SUPPLEMENTAL BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-387

BRIAN CARRUTH, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
JULIAN GINOS
* DANIEL J. LENERZ
DC Bar #888283905
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Daniel.Lenerz@usdoj.gov
(202) 252-6829

Cr. No. 2021-CF2-6934

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Cases

* Authorities upon which we chiefly rely are marked with asterisks.

Statutes

Other Authorities

ISSUES PRESENTED

I. Whether the District's statute providing that "no person shall carry within the District of Columbia a rifle or shotgun" is facially unconstitutional.

II. Whether there was sufficient evidence that Carruth "carr[ied]" a rifle.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-387

BRIAN CARRUTH, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

SUPPLEMENTAL BRIEF FOR APPELLEE

INTRODUCTION

After the parties submitted their briefs, this Court invited the District of Columbia and the Public Defender Service (PDS) to participate. The United States submits this supplemental brief in response to their filings.[1]

---

[1] The United States refers to appellant Brian Carruth's opening brief as "Carruth Br."; to the District's brief as "D.C. Br."; to PDS's brief as "PDS Br."; and to its own initial brief as "U.S. Br."

PDS argues that D.C. Code § 22-4504(a-1) is facially unconstitutional. In response, the District urges that PDS's facial challenge is not properly before this Court. If this Court reaches the issue, the United States believes the Court should find Section 22-4504(a-1) unconstitutional because it violates the Second Amendment. Section 22-4504(a-1) amounts to what is effectively a complete prohibition on the public carry of long guns in the District, a prohibition that cannot be squared with the historical tradition of regulating such firearms.

PDS separately argues that, to "carry" a long gun for purposes of Section 22-4504(a-1), the gun must be "in such proximity to the person as to be convenient of access and within reach." PDS is incorrect. The plain text of the statute does not contain such a requirement, and this Court's cases imposing that requirement in the context of the District's prohibition on carrying a pistol without a license were interpreting language that does not appear in Section 22-4504(a-1). The Council's choice to use different language in Section 22-4504(a-1) must be given effect. The best reading of that statute, and one that properly places Section 22-4504(a-1) in the hierarchy of the District's firearm laws, is that the term "carry" requires personal agency and the ability to exercise

some degree of control over the firearm, but is not limited to situations where the firearm is "in such proximity to the person as to be convenient of access and within reach."

ARGUMENT

I. Section 22-4504(a-1)'s Near-Total Prohibition on the Public Carry of Long Guns Violates the Second Amendment.

In his opening brief, Carruth raised a limited, as-applied Second Amendment challenge to his conviction for violating Section 22-4504(a-1), arguing that, because he "had lawfully registered his firearm in the state of Ohio," it is "an unfair and undue burden to have him register his weapon in the District of Columbia if his ultimate goal was to travel to another jurisdiction where such similar carry was legal" (Carruth Br. at 25). Addressing only this narrow argument in its initial brief, the United States urged this Court to reject it because (1) Carruth was not required to register his firearm in the District before he could travel through D.C. with it, and (2) Carruth could have lawfully transported his unregistered rifle in the District had he complied with the provisions of D.C. Code § 22-4504.02 (see U.S. Br. at 34-39).

In its amicus brief, PDS argues that Section 22-4504(a-1) is unconstitutional on its face (see PDS Br. at 7-14). The District, in turn, argues that Carruth's Second Amendment claim is not properly before this Court because he did not preserve it below (see D.C. Br. at 12-17), that Carruth's as-applied challenge is meritless (*id.* at 17-29), and that amicus PDS cannot expand Carruth's as-applied challenge into a facial challenge (*id.* at 29-31). As discussed below, if this Court finds that a facial challenge is properly before it, the United States agrees with PDS that Section 22-4504(a-1) is unconstitutional on its face.

A. Applicable Legal Principles and Standard of Review.

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "Like most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any

weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.*

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court clarified the test to be used when determining whether a firearm regulation passes constitutional muster. In *Bruen*, the Court addressed the then-prevailing two-step test fashioned by the lower courts after *Heller*, under which courts would (1) determine whether the regulated conduct fell within "the original scope of the [Second Amendment] right based on its historical meaning," and if so, (2) engage in a means-end balancing inquiry to decide whether the challenged regulation could satisfy either strict or intermediate scrutiny, depending on whether the regulation burdened the "core" Second Amendment right. *Bruen*, 597 U.S. at 17-18 (cleaned up). *Bruen* held that

> this two-step approach[ ] is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* [*v. City of Chicago*, 561 U.S. 742 (2010),] do not support applying means-end scrutiny [*i.e.*, step two,] in the Second Amendment context.

Id. at 19. *Bruen* thus made clear that, when faced with a Second Amendment challenge, courts "must evaluate whether a 'historical

tradition of firearm regulation' exists by determining whether a modern firearm regulation has a historical regulation that is a 'historical analogue' 'relevantly similar' to it." *Picon v. United States*, 343 A.3d 57, 62 (D.C. 2025).

Subsequently, in *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court further clarified the proper inquiry. In upholding 18 U.S.C. § 922(g)(8), which disarms individuals subject to certain domestic violence protective orders, the Court observed that "some courts have misunderstood the methodology of our recent Second Amendment cases." *Rahimi*, 602 U.S. at 692. Those cases, the Court explained, "were not meant to suggest a law trapped in amber." *Id.* Instead, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* For instance, "if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* But even "when a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster,'" so long as the law

"comport[s] with the principles underlying the Second Amendment[.]" *Id.* (quoting *Bruen*, 597 U.S. at 30).

This Court reviews a preserved challenge to the constitutionality of a statute de novo. *See Picon*, 343 A.3d at 61.

B. The District's Absolute Ban on the Open Carry of Long Guns Violates the Second Amendment.

D.C. Code § 22-4504(a-1) provides: "Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun." This statute bans the public carry of long guns except in a narrow set of circumstances "otherwise permitted by law." That exception allows law enforcement officers, members of the military, and the like to carry long guns under certain conditions, *see* D.C. Code § 22-4505(b), and it allows a person holding a valid registration for a long gun to carry it publicly while it is being used for lawful recreational purposes or "[w]hile it is being transported for a lawful purpose as expressly authorized by District or federal statute and in accordance with the requirements of that statute." D.C. Code § 22-4504.01(1)-(4). To be transported lawfully by any person, regardless of whether he or she has registered it, the firearm must be unloaded; if the firearm is transported

other than in a vehicle—such as by bicycle or while walking—it must be inside a locked container and separate from any ammunition. *See* D.C. Code § 22-4504.02(b)-(c). Section 22-4504(a-1) thus amounts to a near-total prohibition on the public carry of a loaded rifle or shotgun for purposes of lawful self-defense, and it requires a person transporting a rifle or shotgun not in a vehicle to carry it unloaded in a locked container.

Section 22-4504(a-1) violates the Second Amendment. Looking at the historical tradition of firearm regulation, courts have found:

> Some antebellum laws prohibited carrying concealed pistols. If there is a history and tradition of government regulation related to guns, this is it. Among the thirty-seven states and the District of Columbia in 1868, about a dozen states had laws that prohibited carrying concealed pistols. Importantly, the concealed carry laws did not prohibit either keeping pistols for all lawful purposes or carrying all guns openly. None of the concealed carry laws included long guns in their restrictions.

Miller v. Bonta, 699 F. Supp. 3d 956, 995 (S.D. Cal. 2023); *see also Baird v. Bonta*, 709 F. Supp. 3d 1091, 1138 (E.D. Cal. 2023) (finding that historical "restrictions on weapons commonly used for legitimate purposes, such as muskets and other long guns, were narrower or absent. These weapons could be carried openly because by prevailing norms, doing so communicated no evil intents, no risk of violence, no threat.").

The Supreme Court has similarly found that "history reveals a consensus that States could *not* ban public carry altogether. Respondents' cited opinions agreed that concealed-carry prohibitions were constitutional only if they did not similarly prohibit *open* carry." *Bruen*, 597 U.S. at 53. Thus, "[t]he historical evidence from antebellum America does demonstrate that the *manner* of public carry was subject to reasonable regulation. . . . States could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly." *Id.* at 59. Indeed, "open carry was the default mode of bearing arms that preserved the core of the Second Amendment right." *McDaniels v. State*, No. 1D2023-0533, 2025 WL 2608688, at *9 (Fla. Ct. App. Sept. 10, 2025) (striking down Florida's ban on the open carry of any firearm).

The District, however, has effectively banned all non-recreational public carry of long guns. Section 22-4504(a-1) does not distinguish between concealed and open carry of such firearms, but instead prohibits both. And the exceptions to that rule do not allow loaded long guns to be carried for "armed self-defense," which "is 'the *central component*' of the Second Amendment right[.]" *Bruen*, 597 U.S. at 30 (quoting *McDonald*, 561 U.S. at 767).

Some cases indicate that restrictions on the open carry of firearms are constitutional, but each of those cases turned on the fact that concealed carry of the firearm was permitted. *See Frey v. City of New York*, No. 23-365-cv, __ F.4th __, 2025 WL 2679729, at *12 (2d Cir. Sept. 19, 2025) (finding "a strong historical tradition of regulating, and often criminalizing, one manner of public carry, so long as the government does not 'altogether prohibit public carry'") (quoting *Bruen*, 597 U.S. at 54); *Baird*, 709 F. Supp. 3d at 1139; *Sinnissippi Rod & Gun Club, Inc. v. Raoul*, 253 N.E.3d 346, 355 (Ill. Ct. App. 2024) ("Courts concluded that the government could lawfully eliminate one kind of public carry to protect and ensure the safety of its citizens, so long as the people were permitted to carry weapons in another manner that allowed self-defense."). The District, however, does not allow a person to obtain a license to carry a concealed long gun. *See* D.C. Code § 22-4506(a) (allowing for the Chief of the Metropolitan Police Department to "issue a license . . . to carry a pistol concealed upon his or her person within the District of Columbia"). And, as previously discussed, Section 22-4504(a-1) effectively amounts to a complete ban on the public carry of long guns

for their use in self-defense. Section 22-4504(a-1) thus violates the Second Amendment.

II. To "Carry" a Firearm for Purposes of Section 22-4504(a-1), a Person Need Not Have Kept It in Such Proximity to be "Convenient of Access and Within Reach."

In his opening brief, Carruth challenged the sufficiency of the evidence that he violated Section 22-4504(a-1), arguing, among other things, that there was insufficient evidence that the rifle he carried was "convenient of access and within reach" (Carruth Br. at 16-18). In response, the United States urged that this was not the proper test to apply (see U.S. Br. at 11-16). The "convenient of access and within reach" standard derives from language in the District's statute prohibiting carrying a pistol without a license (CPWL) and carrying a dangerous weapon (CDW) that requires the pistol or dangerous weapon to be carried "on or about the[ ] person." D.C. Code § 22-4504(a). That language does not appear in Section 22-4504(a-1), which simply requires a defendant to "carry" the rifle or shotgun. By using different language in two sections of the same statute, the Council indicated that it intended different standards to apply to the two crimes. *See Beatley v. District of Columbia*,

307 A.3d 470, 476 n.8 (D.C. 2024) (noting the "usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended") (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004)) (some quotation marks omitted).

PDS disputes this conclusion, asserting (at 16) that the United States's argument is waived, and arguing that, by using the term "carry" in Section 22-4504(a-1), "the D.C. Council incorporated the background understanding of what it means to 'carry' a weapon in violation of § 22-4504(a), including the requirement that the weapon be kept 'in such proximity to the person as to be convenient of access and within reach'" (PDS Br. at 19). PDS is incorrect on both accounts.

The United States did not waive its argument regarding the proper interpretation of Section 22-4504(a-1)'s "carry" requirement by failing to object to the trial court's use of the Redbook instruction, which requires the jury to find that the defendant carried the rifle "on or about his/her person." Criminal Jury Instructions for the District of Columbia, No. 6.500 (5th ed. rev. 2022). The United States is not challenging the jury instructions; rather, it is defending against Carruth's challenge to the

sufficiency of the evidence. The Supreme Court has made clear that, when a jury instruction adds an element to the charged crime and the Government fails to object, "a sufficiency challenge should be assessed against the elements of the charged crime, not against the erroneously heightened command in the jury instruction." *Musacchio v. United States*, 577 U.S. 237, 243 (2016). "Because the [sufficiency] question is what 'any rational trier of fact' could have found, [the court's] determination 'does not rest on how the jury was instructed.'" *United States v. Abukhatallah*, 41 F.4th 608, 624 (D.C. Cir. 2021) (quoting *Musacchio*, 577 U.S. at 243). A motion "for an acquittal based on insufficient evidence cannot depend on jury instructions." *Id.* at 626. Thus, "[t]he Government's failure to object to the heightened jury instruction . . . does not affect the court's review for sufficiency of the evidence." *Musacchio*, 577 U.S. at 244.

On the merits, PDS is incorrect that Section 22-4504(a-1) should be interpreted to contain the same "convenient of access and within reach" standard as Section 22-4504(a). According to PDS, although these two sections of the same statute use different language, they should be interpreted to contain the same requirement because the "'convenient of

access' requirement has been understood to define what it means to 'carry' a weapon . . . and is not limited to the specific statutory language of 'concealed on or about the person'" (PDS Br. at 19).

This argument cannot be squared with this Court's cases interpreting the CPWL/CDW statute and its predecessors. The "convenient of access and within reach" standard was first adopted in *Brown v. United States*, 30 F.2d 474 (D.C. Cir. 1929). *See generally M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) (recognizing that D.C. Circuit decisions rendered prior to February 1, 1971, constitute the case law of the District of Columbia). At that time, D.C. law provided that "'any person who shall within the District of Columbia have concealed about his person any deadly or dangerous weapon, or who shall carry openly any such weapon, with intent to unlawfully use the same, shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not exceeding one year, or both.'" *Brown*, 30 F.2d at 475 (quoting D.C. Code § 855 (1901)). The defendant was charged with two counts: (1) "having unlawfully concealed about his person a deadly and dangerous weapon, to wit, a pistol"; and (2) "with unlawfully carrying openly a deadly and dangerous weapon, to wit, a pistol, with intent

unlawfully to use the same." *Id.* at 474. The jury acquitted the defendant of the second count and convicted him of the first. *Id.* at 475. On appeal, the defendant argued that the trial court "erred in instructing the jury that the words 'concealed about the person' do not necessarily mean on the defendant's person." *Id.* The court of appeals rejected this argument, explaining that "'about' is a comprehensive term" that has a broader meaning than the word "on." *Id.* The court held "that the words 'concealed about his person,' as used in the statute, were intended to mean and do mean concealed in such proximity to the person as to be convenient of access and within reach." *Id.*

Brown thus made clear that it was interpreting the statutory term "concealed about his person," not "what it means to 'carry' a weapon" more generally (PDS Br. at 19). Not only did *Brown* expressly state as much, but the statutory provision it was interpreting did not contain the word "carry" at all; instead, the statute made it a crime for a person to "'*have* concealed about his person any deadly or dangerous weapon[.]'" *Brown*, 30 F.2d at 475 (quoting § 855) (emphasis added).

Congress subsequently amended the District's concealed-carry prohibition. As relevant here, in 1943, Congress made it a crime for a

person to "carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed." Pub. L. No. 78-182, 57 Stat. 586 (Nov. 4, 1943). In *Wilson v. United States*, 198 F.2d 299 (D.C. Cir. 1952), the D.C. Circuit addressed this new statutory language. There, the defendant was charged with having "carried a pistol on or about his person without a license having been issued as provided by law." *Id.* at 299. Citing *Brown*, the court stated that, although "[t]he wording of the statute ha[d] been slightly changed since the *Brown* opinion was written," "the principle remain[ed] the same." *Id.* at 300. The relevant question "was whether, in having a loaded pistol under the hinged front seat of his automobile so that he could get it by alighting from the car and tilting the driver's seat upward and forward, Wilson had the weapon, in the language of the *Brown* case, 'in such proximity to the person as to be convenient of access and within reach.'" *Id.* (quoting *Brown*, 30 F.2d at 475). *Wilson* thus looked at statutory language that had been "slightly changed"—from "about his person" to "on or about his person"—and applied "the same" "principle," requiring the weapon to

have been kept "in such proximity to the person as to be convenient of access and within reach."

Both the D.C. Circuit and this Court have subsequently confirmed that the "convenient of access and within reach" standard is an interpretation of the statutory language "on or about [the] person." In *United States v. McDonald*, the D.C. Circuit explained that then-D.C. Code § 22-3204(a) "requires that the weapon be found 'on or about his person,'" and that "[t]his court has construed 'about' to mean 'in such proximity to the person to be convenient of access and within reach.'" 481 F.2d 513, 514 n.1 (D.C. Cir. 1973). Likewise, in *Henderson v. United States*, this Court explained that the CPWL statute "provides, in pertinent part, as follows: '"No person shall carry within the District of Columbia either openly or concealed *on or about their* [sic] *person*, a pistol, without a license issued pursuant to District of Columbia law[.]"' 687 A.2d 918, 920 (D.C. 1996) (quoting then-Section 22-3204(a)) (emphasis in *Henderson*). The Court noted that "[t]he meaning of the statutory language italicized above has been the subject of judicial consideration in this jurisdiction for many years." *Id.* Citing *Brown* and *Wilson*, the Court found that the "convenient of access and within reach"

standard articulated in those cases was a "binding" and "controls this case." *Id.*; *see also id.* (quoting 94 C.J.S. *Weapons* § 8 (1956 & 1996 Supp.), for the proposition that "the words 'on or about the person' in a statute prohibiting the carrying of concealed weapons mean carrying on the person, or *in such proximity to the person, as to be convenient of access and within immediate physical reach*") (emphasis in *Henderson*).

In a footnote, *Henderson* made explicitly clear that it was not interpreting what it means to "carry" a firearm more generally. Noting that the United States had relied in its brief on cases interpreting what it means for a firearm to be "'carried' within the meaning of 18 U.S.C. § 924(c)(1)," the court declined to follow those cases because, "[u]nlike [the District's] CPWOL statute, [§ 924(c)] contains no requirement that the firearm be carried 'on or about [the] person.'" *Henderson*, 687 A.2d at 921 n.5.

PDS is thus incorrect when it asserts that, in enacting D.C. Code § 22-4504(a-1), the D.C. Council acted with a "background understanding of what it means to 'carry' a weapon" that incorporates the "convenient of access and within reach" standard taken from "the 'carrying' element of CPWL and CDW)" (PDS Br. at 19, 23). Rather, what the statutory

history reflects is that the "convenient of access and within reach" standard is a well-settled interpretation of the phrase "on or about the person"—not an interpretation of some larger "carrying element" more generally. The Council is "presumed to know the construction which has been given to prior statutory provisions[.]" *Office of the People's Counsel v. Public Serv. Comm'n*, 477 A.2d 1079, 1091 (D.C. 1984). And, "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Beatley*, 307 A.3d at 476 n.8. The Council thus did *not* import the "convenient of access and within reach" standard into Section 22-4504(a-1) when it made the deliberate choice to leave the words "on or about the person" out of the statute. If anything, it did just the opposite.

Rather than starting with a nonexistent "background understanding of what it means to 'carry' a weapon" when interpreting the term "carry" in Section 22-4504(a-1), this Court should begin where it always does: with the text. *See Coleman v. United States*, 202 A.3d 1127, 1138 (D.C. 2019) ("In interpreting a statute, we begin with its text."). Section 22-4504(a-1) does not define what it means to "carry" a rifle or shotgun, and thus "it is appropriate . . . to look to dictionary

definitions to determine its ordinary meaning." *Lucas v. United States*, 305 A.3d 774, 777 (D.C. 2023) (cleaned up).

Reviewing dictionary definitions of the word "carry," the Supreme Court has recognized that "[w]hen one uses the word in the first, or primary, meaning, one can, as a matter of ordinary English, 'carry firearms' in a wagon, car, truck, or other vehicle that one accompanies." *Muscarello v. United States*, 524 U.S. 125, 128 (1998). The Court explained:

> Consider first the word's primary meaning. The *Oxford English Dictionary* gives as its *first* definition "convey, originally by cart or wagon, hence in any vehicle, by ship, on horseback, etc." 2 Oxford English Dictionary 919 (2d ed. 1989); *see also* Webster's Third New International Dictionary 343 (1986) (*first* definition: "move while supporting (as in a vehicle or in one's hands or arms)"); The Random House Dictionary of the English Language Unabridged 319 (2d ed. 1987) (first definition: "to take or support from one place to another; convey; transport").

Id. The Court rejected the argument, effectively advanced by PDS, that there is some "special ordinary English restriction (unmentioned in dictionaries) upon the use of 'carry' in respect to guns[.]" *Id.* at 129. Instead, applying the "'generally accepted contemporary meaning' of the word 'carry,'" *id.* at 139, the Court found that it "applies to a person who knowingly possesses and conveys firearms in a vehicle, including in the

locked glove compartment or trunk of a car, which the person accompanies," *id.* at 126-27.

As the United States explained in its opening brief (at 15-16), adopting *Muscarello*'s understanding of what it means to "carry" a firearm is not only consistent with Section 22-4504(a-1)'s plain text, but it also makes sense given (1) the presumption that the Council meant Section 22-4504(a-1)'s "carry" requirement to have a different meaning than Section 22-4504(a)'s "on or about the person" requirement, and (2) the structure of the District's firearms crimes. "Carrying" is a narrower concept than "possession" or "transporting," but broader than being "armed with" or having something "readily available" or "on or about the person" (see U.S. Br. at 16 (citing cases)). Allowing a conviction for carrying a rifle or shotgun where that firearm is in the trunk of a car or a locked box inside the passenger compartment—where it is being "carried" in the generally accepted contemporary meaning of the word, but is not "convenient of access and within reach"—would give effect to the Council's choice not to require a rifle or shotgun to be carried "on or about the person."

PDS's remaining arguments all start from the incorrect presumption that the Council intended to import the "on or about the person" standard into Section 22-4504(a-1) despite not using that language. For example, pointing to the legislative history of Section 22-4504(a-1), PDS argues that "the Council expressed no intent, and identified no reason, to change the well-established understanding of what it means to 'carry' a weapon" (PDS Br. at 21). But this argument requires there to have been such a "well-established understanding," which, as discussed above, there was not.

PDS also places undue weight (at 20-22) on a Committee Report stating that the enactment of Section 22-4504(a-1) "clarif[ied] that no person shall carry a long arm in the District except as otherwise permitted by law (e.g. lawful transportation related to commerce or recreation)." Committee on Public Safety and the Judiciary, Council of the District of Columbia, Committee Report on Bill 17-593, at 3-4 (Nov. 25, 2008). This unexplained statement hardly indicates the Council's "intent to treat the two offenses [CPWL and carrying a rifle] the same" (PDS Br. at 22) notwithstanding the different statutory language. To the contrary, the Council's focus on the "transportation" of rifles and

shotguns indicates that, when enacting Section 22-45-4(a-1), it was contemplating a much broader swath of conduct than either physically carrying a rifle or shotgun or having one "convenient of access and within reach." *See generally Muscarello*, 524 U.S. at 134 (explaining that "'transport' is broader than the word 'carry'"). And, in any event, this Court should not "allow[ ] ambiguous legislative history to muddy clear statutory language." *Milner v. Dep't of the Navy*, 562 U.S. 562, 572 (2011).

PDS also misses the mark with its invocation of the statutory "'policy' of preventing a person from having a weapon 'so near him or her that he or she could promptly use it'" (PDS Br. at 14 (quoting *White v. United States*, 714 A.2d 115, 120 (D.C. 1998)). According to PDS, Section 22-4504(a-1) merely "extend[ed] the policy of the CPWL and CDW statute to rifles and shotguns" (*id.* at 19). Again, this argument assumes the existence of an established meaning of the term "carry" that does not, in fact, exist. And even if the Council were motivated by the same concerns when it enacted Section 22-4504(a-1) that prompted Congress when it enacted Section 22-4504(a), that purpose would be furthered, not defeated, by applying Section 22-4504(a-1) to situations where a long gun

is carried but not in such a way that it is "on or about the person." As this Court has explained:

> In enacting what is now section 22-[4504(a)], Congress "evidenced the clearest intent to drastically tighten the ban on dangerous weapons," *Cooke v. United States*, 275 F.2d 887, 889 (1960), in order to protect the citizens of the District of Columbia from injuries resulting from the use of such weapons. *Strong v. United States*, 581 A.2d 383, 387 (D.C. 1990). Congress was particularly concerned with the "substantial injury and loss of life attributable to the unlawful use of firearms" and sought, by its enactment of section 22-[4504(a)], to reduce the number of injuries and deaths. *Billinger v. United States*, 425 A.2d 1304, 1305 (D.C. 1981) (citing legislative history) . . . . Section 22-[4504(a)] was specifically "designed to keep such dangerous items off the street." *Roper v. United States*, 564 A.2d 726, 730 (D.C. 1989) (citation omitted).

Bsharah v. United States, 646 A.2d 993, 998 (D.C. 1994). Accepting PDS's invitation to interpret Section 22-4504(a-1) so that it does not cover all situations in which a person knowingly possesses and conveys long guns in a vehicle, including in the trunk, would neither keep those "dangerous items off the street" nor "protect the citizens of the District of Columbia from injuries resulting from the use of such weapons."

Turning the statutory analysis on its head, PDS faults the United States for failing to "claim . . . that any difference between long guns and other weapons should dictate a different understanding of what it means

to 'carry' them" (PDS Br. at 24). But it was the Council which directed that long guns be treated differently when it criminalized the carrying of such weapons without requiring that they be "on or about the person." That somewhat broader prohibition fits neatly with the Council's stated concerns when enacting the Bill that included Section 22-4504(a-1). The Council was worried about Presidential assassinations and "[t]he threat of gun violence against" government officials more generally, which was "an especial concern[.]" Committee Report on Bill 17-593, at 4. It specifically was thinking about the transportation of firearms "by motor vehicles" and the possibility that the firearms would be transported in the "trunk[.]" *Id.* And the Council declared that "persons should not be carrying real weapons on the street regardless of operability[.]" *Id.* at 3. The Council thus may well have intended that long guns be left "at home" (see PDS Br. at 24), rather than allowing them to be carried just out of reach and readily, but not immediately, accessible.

CONCLUSION

WHEREFORE, the United States respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
JULIAN GINOS
Assistant United States Attorneys

/s/
DANIEL J. LENERZ
DC Bar #888283905
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Daniel.Lenerz@usdoj.gov
(202) 252-6829

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, David H. Reiter, Esq., d.reiter.law@gmail.com, counsel for amicus curiae the Public Defender Service, Alice Wang, Esq., awang@pdsdc.org, and counsel for intervenor-appellee the District of Columbia, Bryan Leitch, Esq., bryan.leitch@dc.gov, on this 3rd day of November, 2025.

/s/
DANIEL J. LENERZ
Assistant United States Attorney