No. 23-CF-344

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

EMANUEL LEYTON PICON,
APPELLANT,

V.

UNITED STATES OF AMERICA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR INTERVENOR-APPELLEE THE DISTRICT OF COLUMBIA

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STATEMENT OF THE ISSUES

Emanuel Leyton Picon ("Leyton") was convicted of possessing an unregistered firearm, unlawful possession of ammunition, and carrying a pistol without a license, among other related charges. On appeal, Leyton argues that the District's restrictions on those under the age of 21 from registering a firearm and obtaining a license to carry violate the Second Amendment. He levels this challenge despite the fact that 35 states have regulations restricting access to, or limiting the ability to carry, firearms for those under 21, and despite the federal government's own longstanding restriction on firearm sales to those under 21. These regulations, like the District's, are lineal descendants of historic firearm laws disarming dangerous persons—including juveniles and young adults. The questions presented are:

1. Whether the District's restrictions on individuals under the age of 21 from registering a firearm or obtaining a license to carry a pistol are constitutional as applied to Leyton because 20-year-olds fall outside of the text and historical understanding of the Second Amendment.

2. Alternatively, whether the challenged age restrictions are constitutional because they are consistent with the Nation's historical tradition of disarming

categories of people deemed too dangerous to bear arms responsibly and, more generally, restricting the rights of individuals under the age of 21.[1]

STATEMENT OF THE CASE

Leyton was indicted by a grand jury for assault with intent to kill while armed (AWIKWA) (D.C. Code §§ 22-401, 22-4502), aggravated assault while armed (AAWA) (D.C. Code §§ 22-404.01, 22-4502), assault with a dangerous weapon (ADW) (D.C. Code § 22-402), assault with significant bodily injury while armed (ASBIWA) (D.C. Code §§ 22-404(a)(2), 22-4502), four counts of possession of a firearm during a crime of violence (PFCV) (D.C. Code § 22-4504(b)), carrying a pistol without a license (CPWL) (D.C. Code § 22-4504(a)(1)), possession of an unregistered firearm (UF) (D.C. Code § 7-2502.01(a)), and unlawful possession of ammunition (UA) (D.C. Code § 7-2506.01(a)(3)). R. 15 (PDF) (Super. Ct. Docket Sheet, No. 73); R. 122-24 (Grand Jury Charges). After a jury trial, Leyton was acquitted of AWIKAW and one PFCV count but convicted of the remaining nine counts. R. 38-39 (Super. Ct. Docket Sheet Nos. 271-82); 1/18/23 Tr. 7-9. Judge Robert D. Okun sentenced Leyton to 120 months of incarceration, suspended as to all but 72 months, with five suspended years of supervised release and three years

[1] The District of Columbia's involvement in this appeal is limited to defending the constitutionality of its firearm statutes. *See* 10/04/24 Rule 44 Notice, Mot. to Intervene, and Mot. for Briefing Schedule.

of probation. 4/7/23 Tr. 18-21; R. 40-44 (Super. Ct. Docket Sheet Nos. 299-311). Leyton timely appealed on April 22, 2023. R. 45 (Super. Ct. Docket Sheet No. 324).

STATEMENT OF FACTS

1. The District's Registration And Licensing Schemes.

Any person in the District who "possess[es] or control[s]" a firearm, with some exceptions not relevant here, must first obtain a registration certificate for that firearm. D.C. Code § 7-2502.01(a). Similarly, and again with some exceptions not relevant here, any person in the District who possesses ammunition must also have a valid registration certificate for their firearm. *Id.* § 7-2506.01(a)(3). The Chief of the Metropolitan Police Department ("MPD") issues registration certificates for individual firearms when a person passes a background check and "complete[s] a firearms training and safety class provided free of charge by the Chief." *Id.* § 7-2502.03(13)(A); 24 DCMR § 2314.2. The registration requirement thus ensures that firearms do not fall into the hands of individuals who, for example, "[h]a[ve] . . . been convicted of a weapons offense" "or a felony," D.C. Code § 7-2502.03(a)(2), or who have recently been "[c]ommitted to a mental institution," *id.* § 7-2502.03(a)(6)(A)(5).

Among other qualifications, an applicant must be "21 years of age or older" to obtain a registration certificate. *Id.* § 7-2502.03(a)(1). However, "an applicant between the ages of 18 and 21 years old, and who is otherwise qualified," can be

issued a registration certificate "if the application is accompanied by a notarized statement of the applicant's parent or guardian" that states the parent or guardian has given permission for the person to "own and use the firearm to be registered" and "[t]he parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered." *Id.* § 7-2502.03(a)(1).

To carry a concealed pistol in public, an individual must have a license issued by the Chief. *See* D.C. Code §§ 22-4504(a), 22-4506. To qualify for a license, the applicant must meet several requirements, including registering the pistol he intends to carry and passing a background check. The background check screens for "suitable person[s] to be so licensed," *id.* § 22-4506(a); *id.* § 7-2509.01(2), defined in the time period relevant here as, among other things, individuals whose "possession of a concealed pistol" would not "render" them "a danger to [themselves] or another," 24 DCMR § 2335.1(d) (2015). The applicant must also be "at least 21 years of age." D.C. Code § 7-2509.02(a)(1); 24 DCMR § 2332. The upshot of these laws is that a 20-year-old like Leyton may, with parental consent, register a firearm, but may not engage in concealed carry.

The registration and licensing framework in place today has a long lineage in the District. As early as 1892, Congress barred persons in the District from "giv[ing] to any minor under the age of twenty-one" any "deadly or dangerous weapon[],"

including a "pistol[]." 27 Stat. 116-17 (1892). And the specific age restrictions at issue in this case were enacted as part of the Firearms Control Regulations Act of 1975 ("FCRA"), D.C. Law 1-85, 23 D.C. Reg. 1091 (1976), the Firearms Registration Amendment Act of 2008, D.C. Law 17-372, § 3(c), 56 D.C. Reg. 1365 (2009), and the License to Carry a Pistol Amendment Act of 2014, D.C. Law 20-279, §§ 2 & 3, 62 D.C. Reg. 1944 (2015).

2. Leyton's Arrest And Conviction.

On the evening of July 29, 2021, through the early morning hours of July 30, 2021, Leyton went to a nightclub; Edwin Hernandez and Selvin Amaya went to the same nightclub. 1/5/23 Tr. 19, 52-53; 1/11/23 Tr. 87-88. After leaving the club, Leyton abruptly shot Hernandez at close range. 1/5/23 86-93, 116-17; 1/11/23 Tr. 104-05. Leyton initially denied any involvement in the shooting. 1/11/23 Tr. 108-09, 130-40. He later admitted to being the shooter but contended that he shot Hernandez out of self-defense. 1/11/23 Tr. 104, 122. Amaya identified Leyton as the shooter, 1/5/23 Tr. 107-09, and law enforcement found Leyton's DNA on the recovered gun, 1/10/23 Tr. 125-30. Leyton had not registered his firearm and had no license to carry his firearm. 1/11/23 Tr. 15-19. A jury convicted Leyton of nine counts, including CPWL, UF, and UA. *See supra*, at 2.

STANDARD OF REVIEW

This Court reviews legal conclusions de novo. *Gamble v. United States*, 30 A.3d 161, 164 n.6 (D.C. 2011).

SUMMARY OF ARGUMENT

1. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court altered but did not upend the framework for evaluating Second Amendment challenges. Under *Bruen*, a challenger must first show that his asserted conduct is covered by the plain text of the Second Amendment, as informed by history. If he does, the burden shifts to the government to demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. Pre-*Bruen* precedent that relied on a text-and-history-based approach remains good law, including First and Fifth Circuit precedent upholding federal age restrictions on the sale and possession of firearms. Those decisions are persuasive here. Indeed, Justice Alito emphasized in his *Bruen* concurrence that nothing in that decision disturbed these federal laws.

2. The Second Amendment does not—by reason of its text or historical understanding—extend to 20-year-olds like Leyton who cannot responsibly bear arms. The Founding generation set the age of majority at 21, and the rights of younger individuals (i.e., "infants") were tightly circumscribed because of a perceived "want of prudence" and absence of "understanding." Consistent with that

historical practice, parents and guardians retained substantial authority to supervise "infants." The suggestion that the Second Amendment extends to 20-year-olds is out of step with this history. It also conflicts with the historical disarmament of classes of individuals posing a danger to the public. This Court should therefore reject Leyton's Second Amendment arguments at *Bruen* step one.

3. Even if this Court disagrees and proceeds to *Bruen* step two, the District's age restrictions on registration and licensing are relevantly similar to the historical traditions of categorical disarmament of individuals whose possession "would otherwise threaten the public safety," *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting), and limitations on the rights of individuals under the age of 21. The District's age restrictions impose the same burden—disarmament—on the right to self-defense as historical precursors and are motivated by the same concerns with "groups . . . judged to be a threat to the public safety" when armed. *Id.* at 458.

ARGUMENT

I. While *Bruen* Refined The Framework For Evaluating Second Amendment Challenges, Prior Precedents Upholding Laws Under A Text-And-History Approach Continue To Hold Force.

1. The Second Amendment ensures that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. But "the right secured by the Second Amendment is not unlimited." *United States v. Rahimi*, 602 U.S. 680,

690 (2024) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). It does not permit the "keep[ing] and carry[ing]" of "any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 691 (quoting *Heller*, 554 U.S. at 626). Nor does it sanction the arming of non-law-abiding citizens or persons presenting a danger of misusing firearms, including felons and the mentally ill. *See Heller*, 554 U.S. at 626; *Rahimi*, 602 U.S. at 699.

Prior to the Supreme Court's decision in *Bruen*, federal courts of appeals had developed a "two-step" framework to analyze Second Amendment claims. *Bruen*, 597 U.S. at 18. The first step asked whether a challenged law regulated conduct outside the scope of the Amendment, as defined by its text and "historical meaning." *Id.* If a claim survived that first step, courts at the second step typically applied some form of means-end scrutiny. *Bruen*, 597 U.S. at 18.

The *Bruen* Court rejected this second step. *Id.* at 19. But it preserved the first step—now *Bruen* step one—as "broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Id.* The Court confirmed that the question of whether "the Second Amendment's plain text covers an individual's conduct," *id.* at 24, involves both textual and historical showings given that "the historical understanding of the Amendment" serves "to demark the limits on the exercise of that right," *id.* at 21; *see Antonyuk v. James*, 120 F.4th 941,

964 & n.11 (2d Cir. 2024) (explaining *Bruen*'s two-step framework and collecting cases from at least eight other Circuits that are in accord).

At step one, the challenger, and not the government, bears the burden of proof. *See id.* at 24; *accord Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024) (per curiam); *Rahimi*, 602 U.S. at 680. The challenger must establish that they fall within the text of the Second Amendment—that they are part of "the people" whom the Second Amendment protects, that the weapon at issue is an "arm," and that their "proposed course of conduct" falls within the Second Amendment. *See Bruen*, 597 U.S. at 31-32; *see also Antonyuk*, 120 F.4th at 981 (same); *Ward v. United States*, 318 A.3d 520, 525-26 (D.C. 2024) (same).

If the challenger carries their burden at step one, "[t]he government must then justify its regulation" by "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. That inquiry—*Bruen* step two—asks whether the challenged regulation falls within a historical tradition of laws that are "relevantly similar." *Id.* at 29. Laws are relevantly similar if they "impose a comparable burden on the right of armed self-defense" that "is comparably justified." *Id.* That is, the "how" and the "why" of the modern regulation must be like some historical precursor. *See id.* Moreover, courts must apply a "nuanced approach" where "regulatory challenges posed by firearms today" differ from those that "preoccupied the Founders in 1791 or the Reconstruction

generation in 1868." *Id.* at 27; *see id.* (citing "unprecedented societal concerns or dramatic technological changes" as "requir[ing] a more nuanced approach").

Importantly, "analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*." *Bruen*, 597 U.S. at 30 (emphasis in original). Neither *Bruen* nor any other precedent was "meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 691. To the contrary, "when a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster.'" *Id.* at 692 (quoting *Bruen*, 597 U.S. at 30). Indeed, "a test that demands overly specific analogues" would generate "serious problems," including "forc[ing] 21st-century regulations to follow late-18th-century policy choices" and "assum[ing] that founding-era legislatures maximally exercised their power to regulate." *Id.* at 739-40 (Barrett, J., concurring). The Supreme Court in *Rahimi* recently applied such analogical reasoning to conclude with little difficulty that the Nation's historical "tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others." *Id.* at 700.

2. Although the Court's decision in *Bruen* abrogated precedent that relied on means-end scrutiny, it did not call into question decisions that applied the text and history standard *Bruen* recognized as "broadly consistent with *Heller*." 597 U.S. at 19; *id.* at 22 ("*Heller*'s methodology centered on constitutional text and history.").

Accordingly, following *Bruen*, courts have determined that decisions not reliant on means-end scrutiny retain their binding or persuasive force. *See, e.g.*, *Bianchi v. Brown*, 111 F.4th 438, 448 (4th Cir. 2024) (en banc) ("The Court was careful to note that only the Courts of Appeals' second step was inconsistent with *Heller*'s historical approach." (internal quotation marks omitted)), *petition for cert. filed sub. nom.*, *Snope v. Brown*, No. 24-203 (U.S. Aug. 21, 2024); *United States v. Sitladeen*, 64 F.4th 978, 985 (8th Cir. 2023) ("[W]e remain bound by [our court's pre-*Bruen* decision]."); *Bevis v. City of Naperville*, 85 F.4th 1175, 1189 (7th Cir. 2023) (similar). Further, even where a court's holding was abrogated by *Bruen*, its factual findings, often based on voluminous records, remain relevant.

At least two pre-*Bruen* cases analyzed the history of age-based firearm restrictions and upheld age-related laws: *National Rifle Association of America, Inc. v. ATF*, 700 F.3d 185 (5th Cir. 2012), and *United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009). In *NRA v. ATF*, the Fifth Circuit rejected a challenge to federal prohibitions on the sale of handguns to persons under the age of 21. 700 F.3d at 188, 193-211 (citing 18 U.S.C. § 922(b)(1), (c)(1)). It conducted an extensive historical analysis and concluded that "when the fledgling republic adopted the Second Amendment, an expectation of sensible gun safety regulation was woven into the tapestry of that guarantee," including "categorical restrictions" on firearm possession by certain groups, such as individuals under the age of 21. *Id.* at 200-01.

The Fifth Circuit noted that the challenged laws are "consistent with a longstanding tradition of targeting select groups' ability to access and to use arms for the sake of public safety." *Id.* at 203. The court then proceeded to step two of the pre-*Bruen* inquiry only "in an abundance of caution," and made clear that it was "inclined to uphold the challenged federal laws at step one of [the pre-*Bruen*] analytical framework," which remains good law today. *Id.* at 204; *see Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013) (citing *NRA v. ATF* approvingly).

Similarly, in *United States v. Rene E.*, the First Circuit affirmed the constitutionality of a federal law barring firearm possession by individuals under 18 based on "a longstanding tradition of prohibiting juveniles from both receiving and possessing handguns," 583 F.3d at 12, and "evidence that the founding generation would have regarded such laws as consistent with the right to keep and bear arms," *id.* at 16 (citing 18 U.S.C. § 922(x)(2)(A) and 18 U.S.C. § 5032).

Both *NRA* and *Rene E.* remain persuasive post-*Bruen*, as evidenced by *Bruen* itself. *Bruen* simply struck down New York's law conditioning the issuance of a license to carry firearms on an applicant showing a "special need for self-protection." 597 U.S. at 12-13 (internal quotation marks and citation omitted). Importantly, however, the Court observed that licensing regimes that employ objective qualifications without a special-need characteristic "do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second

Amendment right to public carry"—meaning that they likely do not infringe that right. *Id.* at 38 n.9 (quoting *Heller*, 554 U.S. at 635). Those "shall-issue" licensing regimes generally require individuals to be at least 21 in order to carry firearms in public, with limited exceptions for the armed forces.[2] And, critically, Justice Alito's concurrence in *Bruen* underscored that the Court disturbed "nothing about who may lawfully possess a firearm," and federal law therefore continued to "bar[] the sale of a handgun" by federal firearms licensees "to anyone under the age of 21," 597 U.S. at 73 (Alito, J., concurring) (citing 18 U.S.C. §§ 922(b)(1), (c)(1)).

II. The District's Age Qualifications Are Constitutional.

As an initial matter, Leyton does not attempt to challenge the District's licensing and registration schemes wholesale. And he concedes that his challenge is to the District's age qualifications as applied to him, a 20-year-old. Leyton Reply Br. 4 n.4. Indeed, he could not succeed in facially challenging the District's age requirement, which would require "establish[ing that] . . . no set of circumstances

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[2] *See* Ariz. Rev. Stat. Ann. § 13-3112(E)(2); Ark. Code Ann. § 5-73-309(3)(A); Colo. Rev. Stat. § 18-12-203(1)(b); Fla. Stat. § 790.06(2)(b); Ga. Code. Ann. § 16-11-129(b)(2)(A); Idaho Code § 18-3302K(4)(a); 430 Ill. Comp. Stat. 66/25(1); Ky. Rev. Stat. Ann. § 237.110(4)(c); La. Stat. Ann. § 40:1379.3(C)(4); Mich. Comp. Laws § 28.425b(7)(a); Minn. Stat. § 624.714(2)(b)(2); Miss. Code Ann. § 45-9-101(2)(b)(i); Nev. Rev. Stat. § 202.3657(3)(a)(1); N.M. Stat. Ann. § 29-19-4(A)(3); N.C. Gen. Stat. § 14–415.12(a)(2); Ohio Rev. Code Ann. § 2923.125(D)(1)(b); Or. Rev. Stat. § 166.291(1)(b); Tenn. Code Ann. § 39-17-1351(b)(1); Tex. Gov't Code Ann. § 411.172(a)(2); Utah Code Ann. § 53-5-704(1)(b)(iii); Va. Code Ann. § 18.2-308.02(A); Wash. Rev. Code § 9.41.070(1)(c); W. Va. Code § 61-7-4(b)(3); Wis. Stat. § 175.60(3)(a); Wyo. Stat. Ann. § 6-8-104(b)(ii).

exists under which the Act would be valid." *Rahimi*, 602 U.S. at 693 (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)). That "heavy burden" would require demonstrating that District's law is unconstitutional with respect to juveniles under the age of 18, *Salerno*, 481 U.S. at 745, but Leyton understandably does not even attempt to press such an argument, *see* PDS Br. 12 n.6.

As for his as-applied challenge, the District's age-related registration and licensing requirements are constitutional as applied to Leyton for either of two reasons: the requirements are consistent with the historical scope of the Second Amendment's text at *Bruen* step one, and in any event, they are consistent with the Nation's historical tradition of firearm regulation at *Bruen* step two.[3]

A. The District's age restrictions are consistent with the scope of the Second Amendment as historically understood.

Individuals under the age of 21—the historical age of majority—and individuals deemed too dangerous to safely keep and bear arms fall outside of the

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[3] If the Court concludes that any portion of the District's age restrictions are unconstitutional, it must sever that portion to preserve the rest of the law. The D.C. Council explicitly adopted severability provisions for its firearms laws. *See* D.C. Code §§ 22-4516, 7-2507.10. And this Court must "give effect to the valid portion of a partially unconstitutional statute so long as it remains fully operative as a law, and so long as it is not evident from the statutory text and context that [the legislature] would have preferred no statute at all." *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 37 (2014) (cleaned up). Both circumstances apply here and so would save the UF, UA, and CPWL statutes if any provision of the registration or licensing scheme were deemed unconstitutional. *Cf. Dubose v. United States*, 213 A.3d 599, 604 (D.C. 2019) (severing the "good reason" provision and upholding a CPWL conviction following *Wrenn*).

historical understanding of the Second Amendment right. Leyton falls within each of these carveouts, and his challenge therefore fails at *Bruen* step one.

1. 20-year-olds, like Leyton, have never fallen within the scope of the Second Amendment.

At *Bruen* step one, the challenger bears the burden of proof. *See Bruen*, 597 U.S. at 24. Leyton does not suggest otherwise. *See* Leyton Br. 16-20.[4] And he has presented no cogent argument that legislatures cannot disarm 20-year-olds. As the Supreme Court acknowledged in *Heller*, the Second Amendment codified a pre-existing right. *Heller*, 554 U.S. at 592. Courts thus must look at the historical understanding of the contours of that right at step one before turning to analogues or exceptions at step two. For instance, in *Heller*, the Court looked to Founding and Reconstruction-era dictionaries and treatises to understand the right's scope. *See, e.g.*, *id.* at 581-84; *see also Polis*, 121 F.4th at 114 (cataloging sources that a court may consider at step one). As historically understood, 20-year-olds did not benefit from the right to bear arms, whether because they fell outside the scope of "the

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[4] *Amicus curiae* PDS argues otherwise, PDS Br. 13-14, but it cannot cure Leyton's forfeiture. Nor is PDS correct. The argument that it is the government's burden to show that "adults under the age of 21" fall outside the scope of the Second Amendment, PDS Br. 14, runs counter to Supreme Court precedent in the Second Amendment context and otherwise. *See Bruen*, 597 U.S. at 24; *see generally Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (instructing that "a plaintiff bears certain burdens to demonstrate an infringement of his rights" and that "[i]f the plaintiff carries these burdens, the focus then shifts to the defendant"); *see also Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 126 (10th Cir. 2024) (the plaintiff bears the burden at *Bruen* step one).

People" or because that is simply how society understood the limits of the pre-existing right.

A wealth of historical evidence demonstrates that individuals under 21 were historically not entitled to the protections of the Second Amendment. 18- to 20-year-olds were long considered legal infants under the supervision of their parents. *See, e.g.*, 1 William Blackstone, *Commentaries on the Laws of England* 451 (1765) ("[F]ull age in male or female, is twenty one years . . . who till that time is an infant, and so styled in law."); 1 Zephaniah Swift, *A System of the Laws of the State of Connecticut* 213 (Windham, John Byrne pub. 1795) ("Persons within the age of 21, are, in the language of the law denominated infants, but in common speech—minors."); 2 James Kent, *Commentaries on American Law* 191 (1827) (confirming that "the inability of infants to take care of themselves . . . continues, in contemplation of law, until the infant has attained the age of twenty-one years"); *Infant*, Black's Law Dictionary (11th ed. 2019) ("An infant in the eyes of the law is a person under the age of twenty-one years." (quoting John Indermaur, *Principles of the Common Law* 195 (Edmund H. Bennett ed., 1st Am. ed. 1878))).

The selection of 21 as the age of majority derives from the assumption at common-law that persons who were not able to reason could not exercise a full suite of rights. *See* 1 William Blackstone, *Commentaries* 121 (the "rights of man" are enjoyed by those "endowed with discernment to know good from evil, and with

power of choosing those measures which appear to him to be most desirable"). Indeed, Blackstone suggested that "an infant [could] do no legal act." *Id.* at 453. Based on this understanding, legislatures have historically set age qualifications for the exercise of a range of civil and political rights, including becoming a naturalized citizen, forming an enforceable contract, petitioning the government, serving on juries, and voting.[5] Further, while Founding-era citizens were required to serve as "peace officers" when called upon by local authorities, "infants," "madmen," and "idiots" were excluded from such service. John Faucheraud Grimké, *The South-Carolina Justice of Peace* 117 (R. Aitken & Son eds., 1788).

These restrictions on the rights of infants reflected the belief that then, as now, infants lack "[j]udgment" and are not "fit to be trusted by the [p]ublic." *From John Adams to James Sullivan, 26 May 1776*, Nat'l Archives, tinyurl.com/2z4yp574; *see James Madison's Notes of the Constitutional Convention*, *Tuesday, August 7, 1787*, Yale L. Sch. Avalon Project, tinyurl.com/2pz5uuua (Gouverneur Morris, a signer of the Constitution and drafter of its Preamble, likewise warning that minors "want prudence" and "have no will of their own"); 1 William Blackstone, *Commentaries*

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[5] *See, e.g.*, Act of Mar. 26, 1790, ch. 4, 1 Stat. 104 (naturalized citizen); Act of Jan. 29, 1795, ch. 20, 1 Stat. 415 (naturalized citizen); Swift, *supra*, at 213-16 (contracts); Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. Chi. L. Rev. 867, 877 n.52 (1994) (juries); Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. Cin. L. Rev. 1345, 1345, 1358-59 (2003) (voting).

290 (noting the "imbecility of the child" and that "an infant is not able to take care of himself"); *id.* at 451 (infants "have not discretion enough to manage their own concerns"); *id.* at 15-18 (referring to infancy as "a defect of the understanding").

In addition, "[t]he age of majority at common law was 21." *NRA*, 700 F.3d at 201. That held true in the American colonies. *See* Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 Tul. L. Rev. 55, 64 (2016) (The "American colonies . . . adopted age twenty-one as the near universal age of majority."). As a result, Founding-era parents retained substantial authority to supervise individuals under the age of 21, limiting their rights. *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting); 1 William Blackstone, *Commentaries* 441 (at the age of 21, infants were "enfranchised by arriving at the years of discretion . . . when the empire of the father . . . gives place to the empire of reason"); John Bouvier, 1 *Institutes of American Law* 148 (1851) (explaining that upon reaching the age of majority "every man is in the full enjoyment of his civil and political rights"). Parents could, for example, limit infants' right of association and reap profits from their labor. 1 William Blackstone, *Commentaries* 452-53. And infants had "no legal standing to assert a claim in court to vindicate their rights" except through their guardians. *See* Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, Yale L. & Pol'y Rev. (Oct. 26, 2021); 1 William Blackstone, *Commentaries* 464.

Notably, during the 18th century, "[c]ollege was one of the very few circumstances where minors lived outside of their parents' or a guardian's direct authority." Cornell, *Infants*, *supra*, at 15. While at college, infants retained certain rights, e.g., the right to be free of excessive punishment, but the college's staff assumed *in loco parentis* status and exercised legal power over infants. 1 William Blackstone, *Commentaries* 168 n.9; *id.* 441 ("[A father] may also delegate part of his parental authority . . . to the tutor or schoolmaster of his child; who is the *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz., that of restraint and correction."). In so doing, colleges in that time prohibited the possession of firearms by students both on and off campus. *See, e.g.*, Cornell, *Infants*, *supra*, at 15-16 (collecting authorities). To take one specific example: Both Thomas Jefferson and James Madison voted for a resolution at the University of Virginia that prohibited students from keeping or using "weapons or arms of any kind, or gunpowder" "within the precincts of the University." *University of Virginia Board of Visitors Minutes*, Encyc. VA. (1824), https://tinyurl.com/eap44tae.

Each of these data points are probative of the "historical understanding" of the scope of the Second Amendment, because, as *Heller* emphasized, the Amendment "codified a pre-existing right." *Heller*, 554 U.S. at 592. And each data point suggests that the Founding generation did not view those under 21 as falling within the Amendment's text.

2. The scope of the Second Amendment right has always allowed legislatures to disarm individuals deemed too dangerous to bear arms responsibly.

Age-based qualifications on firearm possession and carry also reflect the broader historical understanding that legislatures could disarm "certain classes of individuals from possessing firearms—those whose possession poses a particular danger to the public." *Rene E.*, 583 F.3d at 15; *see Medina v. Whitaker*, 913 F.3d 152, 159 (D.C. Cir. 2019) ("[T]hose who posed a 'real danger' . . . were proper subjects of disarmament."); *id.* at 159 ("[T]he scope of the Second Amendment was understood to exclude more than just individually identifiable dangerous individuals."); *Kanter*, 919 F.3d at 454, 456 (Barrett, J., dissenting) (detailing "historical evidence" demonstrating that those who "threatened violence" or posed a "risk of public injury" were categorically excluded from the scope of the Second Amendment right).

Prior to *Bruen*, the Supreme Court and other federal courts had already recognized that this longstanding dangerous-persons limitation to the Second Amendment justifies laws that categorically disarm certain groups—for instance, those considered mentally ill. *See Heller*, 554 U.S. at 626; *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Beers v. Att'y Gen. United States*, 927 F.3d 150, 158 (3d Cir. 2019), *vacated as moot sub nom. Beers v. Barr*, 140 S. Ct. 2758 (2020). And courts made clear that "the legislative role did not end in 1791. That *some*

categorical limits [on the Second Amendment's scope] are proper is part of the original meaning, leaving to the people's elected representatives the filling in of details." *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (emphasis in original). More recently, *Rahimi* reiterated the same principle: "[W]e do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse . . . ." *Rahimi*, 602 U.S. at 698.

The same logic that supports categorical possession bans by dangerous persons applies to legal "infants," who historically have been placed in the same category for Second Amendment purposes as others deemed too dangerous to be armed. Thomas M. Cooley, *Treatise on Constitutional Limitations* *29 (1st ed. 1868); *see* 1 Blackstone, *Commentaries* 451 (describing "infants, as well as idiots and lunatics" as "persons [who] have not discretion enough to manage their own concerns"); Stephen P. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to "Bear Arms,"* 49 Law & Contemp. Probs. 151, 161 (1986) ("[V]iolent criminals, children, and those of unsound mind may be deprived of firearms . . . .").

Indeed, individuals under the age of 21 bear certain similarities to other groups categorically prohibited from possessing firearms. As the Tenth Circuit recently observed in upholding at *Bruen* step one a restriction on the purchase of firearms by individuals under the age of 21, "compelling scientific evidence" demonstrates that

brain maturation "affecting judgment and decision-making . . . continue[s] at least until age 21." *Polis*, 121 F.4th at 126. This biological reality means that individuals under the age of 21 pose an outsized risk to the public because they are less able to regulate their emotions and are more prone to impulsive and risk-seeking behaviors. *See NRA*, 700 F.3d at 210 n.21 ("[M]odern scientific research supports the commonsense notion that 18-to-20-year-olds tend to be more impulsive than young adults aged 21 and over."); *Horsley v. Trame*, 808 F.3d 1126, 1133 (7th Cir. 2015) ("[T]he brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, [and] foresight of consequences . . . ." (citation omitted)); *Graham v. Florida*, 560 U.S. 48, 68 (2010) ("[P]arts of the brain involved in behavior control continue to mature through late adolescence.").

Specifically, "key brain systems and structures, especially those involved in self-regulation (i.e., exercising control over one's emotions, impulses, and actions) and higher-order cognition (e.g., advanced thinking abilities, including thinking ahead, planning, accurately perceiving risk, and making reasoned decisions), continue to mature . . . until at least the age of 21." *Polis*, 121 F.4th at 126 (citation omitted); *see, e.g.*, Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 453, 456 (2013); Elizabeth R. Sowell et al., *In Vivo Evidence for Post-adolescent Brain Maturation in Frontal and Striatal*

Regions, 2 Nature Neuroscience 859, 859-60 (1999). By contrast, the limbic system, which generates emotions, develops earlier, and plays a disproportionate role in the decision-making of individuals under the age of 21. *See Lara v. Comm'r Penn. State Police*, 97 F.4th 156, 164 (3d Cir. 2024) (Krause, J., dissenting from denial of rehearing en banc) (citing Arain, *supra*, at 453).

Individuals in their late teens and early 20s are therefore "less mature than adults in several significant and relevant ways," including that they are more likely to engage in "sensation seeking," and "less able . . . to control their impulses and consider the future consequence of their actions and decisions." *Polis*, 121 F.4th at 126 (citation omitted); *NRA*, 700 F.3d at 210 n.21 (compiling authorities). Their "basic cognitive abilities . . . mature before the development of emotional maturity, including the ability to exercise self-control, rein in sensation seeking, properly consider the risks and rewards of alternative courses of action, and resist coercive pressure from others." *Polis*, 121 F.4th at 126 (citation omitted). So, their tendency to be "more focused on rewards, more impulsive, and more myopic are exacerbated" when "making decisions in situations that are emotionally arousing, including those that generate negative emotions, such as fear, threat, anger or anxiety." *Id.* at 126-27 (citation omitted). At base, "young adults are both uniquely prone to negative emotional states *and* uniquely unable to moderate their emotional impulses." *Lara*,

97 F.4th at 164 (Krause, J., dissenting from denial of rehearing en banc) (citation omitted); *see NRA*, 700 F.3d at 210 n.21.

Case in point: the occurrence of at least four categories of "risk-taking behaviors" "peak" in the late teens and early 20s—violent crime, suicidal ideation and attempted suicide, deliberate self-injury, and binge drinking. *Polis*, 121 F.4th at 127; *see NRA*, 700 F.3d at 210 n.21 (compiling authorities); Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category*, 85 Fordham L. Rev. 641, 645 (2016) ("[E]ighteen-to-twenty-one-year-olds . . . engage in risk-taking behavior (including involvement in criminal activity) at a higher rate than older adults."); Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 Developmental Neuroscience 220 (2014) (similar). To underscore the issue, in 2019, 18- to 20-year-olds accounted for over 15% of arrests for homicide and manslaughter even though they comprise less than 4% of the nation's population. *See* U.S. Dep't of Just., Crime in the United States, Arrests, by Age, 2019, tinyurl.com/3ypxpau7; *Lara*, 97 F.4th at 163 (Krause, J., dissenting from denial of rehearing en banc) (collecting additional authorities).

Access to firearms only exacerbates the risk of these behaviors. For example, "[f]irearms [are] used in more than half of all suicide attempts," and "[i]ntoxication is a particularly significant contributing factor to homicide and physical assault at all ages, especially in incidents . . . involving firearms." *Polis*, 121 F.4th 127

(citation omitted). It therefore makes good sense that legislatures would—and have—chosen to categorically prohibit possession and carry of firearms by individuals under the age of 21. Like prohibitions on possession by dangerous persons, this categorical disarmament is similarly supported by the historical understanding of the scope of the right.

3. Leyton's arguments to the contrary lack merit.

Leyton's arguments to the contrary fail to persuade. *First*, Leyton contends that it should be "obvious" that the Second Amendment extends to 20-year-olds because other constitutional amendments, including the First and Fourth Amendments, protect individuals under the age of 21. Leyton Br. 16-17.

But the Supreme Court has repeatedly emphasized that age may impact the scope of constitutional rights. Specifically, it has cautioned that "the constitutional rights of children cannot be equated with those of adults" because of children's "peculiar vulnerability" and "their inability to make critical decisions in an informed, mature manner." *Bellotti v. Baird*, 443 U.S. 622, 634 (1979). In the First Amendment context, for example, the court has noted that "[i]t is well settled" that the government "can adopt more stringent controls on communicative materials available to youths than on those available to adults." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975). And in the Fourth Amendment context, the Court has underscored that the government may prohibit conduct in schools "that

would be perfectly permissible if undertaken by an adult." *New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985). In other contexts too, the Supreme Court has clarified that age impacts a court's assessment of constitutionality. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (holding that a mandatory sentence of life without parole for juvenile offenders violates the Eighth Amendment); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-73 (2011) (holding that age informs the *Miranda* custody analysis); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (recognizing a right to sexual autonomy, but excluding "minors" from consideration).

Leyton's argument also proves too much. For instance, the First Amendment and Fourth Amendment apply to all individuals, including those under 18. *See, e.g.*, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (free speech); *W. Va. State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (free exercise); *T.L.O.*, 469 U.S. at 334 (unreasonable searches and seizures). If the Second Amendment had precisely the same contours as the First and Fourth Amendments, it would likewise apply to individuals below the age of 18—yet no one in this case has argued as much (nor, to the District's knowledge, has any court held as much). Surely, for example, the Second Amendment would not protect a first-grader's ability to carry a gun. The First and Fourth Amendments also protect violent felons and the mentally ill, but the Second Amendment right does not apply to them.

It is therefore a mistake to assume perfect congruity between different constitutional amendments. In fact, the Fifth Circuit has described the Second Amendment as enshrining an "affirmative right"—as compared to a "protective right" like the Fourth Amendment right to be free from unreasonable searches—which, in its view, justifies the Second Amendment's "exten[sion] to fewer groups." *United States v. Portillo-Munoz*, 643 F.3d 437, 441 (5th Cir. 2011) (concluding that the Second Amendment does not protect undocumented immigrants). An affirmative right grants individuals discretion to exercise that right, and historically, those under 21 were viewed as "want[ing] [of] prudence" and therefore incapable of exercising a panoply of rights. Nat'l Archives, *supra*, at 18.

Second, Leyton emphasizes that, regardless of Founding-era views about the age of majority, today, 18-year-olds are considered adults and therefore should enjoy Second Amendment rights. Leyton Br. 19-20; Leyton Reply Br. 8. But setting the age of majority at 18 is a new concept in American law. *See NRA*, 700 F.3d 204 n.17. And Leyton does not explain why modern conceptions of the age of majority are an appropriate proxy for the "historical understanding" of the Second Amendment. *Bruen*, 597 U.S. at 26. Indeed, if anything, age limits are best understood as a proxy for dangerousness or lack of judgment, and modern brain science confirms that the historic conception of 20-year-olds as impulsive remains correct today. *See supra* at 21-25.

Further, "'majority or minority is a status,' not a 'fixed or vested right.'" *NRA*, 700 F.3d at 204 n.17 (citation omitted). "There is no legal requirement that the same age of majority apply to all activities and circumstances, and statutes setting different ages at which a person may engage in an activity . . . are within the province of the legislature." 42 Am. Jr. 2d Infants § 6 (2d ed. 2024). "The terms 'majority' and 'minority'" therefore "lack content without reference to the right at issue." *NRA*, 700 F.3d at 204 n.17. For example, "[s]eventeen-year-olds may not vote or serve in the military . . . [and] [t]wenty-year-olds may not purchase alcohol . . . ." *Id.*

Third, Leyton asserts a third argument in his reply brief: that service of individuals under 21 in Founding-era militias suggests those individuals enjoyed Second Amendment rights. True, the Militia Act of 1792 provided that "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (*except as is herein after excepted*) shall severally and respectively be enrolled in the militia . . . ." Act of May 8, 1792, ch. 33, 1 Stat. 271 (emphasis added). Leyton argues that the Act is "compelling evidence of the Founders' understanding of the age range of the militia" and that the Second Amendment therefore must extend to 20-year-olds because the "militia in colonial America consisted of a subset" of those individuals falling within the historical scope of the Second Amendment right. Leyton Reply Br. 5-6 (quoting *Heller*, 554 U.S. at 650).

That conclusion does not follow for a number of reasons. First, as *Heller* made clear, the Second Amendment "protect[s] an individual right unconnected with militia service." *Heller*, 554 U.S. at 605; *see id.* at 589-94. Thus, as a matter of first principles, "the right to arms is not co-extensive with the duty to serve in the militia." *NRA*, 700 F.3d at 204 n.17; *see Lara v. Comm'r Penn. State Police*, 91 F.4th 122, 137 (3d Cir. 2024) ("[A] duty to possess guns in a militia or National Guard setting is distinguishable from a right to bear arms unconnected to such service."), *cert. granted, judgment vacated sub nom. Paris v. Lara*, 2024 WL 4486348 (U.S. Oct. 15, 2024) (Mem.); *see also NRA v. Bondi*, 61 F.4th 1317, 1331 (11th Cir. 2023) (explaining that the "historical record shows that merely being part of the militia" does not establish an entitlement to Second Amendment rights for "18-to-20 year olds"), *vacated and rehearing en banc granted*, 72 F.4th 1346 (11th Cir. 2023). "In the Anglo-American legal tradition, rights are the correlatives of duties, they are not synonyms." Megan Walsh & Saul Cornell, *Age Restrictions & The Right to Keep and Bear Arms, 1791-1868*, 108 Minn. L. Rev. 3049, 3075 (2024). Put another way, if a child has a *duty* to wash the dishes each night, that does not create a corresponding *entitlement* to wield a sponge if they turn out to be terrible at it. As the Tennessee Supreme Court expressly recognized in 1878, not "every citizen who is subject to military duty has the right 'to keep and bear arms.'" *State v. Callicutt*, 69 Tenn. 714, 716 (1878).

Further, militia service historically was a matter of legislative discretion—not a reflection of one's free-standing entitlement to Second Amendment rights. Specifically, the Militia Act of 1792 granted States discretion to exclude individuals from militias, including "minors" "between the ages of eighteen and twenty-one." *See* Act of May 8, 1792, ch. 33, 1 Stat. 271-72; *see also In re Opinion of the Justices*, 39 Mass. (22 Pick.) 571, 576 (1838) (affirming states' ability to make age-based exemptions from militia service).

Founding-era militias also enrolled people not considered at the Founding to possess Second Amendment rights. For example, Black Americans served in state militias but were barred from possessing firearms at other times. *See* Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 Geo. L.J. 309, 331-32, 336-38 (1991). Separately, Virginia prohibited individuals who refused to swear a loyalty oath from bearing arms, but still required them to enroll in the militia without arms.[6]

And once again, if Leyton were correct and the duty to serve in the militia evidenced a right to bear arms, his argument "proves too much." *NRA*, 700 F.3d at

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[6] *See* An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age to Give Assurance of Allegiances to the Same, and for Other Purposes, ch. 3 (1777), *in* 9 Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619, at 281 (William W. Hening ed., 1821).

204 n.17. Some colonies obligated 16-year-olds to serve in the militia, while other colonies had fluctuating age minimums that fell below 18 or rose to 21 based on military need and strategy. *Id.* (collecting authorities). The minimum age range for militia service in Virginia and New Jersey, for example, fluctuated from 16 to 21 based on the exigencies of the era.[7] Yet Leyton does not claim that the Second Amendment should extend to individuals below the age of 18. Leyton suggests that these are "cherry-pick[ed]" examples and that "by the end of the eighteenth century, the militia mandate had been narrowed in most states to 18 until 45 or 50." Leyton Reply Br. 5 n.5. But what matters is that legislatures *could*—and did—make exceptions.

Further, as a practical matter, service by those under 21 in Founding-era militias occurred with the support of parents or guardians and under close supervision of adults. That service bore no resemblance to a free-standing right to keep and bear arms. For example, to serve in some militias, infants needed permission from a guardian or parent. Pennsylvania's 1755 militia draft stated that

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[7] *E.g.*, *NRA*, 700 F.3d at 204 n.17 (citing New York (1778), New Jersey (1777 and 1779), and Ohio (1843) laws); *see* Record Excerpts, *NRA*, 700 F.3d 195 (5th Cir. 2012) (No. 11-10959), ECF 36-1 at 50-53 (collecting additional early New Jersey and Virginia laws ranging from 1705 to 1784); *see also id.* at 44-46 (collecting additional laws enrolling individuals over 21 in their militias, or exempting those under 21 during certain periods, including Delaware (1807), Georgia (1861), Kansas (1859), New Jersey (1829), North Carolina (1868), Ohio (1843), and Pennsylvania (1793 and 1864) laws, which enrolled only individuals over 21 in their militias).

"no [y]outh, under the [a]ge of [t]wenty-one [y]ears, . . . shall be admitted to enroll himself . . . without the [c]onsent of his or their [p]arents or [g]uardians, [m]asters or [m]istresses, in [w]riting . . . ." *Militia Act*, *[25 November 1755]*, Nat'l Archives, tinyurl.com/5bed3fea. Michigan, Missouri, and New York had similar laws requiring parental consent.[8] In some states, infants' guardians were also expected to purchase mandated equipment for them—suggesting minors could not otherwise obtain firearms.[9] During the Congressional debates on the 1792 Militia Act, Representative John Vining asked "by what means minors were to provide themselves with the requisite articles?" 2 Annals of Cong. 1854-55 (1790). Representative Jeremiah Wadsworth responded that they would be provided arms by "their parents or guardians." *Id.*

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[8] *See* An Act for the Reorganization of the Military Forces of the State of Michigan, tit. 7, ch. 28, § 6, *in* James S. Dewey, ed., 1 The Compiled Laws of the State of Michigan 317, 320 (1872); An Act to Organise, Govern, and Discipline the Militia, art. 4, § 22, *in* 2 Laws of a Public and General Nature of the State of Missouri 512, 521 (1842); An Act to organize the Militia, ch. 222, § 33 (1818), N.Y. Laws 210, 225.

[9] *See, e.g.*, Act of Mar. 6, 1810, ch. 107, § 28, 1810 Mass. Acts 151, 176; Act of Dec. 22, 1820, ch. 36, § 46, 1820 N.H. Laws 287, 321; 2 *The Code of North Carolina* ch. 35, § 3168, 346-47 (William T. Dortch, John Manning, & John S. Henderson eds., 1883); An Act to organize, govern, and discipline the Militia of this State, ch. 164, § 34, 1821 Me. Laws 687, 716; Act of July 4, 1825, ch. 1, § 24, 1825 Mo. Laws 533, 554; *see also* Cornell, *Infants*, *supra*, at 17, 25-26 (collecting additional authorities).

Critically, wielding firearms after receiving military training and under the close supervision of officers is worlds apart from granting a 20-year-old license to possess and carry a firearm without ongoing supervision. After all, a "well regulated" militia implies "proper discipline and training." *Heller*, 554 U.S. at 97. And at the Founding, when infants did serve in the militia, they did so only under the supervision of officers, who like those acting *in loco parentis*, assumed the responsibilities of care and supervision normally borne by an infants' parents or guardian. *See* Nicholas J. Johnson et al., *Firearms Law and the Second Amendment* 243, 251 (2022); *see also* 1 William Blackstone, *Commentaries* 441 (describing *in loco parentis* status as "the power . . . of re[s]traint and correction").

B. The District's age restrictions are consistent with the Nation's historical tradition of firearm regulation.

Even if this Court disagrees with the District at *Bruen* step one and decides that 20-year-olds fall within the scope of the Second Amendment's text as historically understood, the District's age qualifications are consistent with the nation's historical tradition of firearm regulation under *Bruen* step two. *See generally* 597 U.S. at 24. From before the Founding through Reconstruction, abundant historical evidence confirms that legislatures have long exercised the power to prohibit arms-carrying by those "whose possession of guns would otherwise threaten the public safety," *Kanter*, 919 F.3d at 454 (Barrett, J.,

dissenting), including minors. The challenged laws are relevantly similar to these historical analogues.

1. There is an established American tradition of restricting access to arms by those persons deemed dangerous.

Restrictions on arms carrying by dangerous persons predate the Founding. Since the earliest English recognition of the right to bear arms, the government has possessed the authority to disarm those thought to be dangerous. "In England, officers of the Crown had the power to disarm anyone they judged to be 'dangerous to the Peace of the Kingdom.'" *Kanter*, 919 F.3d at 456 (Barrett, J., dissenting) (quoting Militia Act of 1662, 13 & 14 Car. 2, c. 3, § 13 (1662)); *Rahimi*, 602 U.S. 693-94. And "English common law punish[ed] people who [went] armed to terrify the King's subjects with imprisonment and forfeiture of their "'armour.'" *Kanter*, 919 F. 3d at 456-57 (citing *Sir John Knight's Case*, 87 Eng. Rep. 75, 76 (K.B. 1686)) (alterations in original).

For example, after the English Civil War, nonconformist Protestants were categorically disarmed because they refused to participate in the Church of England or swear an oath affirming the King's religious authority and were therefore deemed unfit to follow the law.[10] Even when their rights were restored, the English Bill of

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[10] *See* Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 45 (1994) (describing the disarmament of "religious dissenters"); Frederick B. Jonassen, *"So Help Me?": Religious Expression and Artifacts in the*

Rights made clear that "Protestants, may have Arms for their Defence suitable to their Conditions, and *as allowed by Law*"—underscoring that the legislature retained discretion to categorically disarm classes of people. *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*, 1 W. & M., Sess. 2, ch. 2, § 7 (Eng. 1689) (emphasis added). Parliament also disarmed Catholics who refused to disavow their faith, *An Act for the Better Securing the Government by Disarming Papists and Reputed Papists*, 1 W. & M., Sess. 1, ch. 15 (1688); *Rahimi*, 602 U.S. at 693-94, because they were considered "liable to violence against the king," *Kanter*, 919 F.3d at 457 (Barrett, J., dissenting) (citation omitted).

Indeed, the "same concern" in England over dangerous persons' access to firearms crossed the Atlantic and animated "early American restrictions on arms possession." *Kanter*, 919 F.3d at 456 (Barrett, J., dissenting). In colonial America, legislatures disarmed many categories of individuals deemed dangerous if armed: Native Americans, enslaved persons, religious minorities, and individuals who refused to declare an oath of loyalty. *See Kanter*, 919 F.3d at 457-58 (Barrett, J., dissenting); Clayton E. Cramer, *Armed America: The Story of How and Why Guns Became as American as Apple Pie* 31, 43 (2006). For example, Puritans were

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Oath of Office and the Courtroom Oath, 12 Cardozo Pub. L., Pol'y & Ethics J. 303, 322 (2014) (describing the Oath of Supremacy); Caroline Robbins, *Selden's Pills: State Oaths in England, 1558-1714*, 35 Huntington Lib. Q. 303, 314-15 (1972) (discussing nonconformists' refusal to take such oaths).

disarmed, *see* Charles Campbell, *History of the Colony and Ancient Dominion of Virginia* 212 (1860), as were Catholics, who were deemed "distrusted inhabitants." *See Kanter*, 919 F.3d at 457 (Barrett, J., dissenting) (collecting authorities).[11] These status-based prohibitions—some of which would, of course, be unconscionable today—nevertheless show that "founding-era legislatures categorically disarmed groups whom they judged to be a threat to public safety." *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting); *see Rahimi*, 602 U.S. at 697-98.

States also disarmed those who refused to recognize American independence or swear loyalty to their state because those individuals posed a unique danger to the colonies.[12] Pennsylvania, for example, disarmed those who would not swear to "be faithful and bear true allegiance to . . . Pennsylvania as a free and independent state." Act of June 13, 1777, § 1 (1777), *in* 9 Statutes at Large of Pennsylvania from 1652 to 1801 110, 111-13 (William Stanley Ray ed., 1903). It did so even though Pennsylvania's 1776 constitution expressly protected the right to bear arms. *See*

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[11] *See also* Shona Helen Johnston, *Papists in a Protestant World: The Catholic Anglo-Atlantic in the Seventeenth Century* 219-20 (May 11, 2011) (Ph.D. dissertation, Georgetown University) (on file with the Georgetown University Library); Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 263 (2020).

[12] *See* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 158 (2007); An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age to Give Assurance of Allegiances to the Same, and for Other Purposes ch. III (1777), *in* 9 Hening 281 (1821).

Saul Cornell, *"Don't Know Much About History": The Current Crisis in Second Amendment Scholarship*, 29 N. Ky. L. Rev. 657, 670-71 (2002). And other states had the same practice. North Carolina, for example, disarmed those who "fail[ed] or refuse[ed] to take the Oath of Allegiance." Act of 1777, ch. 6, §§ 8-9, 24, The State Records of North Carolina 88 89 (Walter Clark ed., 1905).

Further, during the ratification debates, the Founders expressly contemplated categorical disarmament of dangerous classes of people. A 1787 proposal before the Pennsylvania ratifying convention—considered by *Heller* to be a "highly influential" precursor to the Second Amendment, 554 U.S. at 604—proposed that "the people have a right to bear arms . . . and no law shall be passed for disarming the people or any of them unless for . . . *real danger of public injury from individuals*." 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 665 (1971) (emphasis added). Samuel Adams, moreover, proposed "that the said Constitution be never construed to authorize Congress to . . . prevent the people of the United States, *who are peaceable citizens*, from keeping their own arms." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) (emphasis added). At the time, "peaceable" meant "[f]ree from war; free from tumult"; "[q]uiet; undisturbed"; "[n]ot violent; not bloody"; "[n]ot quarrelsome; not turbulent." 1 Samuel Johnson, A Dictionary of the English Language (5th ed. 1773). Further, William Rawle, "a prominent lawyer who had been a member of the Pennsylvania Assembly that

ratified the Bill of Rights," *Heller*, 554 U.S. at 607, noted that while the Second Amendment "restrained the power of Congress to 'disarm the people,' the right to keep and bear arms nonetheless 'ought not, . . . be abused to the disturbance of the public peace.'" *NRA*, 700 F.3d at 201 n.12 (citation omitted). At a minimum, these proposals and statements from members of the Founding generation "indicate[d] some common if imprecise understanding at the Founding regarding the boundaries of a right to keep and bear arms"—namely, that the dangerous could be disarmed. *Kanter*, 919 F.3d at 455 (Barrett, J., dissenting) (citation omitted).

In this tradition, within a few decades of the Founding, state authorities deemed another group ill-suited for arms bearing: minors. These firearm regulations were fully consistent with the Founding-era treatment of those under 21 as "infants" who "want prudence" and, having "no will of their own," are unable to exercise a full suite of rights and are in need of close supervision by adults. *See James Madison's Notes of the Constitutional Convention*, *supra*; *see also* Part II.A.1, *supra*.

As discussed, public, state-run universities acted first, prohibiting students from keeping firearms on—and sometimes off—campus. *See Bondi*, 61 F.4th at 1327 & nn.17-18 (citing an 1810 resolution from the University of Georgia, an 1824 resolution from the University of Virginia, and an 1838 resolution from the University of North Carolina); *see also supra* at 19. These institutional restrictions

formed the backdrop for a broader state effort to disarm minors in the decades surrounding the passage of the Fourteenth Amendment.

By the close of the 19th century, at least "nineteen States and the District of Columbia had enacted laws . . . restricting the ability of persons under 21 to purchase or use particular firearms," some with carveouts for parental permission. *NRA*, 700 F.3d at 202 & n.14. For instance, as early as 1856, Alabama forbade providing "to any male minor" any "air gun or pistol." 1856 Ala. Acts 17. Two years later, Tennessee codified a similar law prohibiting selling, loaning, giving, or delivering "to any minor a pistol, bowie-knife, dirk, Arkansas tooth-pick, hunter's knife, or like dangerous weapon, except a gun for hunting or weapon for defence in traveling." Tenn. Code § 4864 (1858), *in* 1 The Code of Tennessee Enacted by the General Assembly of 1857-8, at 871 (Return J. Meigs & William F. Cooper eds., 1858). Within a year, a similar law was on the books in Kentucky. *See* 1859 Ky. Acts 245, § 23. A flurry of similar regulations soon followed—even in states with Second Amendment analogues in their respective constitutions. *See NRA*, 700 F.3d at 202 & n.14 (collecting statutes); *see also Rene E.*, 583 F.3d at 14 (same). By 1923, 23 jurisdictions had set 21 as the "minimum age for the purchase or use of particular firearms." *NRA*, 700 F.3d at 202 & n.15 (collecting statutes).

Reconstruction-era courts and commentators approved of these restrictions. Thomas Cooley, a highly regarded judge and legal scholar cited in *Heller*, opined

"[t]hat the State may prohibit the sale of arms to minors." *NRA*, 700 F.3d at 203 (citing Thomas M. Cooley, *Treatise on Constitutional Limitations* 740 n.4 (5th ed. 1883)); *see Heller*, 554 U.S. at 616-17 (treating Cooley's interpretation of the Second Amendment as persuasive authority). He contended as much despite simultaneously "acknowledg[ing] that the 'federal and State constitutions provide that the right of the people to bear arms shall not be infringed.'" *NRA*, 700 F.3d at 203 (citing Cooley, *supra*, at 429). Likewise, in 1878, the Tennessee Supreme Court upheld that state's restriction on the sale of pistols to those aged 21 and under. *See Callicutt*, 69 Tenn. at 716-17 (holding that the challenged law "do[es] not in fact abridge[] the constitutional right of the 'citizens of the State to keep and bear arms for their common defense,'" and that "acts to prevent the sale" of "a pistol or other like dangerous weapon to a minor" were "not only constitutional as tending to prevent crime[,] but wise and salutary in all [their] provisions").

Moreover, contrary to PDS's suggestion, PDS Br. 18-19, courts upheld state statutes prohibiting the transfer of deadly weapons to juveniles during this time. *See, e.g.*, *State v. Allen*, 94 Ind. 441, 442 (1884) (reversing dismissal of indictment for "unlawfully . . . trad[ing] to . . . a minor under the age of twenty-one years, a certain deadly and dangerous weapon, to wit: a pistol, commonly called a revolver"); *Coleman v. State*, 32 Ala. 581, 582 (1858) (upholding conviction under statute "mak[ing] it a misdemeanor to 'sell, or give, or lend, to any male minor,' a pistol").

Courts in the early 20th century similarly upheld statutes banning the possession of handguns by juveniles against federal or state constitutional challenges. *See, e.g.*, *Glenn v. State*, 72 S.E. 927 (Ga. Ct. App. 1911) (upholding a 1910 ban on juvenile possession of handguns); *Biffer v. City of Chicago*, 116 N.E. 182, 184-85 (Ill. 1917) (upholding a Chicago ordinance that denied concealable-weapons permits to minors); *Parman v. Lemmon*, 244 P. 227, 228, 231 (Kan. 1925) (rejecting a constitutional challenge to a state law prohibiting both the sale and possession of "dangerous weapons to minors," including "pistol[s], revolver[s], or toy pistol[s]").

Finally, in a testament to the strength and continuity of this historical tradition, today at least 15 jurisdictions prohibit those under the age of 21 from "carrying certain firearms in public at all (subject, in some States, to exceptions)," an additional 19 states "prohibit people under the age of 21 from carrying certain firearms in public in a concealed manner," and some states prohibit those under the age of 21 from possessing firearms at all. *See* Brief of Amici Curiae Illinois et al., *Lara*, 91 F.4th 122 (3d Cir. 2024) (No. 21-1832), 2024 WL 885444, at *4-6 & nn.1-4 (cataloguing at least 35 states with regulations restricting access to, or limiting ability to carry, firearms). And critically, federal law has long prohibited those under 21 from purchasing handguns or ammunition from federal firearms licensees. *See* 18 U.S.C. § 922(b)(1), (c)(1); *Rene E.*, 583 F.3d at 13 (detailing this history). The Supreme Court has called those regulations "presumptively lawful," *Heller*, 554

U.S. at 626-27 & n.26, and left them undisturbed in *Bruen*, 597 U.S. at 73 (Alito, J., concurring).

Leyton has no meaningful response to this longstanding history and tradition, except to assert that the government may carry its burden at step two only by identifying historical analogues from "immediately before or after the adoption of the Bill of Rights." Leyton Br. 20-21; *see* Leyton Reply Br. 13 (similar); PDS Br. 17-18. That argument lacks merit for several reasons. First, Leyton ignores that, because the scope of the Second Amendment is the same as applied to states and to the federal government, this Court is not constrained to examine only Founding-era history, and history from the period before and after the ratification of the Fourteenth Amendment is illuminating. *See Bruen*, 597 U.S. at 20 (explaining that "examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification [is] a critical tool of constitutional interpretation" (quoting *Heller*, 554 U.S. at 605)); PDS Br. 4-5 (acknowledging the relevance of history from 1791 through the end of the 19th century).[13] Indeed, the Supreme Court has previously considered not only 18th-

[13] The Court in *Bruen* and *Rahimi* acknowledged and declined to settle an "ongoing scholarly debate" about whether courts should *primarily* rely on the prevailing understanding of the Second Amendment in 1868, when the Bill of Rights was made applicable against the States, or in 1791, when the Bill of Rights was adopted. *Bruen*, 597 U.S. at 37 (majority opinion); *Rahimi*, 602 U.S. at 692 n.1.

century analogues, but also "[e]vidence from around the adoption of the Fourteenth Amendment," *Bruen*, 597 U.S. at 61, and Reconstruction-era sources, *see, e.g.*, *McDonald*, 561 U.S. at 777 (analyzing the views of "the Framers and ratifiers of the Fourteenth Amendment"); *Heller*, 554 U.S. at 605 (considering historical evidence "through the end of the 19th century").

Further, as *Heller* emphasized, 19th-century evidence is a "critical tool of constitutional interpretation." 554 U.S. at 605. And, generally, "post-ratification history" is "a proper tool to discern constitutional meaning." *Rahimi*, 602 U.S. at 726 (Kavanaugh, J., concurring); *see id.* at 738 (Barrett, J., concurring) (similar). "[T]he Framers themselves intended that post-ratification history would shed light on the meaning of vague constitutional text." *Id.* at 725 (Kavanaugh, J., concurring). And courts routinely rely on post-ratification history to ascertain constitutional meaning. *Id.* at 727-28 (Kavanaugh, J., concurring) (compiling examples).

Here, as in *Bruen*, the scope of the right in 1868 and 1791 is, "for all relevant purposes, the same." *Bruen*, 597 U.S. at 38. So there is no need to address which time period controls. Whatever the relevant time period, the Supreme Court has rejected the notion that the scope of the Second Amendment differs as between the federal government, the District, and the states. *Id.* at 37 ("[I]ndividual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government."). *But cf. Ward*, 318 A.3d at 526 n.6 (noting in dicta that the "scholarly debate" is not relevant to the District because it is treated as part of the sovereign United States).

2. The challenged laws are relevantly similar to their historical precursors.

The District's challenged laws are fully in line with historical, categorical disarmament prohibitions, which have included laws ranging from the Founding-era disarmament provisions to the "presumptively lawful" statutes disarming felons and the mentally ill—and which of course include the disarmament of those under 21 beginning in the mid-19th century. *Heller*, 554 U.S. at 626-27 & n.26; *see NRA*, 700 F.3d at 200-02 (surveying Founding-era regulations of firearms based on risk of danger and concluding that the Founders "would have supported" limiting or banning ownership of firearms by minors); *accord Rene E.*, 583 F.3d at 15.

To begin, the Supreme Court has emphasized that analogues need not be a "dead ringer" or a "historical twin." *Bruen*, 597 U.S. at 30. Instead, they need only be consonant with the "principles" that the historical tradition "represent[s]." *Rahimi*, 602 U.S. at 692, 698; *see* Part I, *supra*. In *Rahimi*, for example, the Supreme Court held that the federal prohibition on firearm possession by individuals subject to a domestic violence restraining order "fit neatly" within the "tradition" that "surety and going armed laws represent" when "[t]aken together," 602 U.S. at 693-700, despite, as Leyton concedes, "significant differences" between these historical analogues and the challenged law, Leyton Reply 17; *see Rahimi*, 602 U.S. at 763-74, 768-70 (Thomas, J., dissenting) (detailing these differences). Moreover, "the absence of a distinctly similar historical regulation . . . can only prove so much."

Antonyuk, 120 F.4th at 969. "Legislatures past and present have not generally legislated to their constitutional limits," so courts should be cautious about "[r]easoning from historical silence." *Id.*; *see Bianchi*, 111 F.4th at 462 ("[T]he arc of weapons regulation in our nation has mimicked a call and response composition, in which society laments [a] harm . . . and the state, pursuant to its police power, legislates in kind.").

With this framing in mind, the District's laws are "distinctly similar" to the nation's historical tradition of firearm regulation. *Bruen*, 597 U.S. at 26. They utilize the same mechanism—a categorial restriction—to impose the same burden out of an identical concern with "groups . . . judged to be a threat to the public safety" when armed. *Kanter*, 919 F.3d at 458 (Barrett, J., dissenting). And the Distict's registration law in particular operates similarly to, and in line with, historical norms on parental supervision. *See* Part II.A.1, *supra*.

The District's age restrictions are especially in lockstep with the historical tradition of limiting the rights of "infants" because of their "defect of . . . understanding," 1 Blackstone, *Commentaries* 15-18, and parents' concomitant retention of "complete authority" to supervise infants, *Brown*, 564 U.S. at 834 (Thomas, J., dissenting). At the Founding, it was only at the age of 21, when the "empire of the father" "g[a]ve[] place to the empire of reason," that "infants" were "enfranchised" with a fully panoply of rights. 1 Blackstone, *Commentaries*

441. The challenged laws are similarly attuned to the shortcomings of adolescence and the virtues of parental supervision: providing for the registration of firearms by 18- to 20-year-olds with parental consent and assumption of civil liability. D.C. Code. § 7-2502.03(a)(1).

Indeed, the District enacted its registration requirements to ensure firearms are possessed only by "demonstrably responsible types of persons," D.C. Council, Report on Bill 1-164 at 24-25 (Apr. 21, 1976), *reprinted in Firearms Control Regulations Act of 1975 (Council Act No. 1-142): Hearing on H. Con. Res. 694 Before the H. Comm. on the District of Columbia*, 94th Cong. 24 (1976), tinyurl.com/45sxkewy, and not by anyone who "indicate[s] a susceptibility . . . to use any firearm in a manner which would be dangerous to themselves or to other persons," *id.* at 34-36; *see also* D.C. Law 1-85, § 2(3) (summarizing the FCRA's purpose as "assur[ing] that only qualified persons are allowed to possess firearms"). The District's licensing requirements likewise were put in place to ensure "licensees are presumably safe people." Council of the District of Columbia, Committee on the Judiciary & Public Safety, Committee Report on Bill 20-930, "License to Carry a Pistol Amendment Act of 2014," at 17 (Nov. 25, 2014) ("Nov. Report"), tinyurl.com/yc2rx6jn; Council of the District of Columbia, Committee of the Whole, Committee Report on Bill 20-930, "License to Carry a Pistol Amendment Act of 2014," at 2 (Dec. 2, 2014) ("Dec. Report"), tinyurl.com/yc2rx6jn (describing

licensing requirements as necessary "to minimize the likelihood that a person who is legally authorized to carry a handgun will cause injury to another").

In setting a minimum age for registration, the Council expressed particular concern about "spontaneous violence . . . generated by anger, passion or intoxication." Report on Bill 1-164 at 25-26 (citation omitted). As discussed, contemporary research has underscored the prescience of that concern—individuals below the age of 21 are more impulsive, less able to accurately perceive risk, and less able to "resist coercive pressure." *Polis*, 121 F.4th at 126; *see supra* at 22-24. "[Y]outh is more than a chronological fact"; "[i]t is a time and condition of life," *Gall v. United States*, 552 U.S. 38, 58 (2007) (citation omitted), where one is more likely, as a categorical matter, to pose a risk of danger.

The Council's particular concern for pistol possession by juveniles is borne out by contemporary crime statistics, as well. Report on Bill 1-164 at 25-26. "[Y]outh under 21 commit violent gun crimes at a far disproportionate rate." *Lara*, 97 F.4th at 163-64 (Krause, J., dissenting from denial of rehearing en banc) (compiling statistics). 18- to 20-year-olds exhibit the highest rate of homicide, committing murder using firearms three times more often than individuals over the age of 21. *Id.* (collecting authorities). And "at least one in eight victims of mass shootings from 1992 to 2018 were killed by an 18 to 20-year-old." *Id.* at 164 (citation omitted).

The justification for the District's age-related restrictions are all the more convincing given the "unprecedented social concerns" posed today by minors' possession of easily concealable firearms that have enhanced firepower—"dramatic technological changes" unimaginable at the Founding. *Bruen*, 597 U.S. at 27 (applying a "nuanced approach" to analogical reasoning). Over the course of the 19th century, the nation's population exploded and rapidly urbanized. *See* Alexander von Hoffman & John Felkner, *The Historical Origins and Causes of Urban Decentralization in the United States* 6-7, Joint Ctr. for Housing Studies, Harvard Univ. (Jan. 2002), tinyurl.com/bdzzn4kv; *Antonyuk*, 120 F.4th at 992. Gun-facilitated crime rose in the increasingly dense cities, while advances in firearms technology produced smaller and deadlier weapons. *See* Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 133 Yale L.J. 99, 152-55 (2023); *Antonyuk*, 120 F.4th at 992-93 (describing "the increased lethality of firearms in the latter decades of the nineteenth century"). Conversely, "interpersonal gun violence 'was not a problem in the Founding era that warranted much attention,' in large part" because of firearms' technological limitations at the time. *Lara*, 97 F.4th at 162 (Krause, J., dissenting from denial of rehearing en banc) (citation omitted)). Indeed, while "[m]any early Americans owned a musket or fowling piece," these firearms "were prone to misfiring and needed to be reloaded after each shot." *Bianchi*, 111 F.4th at 464. At base, "[g]uns were so difficult to fire

in the eighteenth century that the very idea of being accidentally killed by one was itself hard to conceive." *Antonyuk*, 120 F.4th at 993 n.45 (citation omitted).

Faced with these new realities, by the mid-19th century, the American public demanded reasonable firearm regulations, including for the "young men" who had "adopted the pernicious habit of going armed." *The Sale of Deadly Weapons*, N.Y. Times, May 29, 1873, at 4, tinyurl.com/6cp6urmu. Many of these laws took the form of restrictions on firearm sales to minors because, in the mid-19th century, it was considered "idle . . . to prohibit the wearing of pistols by statute," as "such a regulation would be obeyed only by the law-abiding community." *Id.* PDS is thus mistaken that restrictions on *sales* to 18-to-20-year olds are irrelevant. *See* PDS Br. 20-21. Notably, Leyton and PDS nowhere suggest that states opted for sales restrictions because they believed that prohibitions on possession or carriage were unconstitutional. Rather, jurisdictions simply had differing policy views on what kind of regulation would be most effective at keeping guns away from minors. Accordingly, legislatures experimented, as the Supreme Court made clear they are free to do, *McDonald*, 561 U.S. at 783, 785: some banned all firearm transfers to minors, *see, e.g.*, Tenn. Code § 4864 (1858), *in* 1 Meigs & Cooper 871 (1858), while others banned both transfers and possession, *see, e.g.*, 1883 Kan. Sess. Laws 159; *see generally NRA*, 700 F.3d at 202 & n.14 (collecting statutes). In all events, the goal was to ensure that "guns may fall as nearly as possible only into proper hands,"

and to "avoid the horrible spectacle of children . . . going about the streets armed like bravoes, and turning to murder as lightly and swiftly as any childish pastime." *The Sale of Deadly Weapons*, *supra*; *see Rene E.*, 583 F.3d at 13.

The District's laws also target the risk of self-harm among young Americans. The laws are grounded on particular concerns about "danger[] to" self, Report on Bill 1-164 at 34-36, and "suicides by firearms," Nov. Report at 18; *see* Dec. Report at 4. That concern has become a modern-day crisis. The rate of suicide among those 10 to 24 has "increased almost every year since 2007." *The Rise of Firearm Suicide Among Young Americans*, Everytown (June 2, 2022), tinyurl.com/254hmbr3; *see* Andrew Solomon, *Has Social Media Fuelled A Teen-Suicide Crisis?*, The New Yorker (Sept. 30, 2024), tinyurl.com/ym6hnnrw (detailing rise in rate of suicide). And the rate of firearm suicide for those aged 10 to 24 has increased by an alarming 53% over the past ten years alone. *The Rise of Firearm Suicide*, *supra*. "[T]hese are not our forebears' calamities." *Bianchi*, 111 F.4th at 464. Nevertheless, compared to our Nation's historical tradition, the District's laws are comparably justified, impose no more than a comparable burden, and should therefore be upheld.

CONCLUSION

The Court should reject Leyton's Second Amendment challenge to the age restrictions in the District's registration and licensing schemes.

Respectfully submitted,

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