RIFLE ASSOCIATION OF AMERICA IN
SUPPORT OF PETITIONERS**

Joseph G.S. Greenlee
NRA – INSTITUTE FOR
LEGISLATIVE ACTION
11250 Waples Mill Rd.
Fairfax, VA 22030
(703) 267-1161
jgreenlee@nrahq.org

Konstadinos T. Moros
Counsel of Record
SECOND AMENDMENT
FOUNDATION
12500 NE 10th Pl.
Bellevue, WA 98005
(425) 454-7012
kmoros@saf.org

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Counsel for Amici Curiae

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AMICI CURIAE STATEMENT OF INTEREST

Second Amendment Foundation (“SAF”) is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in several Second Amendment-related lawsuits and thus has great interest in the outcome of this case.¹

The National Rifle Association of America (NRA) is America’s oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise among the citizenry. Today, the NRA is America’s leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

¹ No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, their members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The Parties were notified that this brief would be filed on September 2, 2026, in compliance with Rule 37.2.

SUMMARY OF ARGUMENT

On June 3, 2015, Carol Bowne was stabbed to death by her violent ex-boyfriend. She had feared exactly this result and had obtained a restraining order against him. Knowing that a court order alone was not going to keep her safe, she submitted an application to obtain a firearm purchase permit, as New Jersey required. By law, that was supposed to take a maximum of 30 days, already an unacceptable waiting period for a constitutional right. She was murdered on day 42, with no permit having been issued. As one news article recounted, “Carol Bowne knew her best shot at defending herself from a violent ex was a gun, and not a piece of paper. And it was paperwork that left her unprotected when Michael Eitel showed up at her New Jersey home last week and stabbed her to death...” See Perry Chiaramonte, *‘No One Helped Her’: NJ Woman Murdered by Ex While Awaiting Gun Permit*, Fox News (June 10, 2015), <https://www.foxnews.com/us/no-one-helped-her-nj-woman-murdered-by-ex-while-awaiting-gun-permit> (last visited Sept. 18, 2026).

While that example should be enough to underscore the importance of this issue, the stakes are high in this case for reasons beyond just whether waiting period laws are constitutional. According to the First Circuit, there is no explicit right to acquire a firearm *at all*, and lawsuits are not viable “unless plaintiffs demonstrate that the Act is abusive toward Second Amendment rights.” *Beckwith v. Frey*, 171 F.4th 560, 570 (1st Cir. 2026). “In our view,” the court explained, the law is “a burden on, but not an

infringement of, the Second Amendment right to keep and bear arms.” *Id.* Thus, the First Circuit has ruled that *judges* get to determine whether the burden imposed by a law is “abusive” enough to justify a Second Amendment claim. In other words, interest balancing is back as the governing standard for Second Amendment cases in the First Circuit, as it is elsewhere. *See, e.g., Duncan v. Bonta*, 133 F.4th 852, 893 (9th Cir. 2025) (en banc) (Bumatay, J., dissenting) (“Under either of the majority’s created tests, we’ve returned to interest balancing by another name.”).

Heller, *Bruen*, and their progeny never instructed that there would be two tracks for Second Amendment analysis: one for when a law directly affects the literal “keeping” or “bearing” of arms, and another for when ancillary rights or conduct are involved, in which judicial interest balancing still reigns supreme. What this Court has repeatedly said is that any law that *implicates* the plain text of the Second Amendment must be justified by historical tradition. The Fifth Circuit has very recently confirmed the same, creating another circuit split on this issue: “[c]onduct either implicates the plain text of the Second Amendment—in which case it is entitled to a presumption of constitutional protections—or it does not—in which event the Second Amendment offers no succor.” *Elite Precision Customs L.L.C. v. ATF*, No. 25-11206, slip op. at 6 (5th Cir. Sept. 18, 2026). Obviously, a law that delays the exercise of the Second Amendment right implicates that right.

Already, this supposed lesser protection for “ancillary” rights is being used to uphold all sorts of

blatant constitutional violations. For example, a California state court recently ruled that the state's new 11% "sin tax" on guns and ammunition does not even implicate the plain text of the Second Amendment. *See Poway Weapons & Gear, Inc. v. California Department of Tax and Fee Administration* at 5, No. 25CV018964 (Cal. Super. Ct. Sacramento Cnty. June 9, 2026) (minute order sustaining demurrer in part and overruling in part). *Bruen's* historical test is meaningless if courts can simply dodge it by declaring that the Second Amendment's plain text is not implicated *enough* to trigger the historical inquiry.

This Court should grant the petition to further cement the principle that the *Bruen* analysis applies when a challenged law "burdens those wishing to exercise their Second Amendment right." *Wolford v. Lopez*, 146 S. Ct. 2032, 2047 (2026). At minimum, this Court should grant, vacate, and remand the ruling below with instructions to the First Circuit on how to correct its step one analysis. This brief will lay out the proper analysis that should apply at that first step.

While the ruling below did not reach any historical discussion, the Petitioners are correct that "making people 'cool off' before they can exercise their Second Amendment rights defies historical tradition." Pet. 26; *see also Ortega v. Grisham*, 148 F.4th 1134, 1150 (10th Cir. 2025) ("Until the 1990s, no waiting period law required a prospective buyer to wait longer than was necessary to conduct a background check."). Amici adopt Petitioners' arguments in full, but write separately to rebut what the Respondent's experts

argued below pertaining to the availability of firearms in the founding era and the 19th Century. Contrary to what those experts claimed, firearms were readily available for purchase in the founding era, and even more so by Reconstruction. As a result, this case does not “implicat[e] unprecedented societal concerns,” and thus there is no reason to use the “more nuanced approach” in the historical analysis. *See Bruen*, 597 U.S. at 27.

ARGUMENT

I. This Court Should Grant Certiorari to Confirm that the “Plain Text Analysis” is Not Meant to Be a Difficult Hurdle for Plaintiffs to Meet.

In *Heller*, this Court rejected the application of any interest-balancing test, explaining that “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008); *see also Wolford v. Lopez*, 146 S. Ct. 2032, 2042 (2026) (“*Heller* emphatically rejected the ahistorical and ‘judge-empowering ‘interest-balancing inquiry’” suggested in the dissent.” (quoting *Heller*, 554 U.S. at 634)). Then, in *Bruen*, it reiterated that courts may not engage in any form of “intermediate scrutiny” or “strict scrutiny” in Second Amendment cases. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 23 (2022). Rather, lower courts must look to historical tradition in judging the constitutionality of challenged gun laws. And this Court could not have been clearer that the *Bruen* test

is, in terms of its substantive analysis, a one-step test: “[d]espite the popularity of this two-step approach, it is one step too many.” *Id.* at 19. It reaffirmed that one-step substantive approach in *Rahimi*, stating that “[i]n *Bruen*, we explained that when a firearm regulation is challenged under the Second Amendment, the United States must show that the restriction ‘is consistent with the Nation’s historical tradition of firearm regulation.’” *United States v. Rahimi*, 602 U.S. 680, 689 (2024) (citing *Bruen*, 597 U.S. at 24).

To be sure, a challenger must show at *Bruen*’s first step that the Second Amendment right to keep and bear arms is at least *implicated*. *Bruen*, 597 U.S. at 17. As Justice Thomas later explained, “[a] challenger need only show that ‘the plain text’ of the Second Amendment covers his conduct. This burden is met if the law at issue ‘regulates’ Americans’ ‘arms-bearing conduct.’” *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from denial of certiorari) (parenthetical omitted). But that initial showing is not an intensive analytical step. Like the First Amendment, which applies whenever speech is regulated, the Second Amendment applies whenever the law regulates acquisition, ownership, possession, carrying, use, or commerce in arms. Or as this Court recently explained, if a law applies to “the people,” or concerns any form of “arms,” or places any restrictions on either keeping or bearing of arms, then the plain text is implicated. *Wolford*, 146 S. Ct. at 2043; *see also id.* at 2064 (Jackson, J., dissenting) (“[T]he majority essentially directs courts to start by simply asking

whether a gun owner cannot do what she wants with her firearm.”).

Put more simply, “implicating” the right to keep and bear arms is far more expansive than covering only laws that directly restrict the literal “keeping” and “bearing” of arms. A law may “implicate” the Second Amendment either directly or indirectly because constitutional rights protect not only core conduct but also “implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring); *see also New York State Rifle & Pistol Ass’n, Inc. v. City of New York, New York*, 590 U.S. 336, 364–65 (2020) (Alito, J., dissenting) (The Second Amendment right includes “necessary concomitant[s],” including the rights to transfer, repair, or train with firearms.). Indeed, lower courts have long recognized that the Second Amendment protects such attendant rights. *See, e.g., Oakland Tactical Supply, LLC v. Howell Twp., Michigan*, 103 F.4th 1186, 1192 (6th Cir. 2024) (“[A]t least some training is protected, not as a matter of plain text, but because it is a necessary corollary to the right defined in *Heller*.”); *see also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011); *Boland v. Bonta*, 662 F. Supp. 3d 1077, 1085 (C.D. Cal. 2023) (citing *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)); *Rigby v. Jennings*, 630 F. Supp. 3d 602, 615 (D. Del. Sept. 23, 2022)).

The Tenth Circuit put it best: “[t]he Second Amendment’s text is not limited to direct prohibitions on possessing or using firearms. It states that the

‘right of the people to keep and bear Arms, shall not be infringed.’” *Ortega*, 148 F.4th at 1143 n.3. And once that right is implicated, the government “must show that the restriction ‘is consistent with the Nation’s historical tradition of firearm regulation’”—full stop. *Rahimi*, 602 U.S. at 689 (quoting *Bruen*, 597 U.S. at 24). The Fifth Circuit recently agreed, adding that “[t]here is no middle ground. It is no defense of the [challenged law’s] constitutionality to theorize that it is only a minor infringement of Second Amendment rights.” *Elite Precision*, No. 25-11206, slip op. at 6–7. “[T]he degree to which a regulation encroaches upon Second Amendment rights is generally immaterial at *Bruen* Step 1.” *Id.*

The logic of the Tenth and Fifth Circuits is cogent because if judges got to decide whether an “ancillary right” is important enough to warrant protection, that heralds the reimposition of interest balancing in disguise. Unfortunately, ever since *Bruen* was decided, some courts are seeking to accomplish exactly that. They have exaggerated *Bruen*’s “first step” into a gatekeeping device that avoids the historical inquiry altogether, shifting the burden away from the government. Under these “extremely narrow reading[s],” the Second Amendment is “wrongly . . . reduced to ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Yukutake v. Lopez*, 130 F.4th 1077, 1092 (9th Cir. 2025) (citing *Bruen*, 597 U.S. at 70).²

² *Yukutake* was vacated and will be reheard en banc, as is always the case for any Second Amendment victory in the Ninth Circuit, with only one exception. See Brief of Amici Curiae Second

For example, before *Bruen*, the Ninth Circuit would look to the “severity of the burden” before deciding which level of scrutiny to apply. Post-*Bruen*, that court simply slapped a fake moustache on that inquiry in *B&L Productions v. Newsom*, asking whether a law “meaningfully constrains” the right before turning to history. 104 F.4th 108, 118 (9th Cir. 2024).³ But the “meaningfully constrains” language is indistinguishable from determining the “severity of the burden.” It is the same concept, stated with different words. Both invite courts to decide whether the Second Amendment is “really worth insisting upon.” *Heller*, 554 U.S. at 634.

Some lower courts have rationalized this defiance by being draconian in their application of the Second Amendment’s plain text. To those courts, no conduct is protected by the plain text of the Second Amendment unless it literally consists of keeping or bearing arms. That is exactly what happened in this case, in which the First Circuit ruled that “laws regulating the purchase or acquisition of firearms do not target conduct covered by the Second Amendment’s ‘plain text.’” *Beckwith*, 171 F.4th at 568. According to that court, such laws are “constitutional

Amendment Foundation, et al. at 3-12, *Yukutake v. Lopez*, No. 21-16756 (9th Cir. Aug. 25, 2025). Nevertheless, the three-judge panel’s point quoted above is still persuasive.

³ The *B&L Productions* panel lifts its “meaningfully constrains” language directly from pre-*Bruen* precedent, further underscoring the intention to reimpose interest balancing in defiance of this Court’s precedent. *Id.* at 118 (citing *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 680 (9th Cir. 2017)).

unless plaintiffs demonstrate that the Act is abusive toward Second Amendment rights.” *Id.* at 570. So much, then, for this Court’s rejection of judge-empowering interest-balancing inquiries. If judges are now going to decide whether a law is “abusive” enough before any historical analysis can even occur, then interest-balancing has made its triumphant return.

This funhouse mirror version of strict textualism evaporates when courts prefer to *narrow* what the Second Amendment protects even further than an overly strict reading of the plain text allows for. When a law *does* directly impede the literal keeping or bearing of arms, some courts add words to the text of the Second Amendment so they can assert, *e.g.*, that a particular arm is not covered by the plain text of the Second Amendment. In those cases, it is no longer enough to just be an “arm” as this Court has defined that term using founding-era dictionaries. Instead, several circuits now say “arms” are *only* those weapons commonly used for self-defense. If a plaintiff does not have sufficient statistical data to prove common use for self-defense specifically (other lawful purposes, such as hunting or sports shooting, are not even considered), they lose, and no meaningful historical analysis occurs.

An example of that is the Second Circuit’s summary order in *Calce v. Tisch*. In that case, plaintiffs challenged New York state and city laws that prohibit the possession of stun guns and tasers. No. 25-861-cv, 2026 U.S. App. LEXIS 10458 (2d Cir. Apr. 13, 2026). The district court had ruled that “Plaintiffs ‘failed to provide any evidence that stun

guns and tasers are in common use’ and therefore, on the summary judgment record before it, ‘no reasonable jury could return a verdict that stun guns and tasers are presumptively protected by the Second Amendment.’” *Id.* at *2 (quoting the district court ruling). The Second Circuit agreed and affirmed the ruling, becoming only the latest of the circuits hostile to the Second Amendment to try to limit the weapons protected by the Second Amendment as much as possible.⁴ Fortunately, this Court has recently rejected that approach, reaffirming that “arms” refers to all “implements used for offense or defense” or “any weapon customarily used for offensive or defensive purposes.” *Wolford*, 146 S. Ct. at 2041. And further assistance from this Court on at least the “hardware” question is on the horizon.⁵

But for the time being, the current state of Second Amendment law in many circuits is a restrictive “Goldilocks” test that keeps historical analysis at bay and upholds almost every challenged law. If a plaintiff

⁴ “[L]ower courts have been quick to make distinctions along various lines, carving items out from the textual scope of ‘Arms’ one by one.” Jamie G. McWilliam, *Arms*, Paper No. 2026-3, at 6 (Univ. of Wyo. Firearms Rsch. Ctr. Mar. 31, 2026) (forthcoming 2026-2027 in 101 Tul. L. Rev.). “The result has been doctrinal fragmentation. Courts exclude weapons, components, and accessories from constitutional protection based on common use, military lineage, perceived functional necessity, or categorical labels such as ‘accoutrements,’ often without a clear theory of why those distinctions follow from the Amendment’s text as originally understood.” *Id.* at 50-51.

⁵ *Viramontes v. Cook Cnty.*, No. 25-238, 2026 U.S. LEXIS 2893 (June 30, 2026); *Grant v. Higgins*, No. 25-566, 2026 U.S. LEXIS 2887 (June 30, 2026).

sues over an “ancillary” right that is not the literal keeping or bearing of arms, their conduct is “too cold”—too far removed from the plain text to merit historical analysis. If instead a plaintiff challenges a law that undeniably blocks the keeping or bearing of an arm, then it is “too hot,” and no historical analysis will occur as the court hearing the case finds some rationale⁶ for why the plain text somehow does not cover the conduct at issue.

This Court should grant the petition to definitively correct this latest lower court gamesmanship. It should be made clear that for purposes of the plain text step, all that matters is whether a law “burdens those wishing to exercise their Second Amendment right.” *Wolford*, 146 S. Ct. at 2047. If it does in any way, the law must be justified with historical tradition every time.

II. Waiting Periods Are a Historical Anomaly, and Firearms Were Readily Available Even in the Founding Era.

The First Circuit never reached a substantive historical discussion in this case, having erroneously ruled against the Petitioners at the first step of the

⁶ “Come hell or high water, *Heller* or *Bruen*, our court will find a way to uphold any weapons restriction that a liberal State can dream up. And the Supreme Court’s occasional grant of certiorari and reversal has done *nothing*—and I mean that literally—to change our court’s behavior.” *Knife Rts., Inc. v. Bonta*, No. 24-5536, 2026 U.S. App. LEXIS 20960, at *82 (9th Cir. July 16, 2026) (VanDyke, J., dissenting from the denial of rehearing en banc.).

Bruen analysis. And if recent history is any guide, should this Court remand the case for a proper step two historical analysis, the First Circuit will find some other way to reach the same ultimate result again. As an amicus brief in another case persuasively argues:

The gentler tools have been tried and have failed. This Court’s GVR orders in the hardware cases ... produced reinstated resistance on remand in every instance: *Bianchi* returned as the en banc opinion upholding Maryland’s ban, and *Duncan* returned as the “accoutrements” holding. *Rahimi*’s unnamed correction—“some courts have misunderstood the methodology of our recent Second Amendment cases,” 602 U.S. at 691—was absorbed without effect, increasing the possibility that this Court’s methodology was not in fact ‘misunderstood’ but was defied.

Brief of Amici Curiae Nat’l Ass’n for Gun Rts., Inc. & Tex. Gun Rts., Inc. in Supp. of Petitioners at 27, *Viramontes v. Cook Cnty.*, Nos. 25-238 & 25-566 (U.S. filed Sept. 3, 2026).

This Court should not merely stop at a plain text course correction, as that would just mean this same case will return to it in a year or two. Instead, it should rule that in this case, there is no possible history that could justify the law at issue, because there is nothing new about the instant availability of firearms. Whatever problems may be associated with prompt acquisition of arms, they are not new ones.

As *Bruen* explained, when “a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26. No “more nuanced approach” is called for here. So, while Petitioners are correct that the presented analogues (intoxication laws and licensing laws) fail to justify Maine’s waiting period, Pet. 29, the historical review need not even get that far. The lack of a “distinctly similar” historical regulation decides this case.

Below, Respondent argued otherwise. Relying on its historical expert Robert Spitzer, whose reading of gun law history just so happens to always align with government defendants seeking to uphold modern laws,⁷ the State asserted that “firearms were not readily available during the 17th, 18th, and most of the 19th centuries.” Brief for Appellant at 26, *Beckwith v. Frey*, No. 25-1160 (1st Cir. Apr. 28, 2025). Another expert, Professor John Donohue, wrote that “[t]here was a built-in waiting period for everyone who purchased a gun in 1791 because of issues of travel

⁷ As the United States Department of Justice recently argued in one of its own cases, Robert Spitzer “has provided testimony in 51 post-*Bruen* Second Amendment cases ... And he has never testified that a challenged regulation has no analogue. In the instant case, as he has done in those other cases, he gives the misimpression that there are literally dozens if not hundreds of historical analogues to the California statutes ... Wrong.” See Reply in Supp. of Mot. for Prelim. Inj. at 9, *United States v. California*, No. 8:26-cv-01697-MRA-ADS (C.D. Cal. filed Sept. 1, 2026), ECF No. 44.

time, scarcity of gun parts, and the time it took to make a gun.” *Id.* (quoting Donohue Decl., ¶ 51 (App. 128-29)). Based on this expert testimony, the State concluded that there was historically “no need to impose waiting periods until recent times because, as a practical matter, a person necessarily had to wait before taking possession of a firearm.” *Id.* at 27.

These same two experts led another court to find that “the specific problem addressed by Vermont’s law—immediate acquisition of highly lethal firearms—was not present at the founding.” *Vt. Fed’n of Sportsmen’s Clubs v. Birmingham*, 741 F. Supp. 3d 172, 213 (D. Vt. 2024). The founders could not have expected the widespread availability of a “large menu of firearms,” and the “instant availability of a wide variety of guns would not have been anticipated at the founding.” *Id.* After all, there were no “Guns-R-Us” stores in 1791. *Id.* And waiting for delivery of goods was an “accepted part of American life in the 18th and 19th century.” *Id.* Therefore, the court concluded “the rapid availability of guns presents an ‘unprecedented social concern’ that requires a ‘more nuanced approach’ to historical analogy.” *Id.*

The State’s experts certainly have impressive academic credentials, and the historical narrative they weave is compelling. But that narrative is not supported by the historical record.

Obviously, there was no Bass Pro Shop in 1791.⁸ But there were an estimated 4,000 gunsmiths and

⁸ Nor should Petitioners be held to that standard anyway. Every type of modern place has changed from its historical

armorers in colonial America. See James B. Whisker, *THE GUNSMITH'S TRADE* 74 (1992); see also M.L. Brown, *FIREARMS IN COLONIAL AMERICA* 149 (1980) (“Gunsmiths were found nearly everywhere [in colonial Virginia]: in port towns along the coast, in settled inland areas, and—probably the busiest ones—on the frontier.”). Plus, blacksmiths and other shops sold firearms, swords, knives, and other weapons, armor, and accoutrements. Perhaps some individuals living in remote areas had to either travel to a place that sold firearms or wait to have them delivered. But once an individual arrived somewhere that had firearms available for sale, no wait was involved.

Newspapers from the time demonstrate the availability of firearms for immediate acquisition. For example, the *South Carolina Gazette* advertised in 1745 that “300 Muskets and Bayonets” were to be “sold by Mr. Commissary Dart, at his House.” The *South-Carolina Gazette*, June 1, 1745, at 2, <https://www.newspapers.com/image/605132111/> (last visited Sept. 18, 2026).

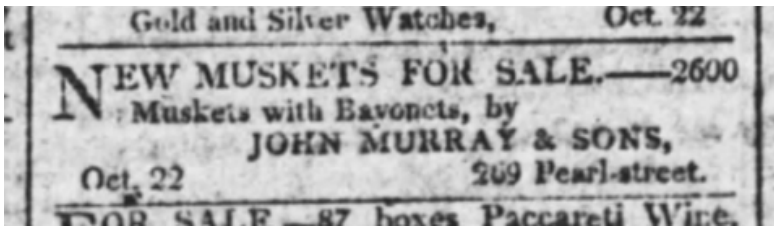
predecessors, but we can still draw close analogies. See, e.g., *Wolford v. Lopez*, 116 F.4th 959, 999 (9th Cir. 2024) (“Defendant likely is correct that, as his expert states, modern hospitals and medical facilities do not resemble the hospitals at the Founding. But medical facilities of some sort have existed since colonial times.... Defendant has not introduced any evidence of a historical ban on firearms in medical facilities of any type.”).

Whereas there were 300 Muskets and Bayonets brought over from Great Britain in the *Alabamough* Man of War. This is to give Notice the same are to be sold by Mr. Commissary Dart, at his House, at the Rate of 12 L. Currency each Musket and Bayonet. They are fine Arms, have double Bridle Locks, and Walnut Tree Stocks.

In 1792, residents of Boston and Worcester could head to the stores of Samuel & Stephen Salisbury to purchase “a quantity of horsemen’s pistols and sword blades.” Spooner’s Vermont Journal (Windsor, Vt.), Aug. 20, 1792, at 4, <https://www.newspapers.com/image/489003398/> (last visited Sept. 18, 2026).

Pistols & Sword Blades.
 A QUANTITY OF
HORSEMEN’S PISTOLS and
 SWORD BLADES, to be sold by
Samuel & Stephen Salisbury,
 At their Stores in BOSTON and WORCESTER,
Massachusetts.

This of course continued after the turn of the century. An advertisement that ran in the New York Evening Post on December 1, 1806, read: “NEW MUSKETS FOR SALE—**2600 Muskets** with Bayonets, by JOHN MURRAY & SONS, 269 Pearl-street.” New-York Evening Post, Dec. 1, 1806, at 1, <https://www.newspapers.com/image/33514851/> (last visited Sept. 18, 2026) (bold added).



Also in 1806, an advertisement in a Pittsfield, Massachusetts newspaper announced, “MILITARY GUNS FOR SALE.” It continued that the seller “makes and keeps **constantly on hand**, all kinds of MILITARY GUNS . . . and FOWLING PIECES.” The Pittsfield Sun (Pittsfield), Sept. 27, 1806, at 4, <https://www.newspapers.com/image/531981202/> (last visited Sept. 18, 2026) (bold added).

MILITARY GUNS FOR SALE.
 THE subscriber makes and keeps constantly on hand, all kinds of *MILITARY GUNS*, of English and French imitation, and *FOWLING-PIECES* of various kinds, which he WARRANTS to be good, for Ball and Shot, and which will be sold as cheap as they can be bought in the City of *Albany*, or in this town. The above mentioned Military Guns, may be had at *JOHN B. ROOT'S* Store, or at my Shop, at Capt. *WHITNEY'S* Forge, in *Pittsfield*.
JASON MILLS.
Pittsfield, August 29, 1866. 64310
N. B. Guns repaired and cleaned.

Another New York advertisement in 1819 offered buyers fowling pieces, rifles, pocket and horse pistols, and muskets. These guns were available for retail in the city or shipped to those outside of it. The Evening Post (New York, N.Y.), July 13, 1819, at 3, <https://www.newspapers.com/image/40478745/> (last visited Sept. 18, 2026).

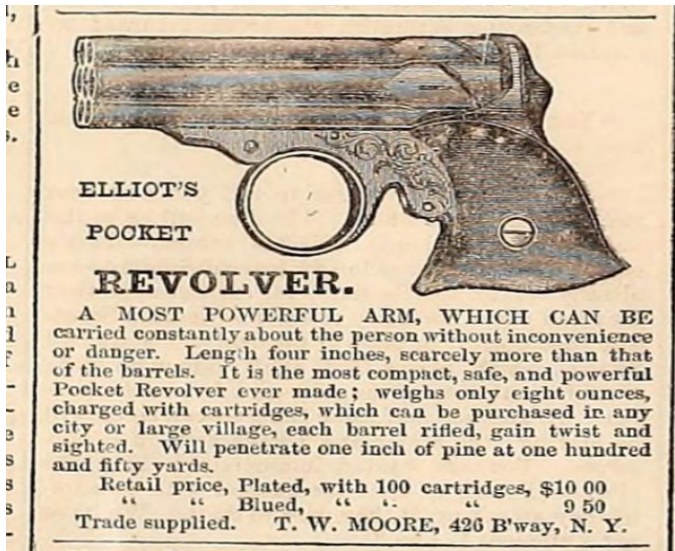
RIFLED GUNS.
WARRANTED Rifles suitable for the southern market, by one of the most approved makers in Philadelphia.
 Single and double barrell'd Fowling Pieces
 Fine twisted barrell'd Rifles
 Pocket and Horse Pistols, and
 British and American Muskets, of superior quality
 Cannister Gun-Powder, Shot & Shooting Tackle
 generally wholesale and retail, by
JOSEPH FINCH,
 No. 9 Wall and 261 Greenwich streets.
 At the above places, fire-arms of every description
 cleaned and repaired, and arms for shipping put in
 order with dispatch. Je 29 2aw1m

Amici could rattle off many further examples, but the advertisements above make the point: while guns are undoubtedly more readily available in our modern era, people could often purchase firearms on demand two centuries ago, particularly if they lived in cities and towns. Many sellers had firearms “constantly on hand,” as one of the advertisements above put it. It is safe to assume those sellers did not make their customers wait several days if they had money on hand and were ready to buy.

And whatever limitations on gun sales existed in the founding era due to the manufacturing and logistical challenges of the time, those limitations had dissipated by the mid-nineteenth century. Mass production of firearms became the norm, and firearms availability increased. For example, between 1850 and 1860, separate from its government contracts, Samuel Colt’s young company sold about 170,000 pocket revolvers and another 98,000 full-size revolvers to civilians. History.com Editors, *1847: Samuel Colt Sells His First Revolvers to the U.S. Government*, History.com (Nov. 16, 2009), <https://www.history.com/this-day-in-history/january-4/colt-sells-his-first-revolvers-to-the-u-s-government> (last visited Sept. 18, 2026). Nearly 150,000 Spencer rifles were produced during or just after the Civil War. Norm Flayderman, *FLAYDERMAN’S GUIDE TO ANTIQUE AMERICAN FIREARMS AND THEIR VALUES* 633 (9th ed. 2007). And Winchester produced 500,000 Model 1873s before the end of the century, Elmar du Plessis, *The Gun That Won the West—The Story of the Winchester Rifle*, NAT’L MUSEUM PUBL’NS (Nov. 30, 2016), <https://perma.cc/B4RK-EYHB>, in addition to 150,000

Model 1894s within the first four years of its release. Flayderman, *FLAYDERMAN'S GUIDE*, at 55.

Firearms had become easy enough to produce that many more advertisements appeared in mainstream publications to drum up sales. For instance, a December 1861 issue of *Harper's Weekly* advertised "Elliot's Pocket Revolver," a small pistol that "could be carried constantly about the person" and came with 100 cartridges for a total of \$10 (about \$379 today⁹).¹⁰ The advertisement noted that the gun could be purchased "in any city or large village."



⁹ All conversions were made using the CPI Inflation Calculator available here: <https://www.in2013dollars.com/>.

¹⁰ *Elliot's Pocket Revolver Advertisement*, *Harper's Wkly.*, Dec. 14, 1861, at 799, available at <https://archive.org/details/harpersweeklyv5bonn/page/798/mode/2up> (last visited Sept. 18, 2026).

During the Reconstruction Era and after, newspapers ran similar ads. For instance, Remington advertised its wide array of “revolvers, rifles, muskets, pocket and belt revolvers, repeating pistols, rifle canes, [and] revolving rifles” in the Flushing Daily Times on November 12, 1866.¹¹ And the Boston Evening Transcript published an advertisement for revolvers in its December 12, 1887, issue, with the vendor stating it expected to sell 200 per day at a price of \$3.50 (about \$123 today).¹² Mass production was well established, yet no sales restrictions or waiting periods were implemented in response.

To be sure, by that time, buyers could also very easily mail-order guns, which would, of course, require waiting for their purchase to arrive. Americans could browse a large selection of firearms in the Sears Catalog, purchase as many as they wanted at affordable prices, and have them shipped to their homes with no background check or any other government intrusion. For example, the 1902 catalog prominently advertised an automatic revolver for \$2.75 (\$107 today) and also listed other revolvers for as low as \$1.60 (\$62 today).¹³ The “wait time” to

¹¹ *E. Remington & Sons Advertisement*, The Flushing Daily Times, Nov. 12, 1866, available at <https://books.google.com/books?id=XvRZAAAIBAJ&pg=PA4&dq=revolvers&a#v=onepage&q=revolvers&f=false> (last visited Sept. 18, 2026).

¹² *G.W. Simmons & Co. Revolver Advertisement*, Boston Evening Tr., Dec. 12, 1887, at 8, available at https://books.google.com/books?id=6Zc-AAAIBAJ&pg=PA8&dq=revolvers&article_id=4796,5116559&hl=en&sa=X&ved#v=onepage&q=revolvers&f=false (last visited Sept. 18, 2026).

¹³ *Revolver Advertisements*, Sears, Roebuck, and Co. Catalogue, Issue No. 112, Fall 1902, at 306-07, available at

receive these guns was for an actual purpose—shipping the order—not some government-imposed mandate. But if someone *did* need a gun immediately, they could buy one from local general stores without having to wait. See Cathy Shufro, *A Brief History of Guns in the U.S.*, Hopkins Bloomberg Pub. Health Mag. (Oct. 13, 2021) (“Soon after the end of the Civil War, gunmakers with surpluses sought peacetime customers. They convinced dry goods stores to sell handguns alongside flour and sugar.”).

To be clear, Amici firmly believe the proper time period for historical analogues is the founding era, not the later 19th century. That is why advertisements from that earlier time period were also included above. But the State saw fit to rely on historical laws from later in the 19th century or even later; it did not limit its proposed analogues to just the founding era. Brief for Appellant at 27, *Beckwith v. Frey*, No. 25-1160 (1st Cir. Apr. 28, 2025) (citing intoxication laws and licensing laws as late as “the early 1900s”).

If the State is going to rely on historical laws so late in time, it is only fair that it also must contend with the retail realities of the era as well—specifically, the increasing availability of firearms. Whatever the limits of the founding era, by the 1850s and thereafter, there essentially *were* the equivalent of “Guns-R-Us” stores around. Other courts have concluded the same. “[W]e are unpersuaded by California’s argument that the mass availability of firearms is a new development. In another case, California argued that

<https://archive.org/details/catalogueno11200sear/page/306/mode/2up> (last visited Sept. 18, 2026).

‘[t]he market revolution of the Jacksonian period (1828-1854) led to radical advancements in firearms technology and [the] wide availability of cheaper, deadlier, concealable firearms.’” *Nguyen v. Bonta*, 140 F.4th 1237, 1245 (9th Cir. 2025) (citing Defendants’ Memorandum of Points and Authorities in Support of Motion for Summary Judgment at 15, *Chavez v. Bonta*, No. 3:19-cv-01226 (S.D. Cal. Mar. 15, 2024), ECF No. 132-1).

To conclude, contrary to what the State and its experts claim, individuals could purchase firearms quickly in the founding era. There were certainly some logistical limits for some who did not live in population centers, but even those began to dissipate as mass production of firearms became the norm in the decades after the founding. And it bears repeating that no state passed any waiting period law when faced with the reality of immediately available firearms.

Given that, no “nuanced approach” should be permitted here. The State can only save its modern law through a “distinctly similar” historical tradition of wait times for firearm purchases, and no such tradition exists.

CONCLUSION

Waiting periods implicate the plain text of the Second Amendment, and they have no basis in our historical tradition. Thus, they are plainly unconstitutional. The Petition should be granted to confirm that and to end the abuse of *Bruen*'s "plain text" step once and for all.

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Respectfully submitted,

Konstadinos T. Moros

Counsel of Record

SECOND AMENDMENT

FOUNDATION

12500 NE 10th Pl.

Bellevue, WA 98005

(425) 454-7012

kmoros@saf.org

Counsel for Amici Curiae