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1 MAP 2026

IN THE

SUPREME COURT OF PENNSYLVANIA

1 MAP 2026

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

KAREEM MOHAMMED WILLIAMS JR.,

Appellant.

BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, SECOND AMENDMENT FOUNDATION, AND FIREARMS OWNERS AGAINST CRIME – INSTITUTE FOR LEGAL, LEGISLATIVE AND EDUCATIONAL ACTION AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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STATEMENT OF *AMICI CURIAE*[1]

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

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

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[1] No person or entity other than the *amici*, their members, or their counsel paid in whole or part for the preparation of this brief or authored any part of it.

Firearms Owners Against Crime – Institute for Legal, Legislative and Educational Action is a non-partisan, non-profit corporation organized pursuant to section 501(c)(4) of the Internal Revenue Code for the purposes of developing and advocating for legislation, regulations, and government programs to improve safety, protect citizens, stimulate sportsmen's activities and safe legal firearm ownership; conducting and publicizing research into the positions of elected officials concerning these issues; providing legal defense of firearms and sportsmen's related issues; and educating the public on safe and legal firearm ownership, and constitutional issues relating thereto.

SUMMARY OF ARGUMENT

Because adults under 21 fall within the Second Amendment's plain text, the Commonwealth may prohibit them from obtaining a license to carry a handgun in public or in a vehicle *only if* the government demonstrates that the restriction is consistent with our nation's historical tradition of firearm regulation. Since the Commonwealth failed to present *any* evidence to support its burden—because no analogous tradition exists—this Court must reverse the Superior Court.

The Supreme Court has repeatedly demonstrated that the Second Amendment's plain text covers 18-to-20-year-old adults. First, the Court determined that the Second Amendment "belongs to *all* Americans." Second, the Court explained that the traditional militia—which included 18-to-20-year-olds—consisted of a "subset of 'the people.'" Third, the Court made clear that the Second Amendment protects the same "people" as the First and Fourth Amendments, which both protect 18-to-20-year-old adults.

The Commonwealth did not—and cannot—carry its burden of proving that its restriction is consistent with historical tradition because the only regulations that applied to 18-to-20-year-olds at or before the

Founding *required* them to keep and bear arms. The colonies and states depended on armed 18-to-20-year-olds to serve in the militia, posse comitatus, watch and ward, and hue and cry. Indeed, when the Second Amendment was ratified, virtually every 18-to-20-year-old who had ever lived in America possessed and carried arms.

Moreover, there is a strong tradition of 18-to-20-year-olds keeping and bearing arms without government mandates. Many Colonial- and Founding-era Americans kept and carried arms, even as legal minors, including many of the most influential Founders.

The Superior Court disregarded the Founding-era tradition involving 18-to-20-year-olds and upheld the restrictions by relying on improper historical analogues—Founding-era laws limiting the contractual capacity of minors and late nineteenth-century laws limiting minors' access to firearms.

The Commonwealth cannot carry its burden of proving that its carry restrictions are consistent with historical tradition because the only regulations that applied to 18-to-20-year-olds at or before the Founding *required* them to keep and bear arms. Moreover, contract limitations differed in both purpose and effect from the Commonwealth's carry

restriction: they shielded minors from improvident contracts while leaving their arms-bearing intact—indeed, mandated. By contrast, Pennsylvania's laws bar legal adults from carrying arms because—unlike the Founding generation—the Commonwealth deems them "too dangerous" to exercise their rights.

As for the late nineteenth-century laws, they are both temporally and substantively insufficient to establish a historical tradition. The Supreme Court has made clear that the relevant inquiry centers on 1791, not enactments from nearly a century later that contradict earlier evidence. Moreover, the restrictions were sparse, uneven, and riddled with exceptions—and they applied only to legal minors as such, not to adults. These late-breaking and fundamentally different laws cannot supply the well-established and representative tradition necessary to justify Pennsylvania's modern carry restrictions for 18-to-20-year-old adults.

ARGUMENT

I. Adults under 21 are among "the people."

The Supreme Court set forth "the standard for applying the Second Amendment" in *New York State Rifle & Pistol Association, Inc. v. Bruen*: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. 1, 24 (2022) (emphasis added); *see also*, *id.* at 33–34 (explaining "the burden falls on respondents"); *id.* at 38–39 (holding that "respondents have failed to meet *their burden* to identify an American tradition." (emphasis added)).

Williams's conduct is indisputably covered by the text because *Bruen* held that the Second Amendment "protect[s] an individual's right to carry a handgun for self-defense outside the home." *Id.* And the Commonwealth cannot carry *its burden* of proving that adults under 21 are excluded from "the people," *see Lara v. Comm'r Pennsylvania State Police*, 125 F.4th 428, 435 (3d Cir. 2025) (To prove "that 18-to-20-year-olds are not among 'the people,' …. the Commissioner must overcome the

strong presumption that the Second Amendment applies to 'all Americans.'"), because the Court's plain text analysis in *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008), demonstrated that 18-to-20-year-olds are likewise covered by the text.

A. The Second Amendment protects "all Americans."

Analyzing the "right of the people" in the Amendment's text, the Supreme Court in *Heller* concluded with "a strong presumption that the Second Amendment right is exercised individually and belongs to *all* Americans." 554 U.S. at 581 (emphasis added). Thus, in *Bruen*, the Court held that "[t]he Second Amendment guaranteed to '*all Americans*' the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions." 597 U.S. at 70 (quoting *Heller*, 554 U.S. at 581) (emphasis added).

Moreover, the *Heller* Court specifically praised the Georgia Supreme Court's interpretation of the Second Amendment, which defined it as, "'The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description[.]'" 554 U.S. at 612–13 (quoting *Nunn v. Georgia*, 1 Ga. 243, 250 (1846)) (emphasis omitted).

B. The militia was a subset of "the people," and 18-to-20-year-olds were in the militia.

The Supreme Court has established that historically, the militia was among "the people" with the right to carry arms, and that 18-20-year-olds were included in the militia. It follows, therefore, that 18-to-20-year-olds have the right to carry arms.

The Court has made clear that the militia was drawn from "the people" protected by the Second Amendment. In *Heller*, the Court observed that "the 'militia' in colonial America consisted of *a subset of 'the people*.'" 554 U.S. at 580 (emphasis added). In *Presser v. People of State of Ill.*, the Court emphasized that a firearms ban on members of the militia would "prohibit *the people* from keeping and bearing arms." 116 U.S. 252, 265 (1886) (emphasis added). And in both *Heller* and *United States v. Miller*, the Court recognized that "the purpose for which the right was codified" was "to prevent elimination of the militia," *Heller*, 554 U.S. at 599; *see also United States v. Miller*, 307 U.S. 174, 178 (1939) ("With obvious purpose to assure the continuation and render possible the effectiveness of [militia] forces the declaration and guarantee of the Second Amendment were made.")—an understanding that necessarily presupposes that members of the militia are themselves protected by the

right. *See Heller*, 554 U.S. at 577 ("Logic demands that there be a link between the [Second Amendment's] stated purpose and the command").[2] Indeed, "'Keep arms,'" the *Heller* Court determined, "was simply a common way of referring to possessing arms, *for militiamen* and everyone else." *Id.* at 583 (emphasis modified).

The Court has also repeatedly recognized that the militia historically included 18-to-20-year-olds. The *Heller* Court explained that at the Founding, the militia consisted of "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." 554 U.S. at 596 (quoting Act of May 8, 1792, 1 Stat. 271). Similarly, in *Perpich v. Dep't of Def.*, the Court declared, "In the early years of the Republic," Congress "command[ed] that every able bodied male citizen between the ages of 18 and 45 be enrolled" in the militia. 496

[2] The Court's reasoning reflects the Founders' understanding. As the influential Antifederalist Federal Farmer straightforwardly explained during the debates over the ratification of the Constitution, "the militia are the people." Federal Farmer, *Letter XVIII*, Jan. 25, 1788, *in* 20 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 1073 (John P. Kaminski et al. eds., 2004); *see also id.* at 1072 ("A militia, when properly formed, are in fact the people themselves").

U.S. 334, 341–43 (1990). And in *Miller*, the Court acknowledged that "the Militia comprised all males physically capable of acting in concert for the common defense," 307 U.S. at 179, before providing examples from 1784 Massachusetts, 1786 New York, and 1785 Virginia that included 18-to-20-year-olds, *id.* at 180–81. Thus, the Court has clearly established that the militia—including 18-to-20-year-olds—was a subset of "the people," and that "the people"—including 18-to-20-year-olds—have the "right to keep and bear arms."[3]

"After *Heller*, there is no doubt that 'the militia' was 'a subset of "the people"' protected by [the Second Amendment's] operative clause," *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 593 (5th Cir. 2025), and as "a subset of 'the people,' those in the militia share the same rights as 'the people,'" *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 427 (4th Cir.), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021).

[3] The right of 18-to-20-year-olds was not limited to militia service. "[M]ost undoubtedly thought it even more important for self-defense and hunting." *Heller*, 554 U.S. at 599.

C. "The people" protected by the Second Amendment are the same people protected by other enumerated rights.

The *Heller* Court emphasized that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." 554 U.S. at 580; *see also* Thomas M. Cooley, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 267–68 (1880) ("[I]n all the enumerations and guaranties of rights" in the Constitution that use "the term *the people*," "the whole people are intended.").

In the First Amendment context, "[s]tudents in school as well as out of school are 'persons' under our Constitution" who "are possessed of fundamental rights which the State must respect[.]" *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). And the Fourth Amendment protects "students against [unreasonable searches and seizures] by public school officials." *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985). 18-to-20-year-olds also have other enumerated rights enjoyed by other adults, such as due process, *Goss v. Lopez*, 419 U.S. 565, 574 (1975), and equal protection, *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954). Therefore, "wholesale exclusion of 18-to-20-year-olds from the scope of the Second Amendment would impermissibly render

'the constitutional right to bear arms in public for self-defense … 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Lara*, 125 F.4th at 437–38 (quoting *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010))).

The Constitution's Framers imposed minimum age requirements where appropriate and constitutionally-sound. *See* U.S. CONST. art. I, § 2, cl. 2 (25 to serve in the U.S. House of Representatives); U.S. CONST. art. I, § 3, cl. 3 (30 to serve in the U.S. Senate); U.S. CONST. art. II, § 1, cl. 5 (35 to be eligible for the office of President). The Framers did not, however, impose any minimum age requirement for the right to keep and bear arms. Thus, "18-to-20-year-olds are, like other subsets of the American public, presumptively among 'the people' to whom Second Amendment rights extend." *Lara*, 125 F.4th at 438; *see also Ohio v. Matosky*, 2025-Ohio-5658, ¶ 17, declaring that "18 to 20 years old are among 'the people' protected by the Second Amendment" and that the "conduct of carrying a firearm is covered by the plain text of the amendment."

Because adults under 21 are covered by the Second Amendment's text, the Commonwealth must justify its carry restrictions "by demonstrating that" they are "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. Unfortunately for the Commonwealth, "there is no analogous historical tradition of restricting a legal adult's right to bear arms based solely on the adult's age." *Matosky*, 2025-Ohio-5658, ¶ 28 (reaffirmed, *Ohio v. Reid-Payne*, 2026-Ohio-672).

II. American tradition proves that 18-to-20-year-olds enjoyed a broad right to keep and bear arms.

A. The only firearm regulations that applied to 18-to-20-year-olds in the Colonial and Founding eras *required* them to keep and bear arms.

1. Hundreds of militia mandates required 18-to-20-year-olds to keep and bear arms.

No seventeenth- or eighteenth-century law restricted 18-to-20-year-olds' rights to keep or carry arms.

Rather, over 200 militia statutes enacted during the Colonial and Founding eras required 18-to-20-year-olds to keep and bear militia arms—typically including firearms, edged weapons, ammunition, and accoutrements. David B. Kopel & Joseph G.S. Greenlee, *The Second*

Amendment Rights of Young Adults, 43 S. ILL. U. L.J. 495, 533–89 (2019).[4] The only militia law from those nearly two centuries that did not include 18-to-20-year-olds was from Virginia, and only from 1738 to 1757. *Id.* at 534.

When the Second Amendment was ratified, every state in the nation included 18-to-20-year-olds in their militias. *Id.* at 537–38 (New Jersey), 542–43 (Maryland), 547–48 (North Carolina), 550 (South

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[4] This brief focuses on the Founding-era tradition and the tradition leading up to it because the Supreme Court has demonstrated that the original 1791 understanding of the Second Amendment controls. *See Heller*, 554 U.S. at 625 (concluding with "our adoption of the original understanding of the Second Amendment"); *Bruen*, 597 U.S. at 28 (the Second Amendment's "meaning is fixed according to the understandings of those who ratified it"); *id.* at 34 ("'Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.'") (quoting *Heller*, 554 U.S. at 634–35) (emphasis *Bruen*'s). Historical evidence from beyond the Founding era may be used only to confirm Founding-era evidence. *See id.* at 37 ("19th-century evidence [i]s 'treated as mere confirmation of what . . . ha[s] already been established'") (quoting *Gamble v. United States*, 587 U.S. 678, 702 (2019)).

Similarly, this Court has declared that "the Constitution's language controls and must be interpreted in its popular sense, *as understood by the people when they voted on its adoption*"; whereby, any interpretation must "completely conform[] to the intent of the framers and … reflect[] the views of the ratifying voter." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 97 (2018) (quotations omitted and emphasis added).

Carolina), 554–55 (New Hampshire), 557–58 (Delaware), 562–63 (Pennsylvania), 567 (New York), 569 (Rhode Island), 572–73 (Vermont), 583 (Virginia), 585 (Massachusetts), 587 (Georgia), 589 (Connecticut). And the year after the Second Amendment's ratification, Congress enacted the Uniform Militia Act, which governed the militia when called into federal service. The Uniform Militia Act set the ages at 18 to 45. 1 Stat. 271, §1 (1792).[5] Thus, virtually every 18-to-20-year-old in Colonial- and Founding-era America possessed and carried arms.

America's first Secretary of War, Henry Knox, explained that "[t]he period of life in which military service shall be required of the citizens of the United States[] to commence [is] at eighteen," because by that age men possess "such a degree of robust strength as to enable them to sustain without injury the hardships incident to the field." 2 THE DEBATES AND PROCEEDINGS IN THE CONGRESS OF THE UNITED STATES 2146, 2153 (Joseph Gales ed., 1834). Knox further asserted that "all men of the legal military age should be armed." *Id.* at 2145–46. Representative James Jackson of Georgia declared "that from eighteen to twenty-one

[5] Today, under 10 U.S.C. § 246, the age is 17, and under Pennsylvania's own militia law—51 Pa.C.S. § 301—it is 17 and a half.

was found to be the *best* age to make soldiers of." *Id.* at 1860 (emphasis added). Nearly a decade before George Washington signed the Uniform Militia Act as president, he wrote to Alexander Hamilton that, "the Citizens of America . . . from 18 to 50 Years of Age should be borne on the Militia Rolls" and "so far accustomed to the use of [arms] that the Total strength of the Country might be called forth at a Short Notice on any very interesting Emergency." 26 THE WRITINGS OF GEORGE WASHINGTON 389 (John C. Fitzpatrick ed., 1938).

The Supreme Court explained that militiamen "would bring the sorts of lawful weapons that they possessed at home to militia duty." *Heller*, 554 U.S. at 627; *see also Miller*, 307 U.S. at 179 ("ordinarily when called for service these men were expected to appear bearing arms supplied by themselves"). Thus, at the time of the Second Amendment's ratification, nearly every 18-to-20-year-old since the establishment of Jamestown had possessed and carried arms. "That young adults had to serve in the militia indicates that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms." *Lara*, 125 F.4th at 444.

2. Numerous mandates unrelated to militia duty required 18-to-20-year-olds to keep and carry arms.

18-to-20-year-olds were traditionally required to secure community defense by participating in the "hue and cry" to pursue criminals, the "watch and ward" to guard their towns, and the posse comitatus to aid sheriffs in carrying out law enforcement duties. Kopel & Greenlee, *The Second Amendment Rights of Young Adults*, at 534–35.[6]

Many statutes that mandated firearms ownership and carry by women and non-militiamen applied to 18-to-20-year-olds. These laws did not specifically mention age. Rather, they applied to everyone old enough to conduct particular activities, such as keeping house.

Maryland, in 1639, required "that every house keeper or housekeepers within this Province shall have ready continually upon all occasions within his her or their house for him or themselves and for every person within his her or their house able to bear armes one Serviceable fixed gunne." PROCEEDINGS AND ACTS OF THE GENERAL

[6] Just before the Second Amendment's ratification and his appointment to the U.S. Supreme Court, James Wilson explained in 1790 that "No man above fifteen and under seventy years of age, ecclesiastical or temporal, is exempted from [the posse comitatus]." 2 COLLECTED WORKS OF JAMES WILSON 1017 (Kermit L. Hall & Mark David Hall eds., 2007).

ASSEMBLY OF MARYLAND JANUARY 1637/8–SEPTEMBER 1664, at 77 (William Hand Browne ed., 1883). A "Housekeeper" was "a man or woman who maintains a family state in a house." 1 Noah Webster, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) (unpaginated). Because the "average age at marriage [was] about 20 years for women in the early colonial period," it was ordinary for 18-to-20-year-olds to be housekeepers. J. David Hacker, et al., *The Effect of the Civil War on Southern Marriage Patterns*, 76 J. OF S. HISTORY 39, 42 (2010); *see also* Richard Middleton & Anne Lombard, COLONIAL AMERICA: A HISTORY TO 1763, at 325 (4th ed. 2011) ("the average marriage age for native-born whites in Somerset County, Maryland between 1670 and 1740 was about 23 for men, and under 19 for women").

Virginia had several laws requiring the carry of arms to travel, attend church, work in the fields, and attend court. 1 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 127 (William Waller Hening ed., 1823) (1624, requiring arms to travel); *id.* (1624, requiring arms to work in the field); *id.* (1624, requiring farmers to possess arms); *id.* at 173 (1632, requiring arms to travel); *id.* (1632,

requiring arms to work in the field); *id.* (1632, requiring men to carry arms to church); *id.* at 263 (1643, requiring "masters of every family" to carry arms to church); 2 *id.* at 333 (1676, requiring arms to attend church or court). More broadly, a 1640 law mandated that "ALL persons . . . be provided with arms and ammunition or be fined." 1 *id.* at 226. And laws in 1659 and 1662 required all men capable of bearing arms to own a firearm. *Id.* at 525; 2 *id.* at 126. To the extent that women of any age farmed, traveled, or engaged in other listed activities, the arms mandates applied to them.

A 1632 Plymouth law required that "every freeman or other inhabitant of this colony provide for himselfe and each under him able to beare armes a sufficient musket and other serviceable peece." THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 31 (William Brigham ed., 1836).

To promote immigration, North Carolina issued land grants starting in 1664—but only to settlers who were "armed with a good firelock or matchlock." 1 AMERICA'S FOUNDING CHARTERS: PRIMARY DOCUMENTS OF COLONIAL AND REVOLUTIONARY ERA GOVERNANCE 210–11 (Jon Wakelyn ed., 2006). In 1701, Virginia required recipients of land

grants to keep someone between the ages of 16 and 60 armed on the land. 3 THE STATUTES AT LARGE, at 206–07.

Delaware required "every Freeholder and taxable Person" starting in 1741 to "provide himself with . . . One well fixed Musket or Firelock." George H. Ryden, DELAWARE–THE FIRST STATE IN THE UNION 117 (1938).

Starting in 1779, "every listed soldier *and other householder*" in Vermont had to "always be provided with, and have in constant readiness, a well fixed firelock." VERMONT STATE PAPERS; BEING A COLLECTION OF RECORDS AND DOCUMENTS, CONNECTED WITH THE ASSUMPTION AND ESTABLISHMENT OF GOVERNMENT BY THE PEOPLE OF VERMONT 307 (William Slade ed., 1823) (emphasis added).

New Hampshire required every head of household to own firearms in 1718. 2 LAWS OF NEW HAMPSHIRE: PROVINCE PERIOD, 1702–1745, at 285 (1913). In 1776, New Hampshire required all males between 16 and 50 *not* in the militia to own firearms. 4 LAWS OF NEW HAMPSHIRE: REVOLUTIONARY PERIOD, 1776–1784, at 46 (1916). Then in 1780, New Hampshire required males under 70 who were exempt from militia training to keep militia arms at home, so they could defend the community if attacked. *Id.* at 276.

With hundreds of militia and non-militia laws requiring 18-to-20-year-olds to keep and carry arms, it is implausible to suggest that they did not have the right to do so.

B. 18-to-20-year-olds regularly possessed and carried arms outside of militia service.

The Superior Court dismissed the militia mandates for 18-to-20-year-olds with the assertion that "an obligation is not the same thing as a right." Op. at 21; *but see Hirschfeld*, 5 F.4th at 429–30 ("Because the individual right is broader than the Second Amendment's civic purpose, those required to serve in the militia and bring arms would most assuredly have been among 'the people' who possessed the right."). The Superior Court's conclusion that the Second Amendment imposed a "legal obligation" on 18-to-20-year-olds, Op. 20, while depriving them of the "fundamental" right it protects, *McDonald*, 561 U.S. at 778, is flawed for several reasons.

First, the militia laws required 18-to-20-year-olds to possess the required arms *at all times*—not only during militia musters. *See* Kopel & Greenlee, *The Second Amendment Rights of Young Adults*, at 533–89. Thus, 18-to-20-year-olds possessed arms during everyday civilian life. *See also* Richard Frothingham, HISTORY OF THE SIEGE OF BOSTON, AND OF

THE BATTLES OF LEXINGTON, CONCORD, AND BUNKERHILL 102–03 (3d ed. 1873) ("the habitual use of the fowling piece" by ordinary militiamen in daily life made them "superior to veteran troops in aiming the musket").

Second, no law limited the use of arms kept by militiamen to militia purposes only. Rather, "[t]he traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense." *Heller*, 554 U.S. at 624 (quoting *Miller*, 307 U.S. at 179). Militiamen—including 18-to-20-year-olds—used their arms for militia purposes and all other lawful purposes.

Third, individuals under 21 in the Colonial and Founding eras regularly possessed and used arms outside of militia service—including many of the most influential Founders. John Adams, James Monroe, and John Marshall all carried firearms to school for protection or hunting. 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 257, 258 n.4 (Lyman H. Butterfield ed., 1961); Tim McGrath, JAMES MONROE: A LIFE 9 (2020); Harlow Giles Unger, JOHN MARSHALL: THE CHIEF JUSTICE WHO SAVED THE NATION 14 (2014). Meriwether Lewis and Daniel Boone owned firearms and began hunting alone before age 14. 8 THE WRITINGS OF THOMAS JEFFERSON 482 (H. A. Washington ed., 1859); Robert Morgan,

BOONE 14 (2007). Thomas Jefferson also possessed a firearm by 14 and later in life advised his 15-year-old nephew to "[l]et your gun therefore be the constant companion of your walks." 1 Henry S. Randall, THE LIFE OF THOMAS JEFFERSON 15 (1865); Thomas Jefferson, WRITINGS 816 (Merrill D. Peterson ed., 1984). "The early years of George Mason" were marked by "the amusements of shooting, fishing, and sailing." 1 Kate Mason Rowland, THE LIFE OF GEORGE MASON, 1725–1792, at 53 (1892). And Joseph Warren kept a firearm as an 18-year-old student at Harvard. Christian Di Spigna, FOUNDING MARTYR: THE LIFE AND DEATH OF DR. JOSEPH WARREN, THE AMERICAN REVOLUTION'S LOST HERO 49 (2018).

Indeed, many Harvard students kept arms in the seventeenth and eighteenth centuries. Although they were often exempted from militia mandates, they participated in training anyway. "[N]o sooner was the College started [in 1636] than the students began to waive their [exemptions] and volunteer to train" with the militia. Samuel F. Batchelder, *"The Students in Arms"—Old Style*, *in* 29 THE HARV. GRADUATES' MAG. 552 (1921) (quotation marks omitted). In 1759, Harvard students petitioned "for Liberty to exercise Themselves in the use of the Fire-Lock," which the faculty granted them permission to do

"in the Play-Place." *Id.* at 556. And by 1766, training with firearms "was influencing college life considerably." *Id.* at 557 n.1. Of course, if the students did not possess their own arms, they could not have voluntarily participated in the training or shooting activities.

In fact, much of the Americans' success during the Revolutionary War was attributed to their lifelong use of arms, unrelated to militia service. *See, e.g.*, 1 THE WORKS OF THOMAS JEFFERSON 208 (H.A. Washington ed., 1884) (The "difference [in casualties] is ascribed to … every soldier in our army having been intimate with his gun from his infancy."); 1 David Ramsay, THE HISTORY OF THE AMERICAN REVOLUTION 204 (1789) (Americans had an advantage because "the inhabitants had been, from their early years . . . taught the use of arms.").

Even 18-to-20-year-old indentured servants—who were not free people under the law—could sometimes keep and bear arms. In 1666, George Alsop presented a defense of indentured servitude in Maryland. Alsop, who had worked as an indentured servant in Maryland himself, argued that it was best for someone "seventeen or eighteen years old" to go into servitude. George Alsop, A CHARACTER OF THE PROVINCE OF MARYLAND 54–55 (Newton D. Mereness ed., 1902) (1666). He noted that

servants could "hunt the Deer, or Bear, or recreate themselves in Fowling" and that "every Servant has a Gun, Powder and Shot allowed him, to sport him withall on all Holidayes and leasurable times, if he be capable of using it, or willing to learn." *Id.* at 59. If 18-to-20-year-old indentured servants could keep and bear arms for non-militia purposes, surely free Americans of the same age could as well.

The tradition of 18-to-20-year-olds keeping and bearing arms was reflected during the debates over the ratification of the Constitution when Federal Farmer declared, "to preserve liberty, it is essential that the whole body of the people always possess arms[.]" Federal Farmer, *Letter XVIII*, Jan. 25, 1788.

In sum, virtually every 18-to-20-year-old in Colonial- and Founding-era America was required to keep and bear arms, 18-to-20-year-olds commonly possessed and carried arms independent of militia duty, and no regulation in Colonial- or Founding-era America restricted the rights of 18-to-20-year-olds to keep or bear arms.

III. The Superior Court relied on improper analogues.

A. Despite being considered "infants" for some purposes, 18-to-20-year-olds still had full Second Amendment rights in the Founding Era.

The Superior Court concluded that 18-to-20-year-olds' legal status as "infants" for some purposes in the Founding era "lends itself to the conclusion that our nation has a historical tradition of restricting the rights of those aged 18 to 20." Op. 19–20. Specifically, the court found it persuasive that "minors lacked … the right to enter into contracts" and that "it was commonly understood that their parents, guardians, or the local government or state would provide them with arms" for militia service.

First, it was *not* commonly understood that someone else would provide arms for 18-to-20-year-old militiamen. Of the hundreds of militia laws enacted before 1800, the overwhelming majority required 18-to-20-year-olds to acquire, keep, and bear the required militia arms and punished them personally for failing to do so. *See generally* 2 BACKGROUNDS OF SELECTIVE SERVICE: MILITARY OBLIGATION: THE AMERICAN TRADITION, pts. 1–14 (Arthur Vollmer ed., 1947).

Second, "requirements that parents furnish firearms for their sons' militia service do not mean that the military-age young men lacked the right to keep and bear (or obtain) such arms themselves. They just as readily imply that eighteen-to-twenty-year-olds were *expected* to keep and bear arms, even if provided by parents." *Reese*, 127 F.4th at 597. "To the extent those laws reflect a Founding-era policy on age and firearms, they reflect the policy that eighteen-to twenty-one-year-olds *should be armed*." *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1181 (11th Cir. 2025) (en banc) (Brasher, J., dissenting). Moreover, these laws were typically intended to ease the financial burden on younger militiamen who could not be expected to afford the required arms themselves, instead placing that burden on their parents or guardians. For example, under Pennsylvania's 1676 law, 18-to-20-year-olds who were "freeholders" had to furnish the arms "at their own . . . Charge and Cost," while 18-to-20-year-olds who were financially dependent on their "Parents or Masters" could rely on them to provide the arms. CHARTER TO WILLIAM PENN, AND LAWS OF THE PROVINCE OF PENNSYLVANIA, PASSED BETWEEN THE YEARS 1682 AND 1700, PRECEDED BY DUKE OF YORK'S LAWS IN FORCE FROM THE YEAR 1676 TO THE YEAR 1682, at 39 (Staughton George et al. eds., 1879).

Perhaps most importantly, none of these laws restricted the rights of 18-to-20-year-olds to keep or bear arms.

Third, the notion that 18-to-20-year-olds were somehow unable to keep and bear arms due to limitations on their ability to enter into contracts is belied by the fact that virtually *every* 18-to-20-year-old was *required* to keep and bear arms in the Colonial and Founding eras, as discussed *supra*. Plus, there was a recognized exception covering contracts for necessaries, *see* 1 Samuel Comyn, A TREATISE OF THE LAW RELATIVE TO CONTRACTS AND AGREEMENTS NOT UNDER SEAL 148 (1809), and firearms were often considered necessaries. For instance, a 1786 Massachusetts law forbade local officials from executing a warrant of distress for the collection of debts against "any person['s] . . . arms or household utensils, necessary for upholding life." Act of Feb. 16, 1786, 1785 Mass. Acts 516. Connecticut, Maryland, and Virginia had similar laws. THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 537 (J. Hammond Trumbull ed., 1850) (Code of 1650); 30 ARCHIVES OF MARYLAND 277, 280 (William Hand Browne ed., 1910) (Act of 1715); 1723 Va. Stat. 121. And the federal 1792 Militia Act likewise exempted militia arms

"from all suits, distresses, executions or sales, for debt or for the payment of taxes." 1 Stat. 271, §1 (1792).

Fourth, restrictions on minors' contractual capacity at the Founding are fundamentally different from a modern carry ban on adults aged 18-to-20 in both "[w]hy and how the regulation burdens the right." *United States v. Rahimi*, 602 U.S. 680, 692 (2024); *see also Bruen*, 597 U.S. at 29. As for the "why," the "right of an infant to avoid his contracts is one conferred by law *for his protection* against his own improvidence and the designs of others." *Lake v. Perry*, 95 Miss. 550, 49 So. 569, 573 (1909) (emphasis added). By contrast, the Commonwealth bans carry by 18-to-20-year-olds because they are "too dangerous" to access firearms—a concern that did not inspire any carry restrictions in the Founding era. As for the "how," even if, *arguendo*, the Superior Court were correct that minors, who were still in the care and protection of their parents, could not enter into contracts for firearms—despite substantial evidence to the contrary—they nevertheless possessed and carried arms. By contrast, Pennsylvania prohibits legal adults from carrying arms.

Lastly, the Superior Court applied its analogical reasoning at the wrong level of generality. *Bruen* requires the government to prove that

its regulation "is consistent with the Nation's historical tradition of *firearm regulation*." 597 U.S. at 24 (emphasis added). At a minimum then, "*Bruen* requires firearm-specific analogies when they exist. Here, they do: Founding-era statutes and practices establish 18 as an age of arms-bearing responsibility." George A. Mocsary, *The Wrong Level of Generality: Misapplying* Bruen *to Young-Adult Firearm Rights*, 103 WASH. U. L. REV. ONLINE 100, 104 (2025). "The infancy doctrine is a general contract rule, not an American gun law." *Id.* "It incidentally affected all non-necessary purchases; it did not single out arms or reflect a historical judgment that young adults may be disarmed or barred from acquiring [or carrying] firearms." *Id.* "Abstracting to the contract law of infancy to validate a purchase ban sidesteps *Bruen*'s 'how and why' inquiry and substitutes a non-firearm, non-disability for a firearm regulation." *Id.*

B. The late nineteenth-century laws are both too little and too late to establish a historical tradition.

The Superior Court also found persuasive that "in the latter-half of the nineteenth century, twenty jurisdictions passed laws restricting firearm access for minors." Op. 22. But these laws are both too little and too late.

"[F]or decades, the [Supreme] Court has generally assumed that the public understanding of the right when the Bill of Rights was adopted in 1791 governs" in cases involving federal law. *Worth v. Jacobson*, 108 F.4th 677, 693 (8th Cir. 2024) (cleaned up); *see also Gamble*, 587 U.S. at 702 (noting that the relevant inquiry is "the public understanding in 1791 of the right codified by the Second Amendment"). And the Court has made emphatically clear that once "a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires." *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). It follows that 1791 is the focal point for inquiry into the Second Amendment's historically understood limits. *See* Mark W. Smith, *Attention Originalists: The Second Amendment was adopted in 1791, not 1868*, HARV. J.L. & PUB. POL'Y PER CURIAM (Dec. 7, 2022), https://perma.cc/8CSW-QB2L.

A collection of laws dating back no earlier than sixty years after the Second Amendment's ratification cannot establish a "tradition of firearm regulation" justifying Pennsylvania's laws, particularly where those late-breaking laws "contradict[ ] earlier evidence." *Bruen*, 597 U.S. at 24, 66; *see also Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 482 (2020)

(collection of over 30 state laws that "arose in the second half of the 19th century. . . cannot by itself establish an early American tradition" justifying the laws under the First Amendment).

In any event, these Reconstruction-era laws "have serious flaws even beyond their temporal distance from the founding." *Worth*, 108 F.4th at 697 (internal quotation marks omitted). By the turn of the twentieth century, less than half of the States had adopted age-based firearm restrictions of any sort. Those laws typically applied only to certain types of weapons, or to carrying firearms concealed rather than openly, and several contained "exceptions for self-defense, hunting, or home possession." David B. Kopel & Joseph G.S. Greenlee, *History and Tradition in Modern Circuit Cases on the Second Amendment Rights of Young People*, 43 S. Ill. Univ. L.J. 119, 142 (2018). This smattering of late-breaking age restrictions does not suffice to show a "[w]ell entrenched," *Rahimi*, 602 U.S. at 695, or "well-established and representative," *Bruen*, 597 U.S. at 30, historical tradition of firearm regulation.

Even more fundamentally, because the age of majority generally was 21 at the time, these nineteenth-century laws applied only to limit

the Second Amendment rights of actual minors—individuals who, at the time, remained under the legal custody and protection of their parents. Because they were "based on one's status as a minor," *Worth*, 108 F.4th at 698, the "[w]hy and how" of these laws, *Rahimi*, 602 U.S. at 692, were thus both fundamentally different from Pennsylvania's laws. "Not to belabor the point, but eighteen- to twenty-one-year-olds in [Pennsylvania] today are analogous to adults, not minors, at the time these statutes were enacted." *Nat'l Rifle Ass'n*, 133 F.4th at 1185 (Brasher, J., dissenting).

CONCLUSION

As the Commonwealth has failed to demonstrate that its carry restrictions for young adults are consistent with our nation's historical tradition of firearm regulation, the decision below should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that based on the word count of Microsoft Word, this brief does not exceed 7,000 words, pursuant to PA.R.A.P. 2135.

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