No. 24-1046

In the Supreme Court of the United States

JASON WOLFORD, *et al.*,

Petitioners,

v.

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAII,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE FIREARMS POLICY COALITION IN SUPPORT OF PETITIONERS

CODY J. WISNIEWSKI
FPC ACTION FOUNDATION
5550 Painted Mirage Road, Suite 320
Las Vegas, NV 89149
(615) 955-4306
cwi@fpcafhq.org

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Amicus Curiae

November 24, 2025

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES..... ii

INTEREST OF AMICUS CURIAE.....1

INTRODUCTION AND SUMMARY OF THE ARGUMENT.....1

ARGUMENT 4

I. The Founding era is the critical period of history for understanding the contours of the Second Amendment. 5

II. There is no historical tradition that supports presumptively banning the carrying of firearms on private property held open to the public. 9

A. During the Founding, the American view of private property and hunting diverged meaningfully from the English view. 11

B. Leading up to the Founding, the only laws restricting the rights of Americans to carry firearms on private property were hunting regulations.....14

C. After the Civil War, some former-Confederate states enacted prohibitions on carrying firearms on some types of private property in an effort to subjugate former slaves 22

III. Hawaii's law is a modern deviation from our nation's historical traditions. 27

CONCLUSION 30

TABLE OF AUTHORITIES

CASES PAGE

District of Columbia v. Heller,
554 U.S. 570 (2008).....6, 8, 9, 12, 15

Espinoza v. Mont. Dep't of Revenue,
591 U.S. 464 (2020).....7, 27

Gamble v. United States,
587 U.S. 678 (2019).....7

Kipke v. Moore,
695 F. Supp. 3d 638 (D. Md. 2023).....26

Koons v. Att'y Gen. N.J.,
156 F.4th 210 (3d Cir. 2025) 20, 21

Marsh v. Chambers,
463 U.S. 783 (1983).....6

McDonald v. Chicago,
561 U.S. 742 (2010).....7

McKee v. Gratz,
260 U.S. 127 (1922).....13, 14

New York State Rifle & Pistol Ass'n, Inc. v. Bruen,
597 U.S. 1 (2022) 1, 2, 5, 6, 7, 8, 9, 10, 21, 22, 27

Ramos v. Louisiana,
590 U.S. 83 (2020) 7

Timbs v. Indiana,
586 U.S. 146 (2019).....26, 27

United States v. Rahimi,
602 U.S. 680 (2024).....1, 6

CONSTITUTIONAL AND STATUTORY PROVISIONS

1715 Md. Laws 90, ch. 26 § 7 ..... 16, 17

1722 N.J. Laws 141–42 16

1865 La. Acts 14–16, § 1 (Extra Sess.) 23, 24

1893 Or. Gen. Laws 79 23

Act of Dec. 20, 1763, 1763 N.Y. Laws 441, 442 18

Act of Dec. 6, 1769, § 3, 1769 N.J. Laws 319, 320 19

CAL. PENAL CODE § 26230(a)(26) 28

HAW. REV. STAT
§ 134-9.1(a)(4) 29
§ 134-9.5(a) 28

MD. CODE ANN. CRIM. LAW § 6-411(d) 28

N.J. STAT. ANN. § 2C:58-4.6(a)(24) 28

N.Y. PENAL LAW § 265.01-d(1) 28

VT. CONST. ch. 2, § 39 (1777),
https://perma.cc/93C8-XPVN 12

OTHER AUTHORITIES

1 WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) 15

2 A DIGEST OF THE LAWS OF TEXAS CONTAINING THE LAWS IN FORCE AND THE REPEALED LAWS ON WHICH RIGHTS REST, FROM 1864 TO 1872 (3d ed. 1873) 25

2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1803) 11, 12

3 THE STATUTES AT LARGE OF PENNSYLVANIA, FROM 1682 TO 1801 (1896) 14, 15

3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1803).....11

A Test Case for the President, N.Y. TRIB. (Mar. 7, 1866).....25

Act of Jan. 30, 1790, in 1 PRIVATE AND SPECIAL STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS (1805) 20

ALBANY WEEKLY HERALD (Sep. 28, 1893), https://perma.cc/H5AC-ENC8 23

Ian Ayres & Spurthi Jonnalagadda, *Guests with Guns: Public Support for 'No carry' Defaults and Private Land*, 48 J.L., MED. & ETHICS 183 (2020).....27, 28

Nathaniel Breading et al., *The Address and reasons of dissent of the minority of the convention, of the state of Pennsylvania, to their constituents* (1787), https://perma.cc/HD7R-U7WN 13

ALLEN BUSH, A DIGEST OF THE STATUTE LAW OF FLORIDA (1872), https://perma.cc/VWF8-98W6.....26

Catie Carberry, *What's in a name? The Evolution of the Term "Gun,"* DUKE CTR. FOR FIREARMS L. (July 24, 2019), https://perma.cc/W9M8-MYPY 15, 16

Florida Constitution of 1868 *in* BENJAMIN PERLEY POORE, THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS (2d ed. 1878), https://perma.cc/L24Q-Q8DC 25, 26

LAWS OF THE STATE OF NEW JERSEY 25 (Trenton 1821).....19

Thomas A. Lund, *Early American Wildlife Law*, 51 N.Y.U. L. REV. 703 (1976) 11

WILLIAM RAWLE, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA (1829) 12

Report of George F. Hoar, W. A. Wheeler, Wm. P. Frye, *reprinted in* CHARLES H. JONES, AN ABRIDGMENT OF THE DEBATES OF CONGRESS (H. Holt & Co. 1875) 24, 25

Brian Sawers, *Keeping Up with the Joneses: Making Sure Your History Is Just as Wrong as Everyone Else's*, 111 MICH. L. REV. FIRST IMPRESSIONS 21 (2013) 13, 19

Brian Sawers, *Race and Property After the Civil War: Creating the Right to Exclude*, 87 MISS. L. J. 703 (2018) 23, 24, 26

ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) 17

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/7U25-GY86 6

Testimony of the Department of the Attorney General on H.B. No. 984, H.D. 1 (Feb. 24, 2023), https://perma.cc/6QEF-ST9K 28, 29

THE ACTS AND RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY OF FLORIDA, AT ITS FOURTEENTH SESSION 27, § 19 (1866) 25, 26

THE EUGENE GUARD (May 15, 1893), https://perma.cc/7MHJ-QC4A 23

THE FRAME OF THE GOVERNMENT OF THE PROVINCE OF PENNSYLVANIA (1683), https://perma.cc/538U-PR2N.....12

THE PENAL CODE OF THE STATE OF TEXAS 1879 (1887), https://perma.cc/Z54D-WEBY 25

ST. GEORGE TUCKER, *View of the Constitution of the United States*, *in* 1 BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE, TO THE CONSTITUTION AND LAWS, OF THE FEDERAL GOVERNMENT OF THE UNITED STATE; AND OF THE COMMONWEALTH OF VIRGINIA (1803).....12

INTEREST OF AMICUS CURIAE[1]

Firearms Policy Coalition, Inc. (FPC) is a nonprofit membership organization that works to create a world of maximal human liberty and freedom. It seeks to protect, defend, and advance the People's rights, especially but not limited to the inalienable, fundamental, and individual right to keep and bear arms. FPC accomplishes its mission through legislative and grassroots advocacy, legal and historical research, litigation, education, and outreach programs. FPC's legislative and grassroots advocacy programs promote constitutionally based public policy. Since its founding in 2014, FPC has emerged as a leading advocate for individual liberty in state and federal courts, regularly participating as a party or *amicus curiae*.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Hawaii has presumptively banned carrying firearms for self-defense on all private property held open to the public. Hawaii's law implicates the Second Amendment because it directly "regulates arms-bearing conduct." *United States v. Rahimi*, 602 U.S. 680, 691 (2024). And it is unconstitutional because it is utterly without grounding in this Nation's history of firearms regulation. Indeed, laws of its type are exclusively the product of former "may-issue" states seeking to minimize the practical significance this Court's

[1] Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amici or their counsel made such a monetary contribution.

decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

Under *Bruen*, this case is straightforward. Hawaii's law should be declared unconstitutional, consistent with decisions of the Second and Third Circuits addressing similar laws. The Ninth Circuit below, however, reached a different result. It held California's similar law likely unconstitutional because it required proprietors to post a sign to override the presumption. But it concluded the opposite for Hawaii's law, because it gave proprietors the ability to override through written or verbal means. The Ninth Circuit itself acknowledged the "seemingly arbitrary" distinctions it drew in this case, but it blamed them on the "historical analysis required by" this Court. Pet.App.80a. As this brief seeks to demonstrate, the panel's blame is misdirected. History does not countenance a state requiring members of the general public to obtain advance permission to carry firearms for self-defense in locations held open to them, regardless of the means by which that permission is obtained.

The Ninth Circuit's decision blessing Hawaii's presumptive carry ban is marked by several errors. First, the court primarily relied on two statutes, one from 1771 and the other from 1865. While two statutes is too few to show a consistent national tradition with respect to arms bearing conduct, even that is overcounting, as the court was wrong to accord a law from as late as 1865 effectively dispositive weight. Under this Court's precedents, Founding-era evidence is primary, and later history has only confirmatory value.

Second, the Ninth Circuit erred in concluding that either of the laws it primarily relied on were proper historical analogues.

In the century leading up to the Founding, American property law underwent major changes, as the balance struck in England between private property rights of landholders and hunting rights was adjusted to accommodate a new country where game and land were both plentiful. Whereas in England hunting was restricted to men of a certain class and all land was considered enclosed by an invisible boundary, in America, the rule developed that hunting should be a much more democratic pursuit. Indeed, even on land owned by another, animals were fair game for everyone unless the landowner took steps to make the land productive or to keep hunters out.

The 18th-century regulations on which the court below rested its analysis, including the 1771 New Jersey statute that it accorded particular weight, are consistent with this history. These were laws aimed at restricting unlawful hunting, and they sought to do so by prohibiting trespassing with guns on land not held open to the public.

The laws enacted immediately after the Civil War, which are frequently cited to support laws like Hawaii's, including the 1865 Louisiana statute relied on by the panel below, are even less apt analogues. Given their historical backdrop, if they could be considered part of the same historical tradition of hunting regulations as the colonial laws, their place in that tradition would be similar to that of the fugitive slave laws in the tradition of laws facilitating the return of property to an owner. These laws were part of the

"Black Codes" of states like Louisiana and Texas. The Black Codes were a suite of regulations adopted by former Confederate states, before formal readmission to the Union, which sought as much as possible to recreate the economic conditions that had existed before the Civil War. Presumptively banning the carrying of firearms served the purposes of this system by reducing the opportunities for newly freed persons to engage in subsistence hunting, therefore making it more likely that they would have to return for employment to the plantations from which they had just been freed.

The true origins for Hawaii's presumptive carry ban lie neither in colonial hunting regulations nor in postbellum Black Codes. Instead, the inspiration came from a 2020 social science paper suggesting a novel way in which to drastically reduce the number of ordinary, law-abiding Americans who carry firearms in public. Hawaii's desire for such a law only arose after this Court vindicated public carry rights in *Bruen*. It is precisely the sort of change that the Second Amendment was included in the Bill of Rights to prevent. The decision below must be reversed.

ARGUMENT

The Ninth Circuit below concluded "that a national tradition likely exists of prohibiting the carrying of firearms on private property," including property held open to the public, "without the owner's oral or written consent." Pet.App.64a. This historical conclusion was wrong, and the Ninth Circuit reached it by failing to properly apply the method of analysis this Court laid out in *Bruen* and *Rahimi*. Broadly

speaking, it was the product of two types of error, both unfortunately common in the lower courts.

First, the Ninth Circuit accorded equal weight to laws from the just before the Founding and laws from the latter half of the 19th century. It should not have. Constitutional rights have the meaning they had when they were adopted, and the Second Amendment's meaning was set in 1791.

Second, in assessing "how" and "why" historical laws impacted the right to keep and bear arms, the Ninth Circuit failed to consider the historical context of the laws that it uncritically assumed were similarly sweeping prohibitions to Hawaii's default-flipping statute. Placing those laws in context shows that at *no period* in our history has a restriction like Hawaii's been accepted as consistent with the rights of Americans.

I. The Founding era is the critical period of history for understanding the contours of the Second Amendment.

Though the Ninth Circuit reviewed laws ranging from 1721 to 1893 in assessing the constitutionality of Hawaii's no-carry default restriction, it rested its conclusion that the law was constitutional primarily on two statutes, one from 1771 in New Jersey and one from 1865 in Louisiana. *Id.* at 62a. Because a law from 1865 is too late to be of primary importance under *Bruen*, properly analyzed, the Ninth Circuit's case rests entirely on the 1771 New Jersey statute.

Although this Court acknowledged a "scholarly debate" on this issue in *Bruen*, it nevertheless held that when it comes to understanding the meaning of the Bill of Rights, "not all history is created equal."

597 U.S. at 34, 37. And that must be true. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008). The people adopted the Second Amendment in 1791, so the public understanding of the right at that time is crucial to understanding the contours of the right. *Bruen*, 597 U.S. at 37; *see also Rahimi*, 602 U.S. at 739 (Barrett, J., concurring) ("Call this 'original contours' history: It looks at historical gun regulations to identify the contours of the right."). The best evidence of that understanding will necessarily come from that period, not from later history. *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/7U25-GY86; *see also Rahimi*, 602 U.S. at 738 (Barrett, J., concurring) ("[E]vidence of 'tradition' unmoored from original meaning is not binding law."). Thus, in *Bruen*, the focal point of this Court's analysis of the understanding of the Second Amendment when it was adopted in 1791 was on the "history of the Colonies and early Republic," culminating with a law enacted in 1801. *Bruen*, 597 U.S. at 46–50. This tight temporal focus is consistent with the special solicitude this Court has shown to the acts of the First Congress, the body that drafted the Bill of Rights. *See, e.g.*, *Marsh v. Chambers*, 463 U.S. 783, 790 (1983). At a minimum, evidence postdating the mid-1830s can only be confirmatory, as by then the Nation had entered a new era with the election of Andrew Jackson (1828), the end of the Marshall Court (1835), and the death of James Madison (1836).

That the Second Amendment applies to Hawaii through the Fourteenth Amendment does not alter the analysis. The Fourteenth Amendment expanded the jurisdictional reach of the Bill of Rights, it did not purport to change the content of incorporated Bill of Rights provisions or "water[] [them] down." *Ramos v. Louisiana*, 590 U.S. 83, 93–96 (2020). To the contrary, this Court has repeatedly and "decisively held that incorporated Bill of Rights protections are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *McDonald v. Chicago*, 561 U.S. 742, 765 (2010) (quotation marks omitted). *Bruen* reiterated these holdings. *Bruen*, 597 U.S. at 37 (collecting cases). In light of these holdings, it should follow that the proper, singular meaning of incorporated rights was established in 1791. While adoption of the 14th Amendment may have extended the reach of those rights, it did not change their substantive meaning.

This Court accordingly has treated Founding-era history as dispositive and relied on later, 19th-century sources only to confirm what earlier sources had already established. *Gamble v. United States*, 587 U.S. 678, 702 (2019). Indeed, this Court expressly has held that while evidence from "the second half of the 19th century" can serve to "reinforce" "an early American tradition," it cannot "by itself establish one." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 482 (2020). That is especially true for historical evidence that significantly post-dates the ratification of the Fourteenth Amendment in 1868—regardless of whether the controlling date is 1791 or 1868. Therefore, laws beyond the end of Reconstruction should be given little if any

weight. This is consistent with *Bruen*, where, even assuming 1868 could be the proper date for understanding the Second Amendment's scope, this Court accorded "late-19th century" evidence post-dating the "Reconstruction-era" little weight when it "contradicts earlier evidence," putting such evidence on the same plane as 20th-century evidence. *See Bruen*, 597 U.S. at 64, 66–67 & n.28.

Heller is exemplary of the Court's established practice in focusing primarily on historical sources from around the Founding to define the scope of a constitutional right. *Heller* relied heavily in its analysis on colonial and Founding-era sources, which it treated as the primary evidence of the scope of the Second Amendment's protections. *Heller*, 554 U.S. at 581–86, 600–03. *Heller* turned to "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century" only after completing its review of these earlier periods. *Id.* at 605. *Heller* did not give these later sources equal weight. For instance, while *Heller* addressed the "outpouring of discussion of the Second Amendment in Congress and in public discourse" following the Civil War, it made clear that "[s]ince those discussions took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources." *Id.* at 614. And *Heller* displayed a significant skepticism toward the laws of that period, noting that much of the discourse arose in the context of efforts to disarm newly freed blacks in the South. *Id.* Ultimately, when it came time to describe what firearms, if any, could be banned consistent with the Second Amendment, the historical tradition *Heller* identified, that of

"prohibiting the carrying of 'dangerous and unusual weapons,' " was supported by reference to treatises dating as far back as 1769. *Id.* at 627. Nothing in *Heller* suggests that evidence from the 1860s should take primary importance, or that evidence from after Reconstruction should be accorded any weight at all. *See also Bruen*, 597 U.S. at 66 ("As we suggested in *Heller*, however, late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence.").

II. There is no historical tradition that supports presumptively banning the carrying of firearms on private property held open to the public.

The Ninth Circuit divided the relevant historical record in this case into two sets of laws. It read one set as having "prohibited the carry of firearms onto subsets of private land, such as plantations or enclosed lands." Pet.App.60a. (relying on laws from Pennsylvania (1721), New Jersey (1722), New York (1763), and Oregon (1893)). "The second set of laws contained broader prohibitions, banning the carrying of firearms onto *any* private property without the owner's consent." *Id.* at 61a (relying on laws from New Jersey (1771) and Louisiana (1865)). Both sets, in the Ninth Circuit's view, comprised laws spanning colonial America through to the latter half of the 19th century. The panel recognized that the first set was more limited than the Hawaii statute as those laws were largely directed at preventing poaching and applied "to only a subset of private property" that was closed off from the public. *Id.* at 61a. But it stressed that "those limitations did *not* apply to the second set of

laws," which it called "dead ringers" for the private property default rule. *Id.* at 62a.

Even if this were accurate, two laws that *departed* from the mainstream cannot be used as valid analogues, as *Bruen* says that such analogues must be "well-established *and representative*." *Bruen*, 597 U.S. at 30 (emphasis added). Laws that depart from the norm are by no means representative of a tradition. The Ninth Circuit thus should have discarded the 1771 New Jersey and 1865 Louisiana laws as outliers even assuming arguendo that its understanding of them was accurate.

In any event, the Ninth Circuit's understanding was not accurate. Neither "set" of laws supports the historical narrative the Ninth Circuit built up around them. At most, these scattered trespass laws and hunting restrictions demonstrate a history of property rights regulation that runs contrary to Hawaii's novel restrictions. The 18th-century restrictions identified by the Ninth Circuit (even the allegedly broader 1771 New Jersey law), were part of an American rebalancing of the adverse rights of landholders and hunters to favor hunters, going so far, in some cases, as to permit hunting on private land and against the owner's wishes if the land was unenclosed and unimproved. Nineteenth-century laws (including some not mentioned by the Ninth Circuit below, but which have featured in other courts' discussion of presumptive bans like Hawaii's) both continued, and, in critical respects, altered this tradition. Former slaveholders in the South sought to shift the balance in favor of property rights and against the hunting rights of former slaves in an effort to circumscribe their liberty, thereby

ensuring that they remained practically dependent upon the landholding class for their livelihood.

No law, from any period, supports upholding Hawaii's presumptive carry ban.

A. During the Founding, the American view of private property and hunting diverged meaningfully from the English view.

For centuries prior to the Founding, English game laws had limited hunting and trapping to those with proper "qualifications," in terms of wealth and landholding. Thomas A. Lund, *Early American Wildlife Law*, 51 N.Y.U. L. REV. 703, 709 (1976). The purpose of these restrictions was to make it so that lower classes "could neither consume game, nor interfere with the beasts that ravaged their crops," thereby ensuring they remained dependent upon their labor for their food. *Id.* at 704. In achieving that goal and in reinforcing a lord's control over his lands, these restrictions went hand in hand with the English common law's strong conception of the right to exclude. As Blackstone explained, "every man's land is in the eye of the law inclosed and set apart from his neighbors … either by a visible and material fence … or, by an ideal invisible boundary." 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 209–10 (1803).

Neither of these views, however—that hunting was a rich man's sport or that any landowner could entirely close his whole property to any intrusion by means of an invisible barrier—would last long in the new world. Even in England, by the time of the founding of this country, the English game laws were denigrated for "disarming the bulk of the people." 2

WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 412 (1803). On this side of the Atlantic, they were denounced as "[a]n arbitrary code" that had "long disgraced" England, WILLIAM RAWLE, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 126 (1829); *see Heller*, 554 U.S. at 607, by disarming the English people "under the specious pretext of preserving the game." ST. GEORGE TUCKER, *View of the Constitution of the United States*, *in* 1 BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE, TO THE CONSTITUTION AND LAWS, OF THE FEDERAL GOVERNMENT OF THE UNITED STATE; AND OF THE COMMONWEALTH OF VIRGINIA app. D at 300 (1803).

In addition to eliminating the "qualifications" that effectively disarmed the English commoners, Americans also expanded the places where citizens could hunt. The American rule that developed was that the people generally were free to carry their arms and hunt where they pleased, unless the landowner specifically improved or enclosed his property. In 1683, Pennsylvania's constitution provided "that the inhabitants of this province and territories thereof may be accommodated with such food and sustenance, as God, in his providence, hath freely afforded … the inhabitants of this province and territories thereof" were given "liberty to fowl and hunt upon the lands they hold, *and all other lands therein not inclosed*." THE FRAME OF THE GOVERNMENT OF THE PROVINCE OF PENNSYLVANIA, § 22 (1683), https://perma.cc/538U-PR2N (emphasis added). Vermont's 1777 constitution similarly declared "[t]hat the inhabitants of this State, shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, *and on other lands (not enclosed)*." VT. CONST. ch. 2, § 39 (1777),

https://perma.cc/93C8-XPVN (emphasis added). And Pennsylvania's antifederalists proposed a similar provision for the federal constitution. *See* Nathaniel Breading et al., *The Address and reasons of dissent of the minority of the convention, of the state of Pennsylvania, to their constituents* at 1 (1787), https://perma.cc/HD7R-U7WN ("Eighth. The Inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on *all other lands in the United States not inclosed*.") (emphasis added).

Although it was not ultimately made part of the Constitution, free hunting on unenclosed lands became, effectively, the universal rule of the time. "At ratification, only one state granted landowners any right to exclude hunters from open land, while six other states authorized hunting on open land, regardless of landowner permission." Brian Sawers, *Keeping Up with the Joneses: Making Sure Your History Is Just as Wrong as Everyone Else's*, 111 MICH. L. REV. FIRST IMPRESSIONS 21, 25 (2013); *see also id.* at 24 ("[U]nfettered public access to open land was the norm, even if it did not receive constitutional protection."). And it continued to be the de facto rule for long after. In 1922, this Court recognized that American law had long since deviated from the Blackstonian conception of an invisible boundary enclosing all private lands when it explained that:

> [t]he strict rule of the English common law as to entry upon a close must be taken to be mitigated by common understanding with regard to the large expanses of unenclosed and uncultivated land in many parts at least of this

> country. Over these it is customary to wander, shoot and fish at will until the owner sees fit to prohibit it.

McKee v. Gratz, 260 U.S. 127, 136 (1922) (Holmes, J.).

B. Leading up to the Founding, the only laws restricting the rights of Americans to carry firearms on private property were hunting regulations.

The 18th-century laws discussed by the Ninth Circuit were all part of this process of redefining and clarifying societal norms about the freedom to hunt and the rights of property holders to exclude hunters from their lands. They are, therefore, entirely unsupportive of Hawaii's position.

Begin with those 18th-century laws that the Ninth Circuit recognized as limited to only "subsets of private land, such as plantations or enclosed lands." Pet.App.60a. Each one was still more limited than the Ninth Circuit recognized.

1721 Pennsylvania. The panel pointed first to a 1721 Pennsylvania law which prohibited a person from " 'carry[ing] any gun or hunt[ing] on the improved or inclosed lands of any plantation other than his own, unless he have license or permission from the owner of such lands or plantation.' " *Id.* (quoting 3 THE STATUTES AT LARGE OF PENNSYLVANIA, FROM 1682 TO 1801 at 255 (1896)). Lest the phrase "carry[ing] any gun" be read out of context and given broader meaning (as it apparently was, by the Ninth Circuit) this law is properly understood as an anti-poaching measure and nothing more. *Contra* Pet.App.61a ("[T]he *primary* aim of some of those laws was to prevent poaching." (emphasis added)). Remember that Pennsylvania had,

in 1683, acknowledged a constitutional right of its citizens to hunt on unenclosed lands. The statute, limiting its restrictions to "improved or inclosed lands" is consistent with that history and unambiguously aimed at places where a hunter had no right to be in the first place. And while it may have applied to a person simply carrying a gun while trespassing on another's plantation, the evident purpose was to avoid difficulties of proof with respect to a poacher who was caught before he had taken game.

Other evidence confirms that this law was aimed at unlawful hunting. The statute is entitled "An Act to Prevent the Killing of Deer Out of Season, and Against Carrying of Guns or Hunting By Persons Not Qualified." And the specific section of the statute quoted by the Ninth Circuit is prefaced with the note that it is aimed at remedying "divers abuses, damages and inconveniencies [that] have arose by persons carrying guns and presuming to hunt on other people's lands." 3 PENNSYLVANIA STATUTES, *supra* at 254–55. Moreover, the use of the word "gun" in the statute itself suggests that this restriction was aimed at hunting. While today that term is understood broadly to encompass all firearms, that has not historically been the case. Noah Webster's 1828 dictionary, cited by the majority in *Heller* for its definition of the terms "arms," "keep," "carry," and "militia," *see* 554 U.S. at 581–84, 595, defined gun as encompassing both large arms like cannon and "smaller species" such as "muskets, carbines, fowling pieces, etc.," but it warned that "one species of fire-arms, the pistol, is never called a gun," *Gun*, 1 WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828); *see generally* Catie Carberry, *What's in a name? The Evolution of the Term*

"Gun," DUKE CTR. FOR FIREARMS L. (July 24, 2019), https://perma.cc/W9M8-MYPY. Pennsylvania's law applied only to those types of arms that would be used in hunting, not to smaller weapons that might be carried for self-defense.

1722 New Jersey. The 1722 New Jersey law, *see* Pet.App.60a, is irrelevant for the same reasons as the Pennsylvania law. *See* 1722 N.J. Laws 141–42. The New Jersey law replicates the Pennsylvania law's title and statement of purpose, both of which directly tie it to hunting. And it describes the relevant restriction—prohibiting anyone "to carry any Gun, or hunt on the improved or inclosed Lands in any Plantation, other than his own"—in materially identical language that identifies it as a part of the tradition of defining the right to hunt on unenclosed lands and the countervailing right to exclude from those enclosed lands. *Id.*

1715 Maryland. In its brief opposing certiorari, Hawaii identified an additional law from this early period which it asserts further supports a broad reading of these laws because it "precluded persons from 'carry[ing] a gun upon any persons land, * * * without the owner's leave.' " Br. in Opp. at 22 (June 4, 2025) (quoting 1715 Md. Laws 88–91) (brackets and ellipsis in brief). But this brief quotation omits important context that places this law, too, squarely in the tradition of laws defining the countervailing rights of hunters and landowners, and operating to bar illegal poaching (in this case, of livestock).

The law's plain text refutes any reading that would extend its provisions to cover the peaceable carry of firearms in a place that a person had any right to be. First and foremost, the law did not apply at all

to most people. Its prohibition applied to "any person or persons whatsoever, that have been convicted of any of the crimes aforesaid," (which included, for example, stealing hogs or other livestock or disfiguring the brand on hogs to disguise their true ownership) or any person convicted of "other crimes, or that shall be of evil fame, or a vagrant, or dissolute liver." 1715 Md. Laws. 90, ch. 26, § 7. And even for the narrow group of criminals to whom it did apply, it did not cover ordinary carrying of firearms, but rather forbade them to "shoot, kill or hunt, or be seen to carry a gun." *Id.* In 1715, as today, it was understood that associated words in a single statute are to be read as informing one another's meaning (*noscitur a sociis*), and similarly that catch-all phrases that conclude lists should be read as limited by the listed items that preceded them (*ejusdem generis*). ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 195–213 (2012); *see also id.* at 200 (noting that *ejusdem generis* has been a recognized canon of statutory construction since at least 1596). Hawaii's quoting of the prohibition on "carry[ing] a gun" without this statutory context obscures the fact that it was not a general prohibition on going armed in public. Finally, the law did not even apply generally to prohibit carrying arms, for purposes of using them to hunt or steal livestock, but only applied "upon any person's land, whereon there shall be a seated plantation, without the owner's leave, having been once before warned." 1715 Md. Laws 90, ch. 26, § 7. The law therefore permitted carrying firearms even under these dubious circumstances unless the person doing so had been specifically warned not to, and the statute was limited to land "whereon there shall be seated a plantation." *Id.* That is a clear reference to the division,

outlined above, between the lands that were understood to be open to the public for hunting at the Founding, and those that were closed off or improved.

1763 New York. Moving on to the New York restriction from 1763, *Wolford*, Pet.App.60a, the story is much the same. The statute was aimed at hunting on enclosed lands. Its title proves this: "An ACT to prevent hunting with Fire-Arms in the City of New-York, and the Liberties thereof," as does its preface: bemoaning the practice of "disorderly persons … to hunt with Fire-Arms, and to tread down the Grass, and Corn, and other Grain standing and growing in the fields and inclosures [in New York City]." Act of Dec. 20, 1763, 1763 N.Y. Laws 441, 442. And its proscription was similarly limited, criminalizing "carry[ing], shoot[ing], or discharg[ing] any Musket, Fowling-Piece, or other Fire-Arm whatsoever, into, upon, or through any Orchard, Garden, Corn-Field, or other inclosed land whatsoever." *Id.* § 1. That this law, like the others, was part of the effort to redefine the contours of property law and to clarify where individuals had no right to go in the first place is made all the more clear by the fact that the same section of the statute criminalizes merely "enter[ing] into, or pass[ing] through … any of the aforesaid places" without fire-arms. *Id.*

1771 New Jersey. A 1771 New Jersey statute was especially important to the panel's conclusion that Hawaii's law comported with historical limits on carrying firearms on private property. The panel stressed that this law was broader than the other examples from the period and "bann[ed] the carrying of firearms onto *any* private property without the owner's consent." Pet.App.61a. In fact, the law was

just as limited as the others and was focused on curtailing hunting on land closed to the public. Several interpretive cues in the statute are very similar to those in the other enactments reviewed so far. It began with a statement of purpose that focused entirely on hunting, recognizing that earlier New Jersey laws "for the preservation of deer and other game, and to prevent trespassing with guns, traps and dogs, have, by experience, been found insufficient." LAWS OF THE STATE OF NEW JERSEY 25 (Trenton 1821). Several of the other sections of the law were explicitly focused on hunting. *Id.* at 26, § 5 (providing for punishment of those "in whose custody shall be found … any green deer-skins or fresh venison" killed out of season). And the portion of the law the Ninth Circuit quoted, which forbid anyone "to carry any gun on any lands not his own, and for which the owner pays taxes, or is in his lawful possession, unless he hath license or permission in writing from the owner," also referred specifically to a "gun," which, as discussed above, meant a long gun, not any firearm. *Id.* at 26, § 1.

The Ninth Circuit ignored that evidence, because in its view, the plain text of the operative provision was otherwise much broader than the other laws. But on that front, the Ninth Circuit missed a critical limitation in the text—rather than banning carry on "*all* private property" as the panel thought, Pet.App.61a, the law was limited to private property "for which the owner *pays taxes*." LAWS OF THE STATE OF NEW JERSEY, *supra* at 25, § 1 (emphasis added). That is precisely the same as saying the land was improved or enclosed as the other laws do, because, at the time New Jersey taxed only *improved* land. *See* Act of Dec. 6, 1769, § 3, 1769 N.J. Laws 319, 320; *see also* Sawers, *Keeping Up*

with the Joneses, *supra* at 25–26. That Section 6 of the statute went on to set property qualifications for hunting on "waste and unimproved Lands" confirms that the earlier provision did not bar hunting there—and further solidifies the New Jersey statute as part of the tradition of apportioning between property and hunting rights in America.

1790 Massachusetts. Amicus is aware of just one other law from the 1700s that, although not mentioned below, has been referenced in litigation over similar "default rule" statutes in other states, a 1790 Massachusetts enactment. *See Koons v. Att'y Gen. N.J.*, 156 F.4th 210, 252 n.105 (3d Cir. 2025) (discussing the law). It was well that the Ninth Circuit did not discuss it, because it too is irrelevant. The law sets forth its purpose to respond to "great depredations made by gunners and hunters on Tarpaulin Cove, or [several islands in Duke County], by which great numbers of sheep and deer have been killed, and other damages sustained," and its first prohibition, like the 1715 Maryland law that was concerned with the stealing of hogs, makes it a crime to "unlawfully take away, shoot, kill or destroy … any sheep or other stock creatures." *Act of Jan. 30, 1790, in* 1 PRIVATE AND SPECIAL STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS 258–59 (1805). The provision which has been argued to support laws like Hawaii's is the second section, which provides for the seizure of the firearm of any person who "shall be seen with any gun or guns upon either of [certain] islands" and further provides for liability for anyone caught " with any skin, limb or carcass." *Id.* In addition to the by-now familiar reference to a "gun," this reading of the statute is bolstered by the fact that the islands at issue were all the property

of the Bowdoins, a prominent Massachusetts family, making it "a classic poaching ban, applied to the property of one influential landowner," where hunters had no right to be in the first place. *Koons*, 156 F.4th at 297 n.80 (Porter, J., concurring in the judgment in part and dissenting in part). The whole context of the statute makes clear that the prohibition merely seeks to restrict unlawful killing of stock animals—either by disarming poachers before they commit the crime, or seizing the implements of the crime thereafter.

* * *

In sum, not one of the 18th century laws courts have relied upon (either below or in any other case) to justify a presumptive carry ban on private property open to the public applied to such land at all. They instead were limited to plantations and other similar lands where people would have been trespassing without permission whether they were carrying a gun or not.

Even if these laws regulated the ordinary carry of firearms, they would be incapable of supporting Hawaii's law. But they are even less relevant than that, as they were not focused on ordinary public carry of arms at all. They were rather part of a distinctly American tradition of regulation which sought to settle the rights of landholders to prohibit incursions and hunting on their enclosed farmland and the countervailing rights of American hunters to access land left open to the public. To the extent that there is any ambiguity on these points, the laws must be interpreted as not restricting ordinary public carry, the interpretation most consistent with the text of the Second Amendment. *See Bruen*, 597 U.S. at 44 n.11 ("To the

extent there are multiple plausible interpretations … we will favor the one that is more consistent with the Second Amendment's command."). This is especially true given the lack of evidence Hawaii has mustered that such laws were actually enforced as broadly as it contends they could have been, *id.* at 58 n.25.

If these laws disclose any principle that is relevant to the scope of the Second Amendment, it is no more than that the Second Amendment permits regulation of the circumstances in which Americans may hunt on private land—but that principle is irrelevant here.

C. After the Civil War, some former-Confederate states enacted prohibitions on carrying firearms on some types of private property in an effort to subjugate former slaves.

The Ninth Circuit below cited two laws from the postbellum 19th century to support its conclusion that Hawaii's law is constitutional: one from 1893 in Oregon and one from 1865 in Louisiana. Pet.App.60a–61a. The panel acknowledged the 1893 restriction was limited to "subsets of private land" but it placed great weight on the 1865 Louisiana statute as applying to all private property. *Id.* As discussed above, these laws are simply too late to identify any new historical principle that could support a limitation on the scope of the Second Amendment's plain text. Thus, even if they supported a tradition of "arranging the default rules that apply specifically to the carrying of firearms onto private property," *id.* at 62a, they should be disregarded. But in fact, they provide no support for that rule.

1893 Oregon. The 1893 Oregon law can be readily dismissed on the same grounds as the laws from a century earlier. The law made it a crime for "any person, other than an officer on lawful business, being armed with a gun, pistol, or other firearm, to go or trespass upon any enclosed premises or lands without the consent of the owner or possessor thereof." 1893 Or. Gen. Laws 79. The references to "trespass" and "enclosed lands" tie this to the earlier hunting restrictions and make clear that this is a law about a hunter going somewhere he has no business being. Although unlike the earlier laws this law does not specifically reference hunting in its text, other historical evidence demonstrates that it was focused on that activity. *See* THE EUGENE GUARD at 2 (May 15, 1893), https://perma.cc/7MHJ-QC4A ("Trespass Law. The last legislature passed a very stringent hunting law"); ALBANY WEEKLY HERALD at 3 (Sep. 28, 1893), https://perma.cc/H5AC-ENC8 ("The Trespass Law. Hunters Will Find Its Provisions Very Rather Stringent.").

1865 Louisiana. The panel's other authority, an 1865 Louisiana statute, which the panel classed as a "historical dead ringer" for Hawaii's law, should be repudiated, not used as a basis for defining the scope of constitutional rights. The Louisiana law provided "[t]hat it shall not be lawful for any person or persons to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor, other than in lawful discharge of civil or military order." 1865 La. Acts 14–15, § 1 (Extra Sess.).

The property rights regime that had developed in America leading up to the Founding had created a system that "allowed the landless to hunt, fish, forage,

and even graze their livestock on private land" so long as it was not enclosed or improved. Brian Sawers, *Race and Property After the Civil War: Creating the Right to Exclude*, 87 MISS. L. J. 703, 706 (2018). That national regime continued up to the Civil War, but following the war, the calculus in favor of these free rights to the land and its animals changed decisively in the South, as hunting, fishing, and foraging all offered "alternatives to sharecropping [that] would have allowed many blacks to live somewhat independently, even without their own land." *Id.* That posed an obvious "threat to planters, who had no alternative to black labor, since planters were unwilling to offer wages or working conditions that would attract immigrant labor." *Id.* As a result, state governments "overturn[ed] centuries of law to prevent black people from prospering," "expand[ing] landowner rights at the expense of public rights precisely to deprive blacks of the essence of freedom." *Id.* at 706–07. Though they were limited in their ability to enact explicitly racial laws, "legislatures used the pretense of game laws to restrict hunting and fishing by blacks. Laws requiring landowner permission were the most transparent limits." *Id.* at 749.

It is into this shameful tradition that the Louisiana law fits. The law, like many before it, covered land that was presumptively closed to the public. *See* 1865 La. Acts 16 (making it unlawful to enter a plantation without permission). And it was contemporaneously criticized in a congressional report on the state of racial violence and racial discrimination in Louisiana by then-Representative George F. Hoar, a Massachusetts Republican, as part of a "series of laws which must have been designed to restore the negro to a state of

practical servitude." *Report of George F. Hoar, W. A. Wheeler, Wm. P. Frye*, *reprinted in* CHARLES H. JONES, AN ABRIDGMENT OF THE DEBATES OF CONGRESS 1369 (H. Holt & Co. 1875). Rep. Hoar specifically noted that the law had the effect of "depriving the great mass of the colored laborers of the State of the right to keep and bear arms, always zealously prized and guarded by his white employers." *Id.*; *see also A Test Case for the President,* N.Y. TRIB. (Mar. 7, 1866) (similarly describing Louisiana law as part of "a code of laws" aimed at "reenacting Slavery in fact").

Texas & Florida 1866. There were two other similar laws from this period that went unmentioned by the Ninth Circuit below, but which could not have helped its case. A Texas 1866 law read almost identically to the Louisiana law with the distinction that it was explicitly limited to "**inclosed** premises or plantations." 2 A DIGEST OF THE LAWS OF TEXAS CONTAINING THE LAWS IN FORCE AND THE REPEALED LAWS ON WHICH RIGHTS REST, FROM 1864 TO 1872 1321 (3d ed. 1873) (emphasis added). And an 1866 Florida law was also narrower, in that it specifically mentioned hunting when it prohibited "any person to hunt or range with a gun within the enclosed lands or premises of another without … permission." THE ACTS AND RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY OF FLORIDA, AT ITS FOURTEENTH SESSION 27, § 19 (1866). Unlike the Louisiana statute, neither the Texas nor the Florida restrictions lasted long. Texas's was "stricken out by the legislature" in 1879. THE PENAL CODE OF THE STATE OF TEXAS 1879 at 90, 114 (1887), https://perma.cc/Z54D-WEBY. Florida's was even more ephemeral; when Florida ratified a new constitution in 1868, it broadly nullified and voided all

statutes inconsistent with federal law or the federal (and new state) constitution, Article XVI, Section 1. Florida Constitution of 1868, *in* BENJAMIN PERLEY POORE, THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS 359 (2d ed. 1878), https://perma.cc/L24Q-Q8DC. Amicus is not aware of any similar law being enacted following the ratification of Florida's 1868 constitution, and the law does not appear to have been included in the first digest of existing Florida statutory law printed after 1868. *See generally* ALLEN BUSH, A DIGEST OF THE STATUTE LAW OF FLORIDA (1872), https://perma.cc/VWF8-98W6.

The Texas, Florida, and Louisiana laws were united in a discriminatory purpose. Each was enacted by legislatures before the creation of integrated governments following the adoption of the 14th Amendment and before the readmission of their respective states to the Union. *See* Sawers, *Race and Property*, *supra* at 764 tbl. 1. These statutes were passed "as part of their discriminatory 'Black Codes,' which sought to deprive African Americans of their rights." *Kipke v. Moore*, 695 F. Supp. 3d 638, 659 (D. Md. 2023) (citing *McDonald*, 561 U.S. at 847 (Thomas, J., concurring in part and concurring in the judgment)). Another section of the Florida law, for instance, prohibited "any negro, mulatto, or other person of color, to own, use or keep in his possession or under his control, any Bowie-knife, dirk, sword, fire-arms or ammunition of any kind, unless he first obtain a license to do so from the Judge." ACTS AND RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY OF FLORIDA, *supra* at 25, § 12. "The 'centerpiece' of the [Black] Codes was their 'attempt to stabilize the black work force and limit its

economic options apart from plantation labor.' " *Timbs v. Indiana*, 586 U.S. 146, 168 (2019) (Thomas, J., concurring in the judgment) (quoting E. FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863–1877 at 199 (1988)). Limiting hunting rights was a key part of this effort.

The context in which these purported analogues were adopted "hardly evince a tradition that should inform our understanding of the" Second Amendment. *Espinoza*, 591 U.S. at 482; *see Bruen*, 597 U.S. at 58 (concluding that two discriminatory statutes were "surely too slender a reed on which to hang a historical tradition"); *see also id.* at 63 n.27 (acknowledging that "Southern prohibitions on concealed carry were not always applied equally, even when under federal scrutiny" such that even facially neutral laws could empower "local enforcement of [such laws in a way that] discriminated against blacks"). Indeed, to the extent that looking to 1868 as a secondary period of historical relevance is helpful to understand what the ratifiers of the Fourteenth Amendment intended to protect, these laws from prior to ratification of that Amendment demonstrate the sorts of evils those ratifiers sought to end, not the practices they intended to enshrine in our Nation's foundational charter.

III. Hawaii's law is a modern deviation from our nation's historical traditions.

While Hawaii's presumptive ban has no grounding in this Nation's historical tradition of firearm regulation, its true genealogy is straightforward. The idea was promoted in a 2020 article that appeared in the Journal of Law, Medicine and Ethics. *See* Ian Ayres & Spurthi Jonnalagadda, *Guests with Guns:*

Public Support for 'No carry' Defaults and Private Land, 48 J.L., MED. & ETHICS 183, 183 (2020). The authors noted that their proposal, to presumptively ban carriage of firearms on private property open to the public absent the owner's express permission, was decidedly *not* the state of the law at the time. With the exception of some specific rules the authors identified regarding churches or places selling alcohol, "*no* state [had] adopted generalized 'no carry' defaults for retail establishments." *Id.* at 184 (emphasis added). And states often made it burdensome for owners to keep firearms off their premises "by imposing strict and specific" rules for how to inform patrons they were not welcome to carry a firearm or by immunizing retail establishments from tort liability if they allowed, but not if they forbid, carrying firearms. *Id.* & n.20.

The idea was not immediately taken up because, at the time, states like Hawaii had other options for limiting the ways their citizens could exercise the right to keep and bear arms. Then, on June 23, 2022, this Court struck down New York's "good cause" requirement to acquire a handgun carry license in *Bruen*, and the most significant of those options disappeared. Hawaii passed its bill implementing Ayres' and Jonnalagadda's idea less than a year later (as did four of the other six may-issue states). *See* HAW. REV. STAT. § 134-9.5(a); CAL. PENAL CODE § 26230(a)(26); MD. CODE ANN. CRIM. LAW § 6-411(d); N.J. STAT. ANN. § 2C:58-4.6(a)(24); N.Y. PENAL LAW § 265.01-d(1). In testimony in support of the restriction, Hawaii's attorney general warned that *Bruen* "represents a very significant and disruptive change for our State" and commended the bill for "identif[ying] policies that we believe would help address the significant risks

presented by the increased public carrying of firearms." Testimony of the Department of the Attorney General on H.B. No. 984, H.D. 1 at 2 (Feb. 24, 2023), https://perma.cc/6QEF-ST9K. With respect to the presumptive ban specifically, the attorney general offered no historical justification for the law, but did approvingly cite Ayres and Jonnalagadda's research. *Id.* at 9. And giving the lie to the claim that the law was intended to buttress the rights of property owners to choose whether to allow firearms on their property, Hawaii's law included several other restrictions entirely barring carry on categories of private property, regardless of owner preference. *See, e.g.*, HAW. REV. STAT § 134-9.1(a)(4) (barring firearms at "[a]ny bar or restaurant serving alcohol or intoxicating liquor"). It could hardly be clearer that Hawaii's law is, far from firmly rooted in our history, a modern deviation spurred by a desire to blunt the effect of this Court's decision in *Bruen*.

CONCLUSION

The Court should hold Hawaii's "no carry default" rule is unconstitutional under the Second Amendment.

November 24, 2025

Respectfully submitted,

CODY J. WISNIEWSKI
FPC ACTION FOUNDATION
5550 Painted Mirage Road, Suite 320
Las Vegas, NV 89149
(615) 955-4306
cwi@fpcafhq.org

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Amicus Curiae