

No. 25-2509

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PWGG, LP, et al.,
Plaintiffs-Appellants,

v.

ROB BONTA, in his official capacity as Attorney
General of the State of California, et al.,
Defendants-Appellees.

**On Appeal from the United States District Court
for the Southern District of California**
Civil Case No. 3:19-cv-01226-L-AHG
The Honorable M. James Lorenz, Judge

**REPLY BRIEF OF
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INTRODUCTION

The California laws challenged here restrict 18-to-20-year-old adults from exercising their constitutionally protected right to acquire, possess, and use firearms for their self-defense. They do this even though the right to keep and bear arms is an essential, fundamental right guaranteed to the people of this nation. It is enshrined in the Bill of Rights and facilitates the exercise of self-defense, itself “a basic right, recognized by many legal systems from ancient times to the present day.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010). There is no historical basis for prohibiting peaceable adults from exercising their full Second Amendment rights because of their age.

The California restrictions challenged here restrict ordinary 18-to-20-year-olds from accessing the commercial market for firearms. The Semiautomatic Rifle Ban does so absolutely for the most common types of long guns in the country. And the Hunting License Requirement places an additional, arbitrary burden on the acquisition of all firearms by 18-to-20-year-olds. Neither restriction is historically justifiable.

There is no historical justification for these restrictions. In California, individuals in this age group are adults. The State can cite no

evidence of any historical restrictions from any relevant period that limited the firearm rights of adults on account of their age. That is enough to resolve this case. Even if more were needed, though 18-to-20-year-olds were minors for most purposes at the Founding, the unequivocal Founding-era evidence shows that they were minors whose rights to keep and bear arms were nevertheless fully protected by the Second Amendment. The State's evidence of some belated restrictions on the acquisition of some types of weapons by 18-to-20-year-old adults dates almost entirely to the last quarter of the 19th century, and the laws are not, in any event, relevantly similar to either the Semiautomatic Rifle Ban or the Hunting License Requirement. The State's evidence amounts to simply too little, too late, to justify its attempts to single 18-to-20-year-olds out for restrictions today.

With respect to the Hunting License Requirement, the State seeks to avoid the need for historical justification by claiming that the burden imposed is light enough that the restriction does not even implicate the plain text of the Second Amendment. But that restriction makes it more difficult for 18-to-20-year-olds to acquire any type of firearm, and that

sort of burden can only be sustained if consistent with history—and the Hunting License Requirement is not.

For these reasons, the decision below should be reversed.

ARGUMENT

I. The plain text covers Plaintiffs’ proposed conduct.

California largely concedes the “plain text” of the Second Amendment covers Plaintiffs’ conduct. It makes no argument whatsoever that the Semiautomatic Rifle Ban somehow escapes Second Amendment scrutiny, implicitly acknowledging, at least, that 18-to-20-year-olds are part of “the people,” that semiautomatic rifles are “arms,” and that sales bans necessarily implicate the Second Amendment’s protections. *See* Appellants’ Opening Br. 19–38, Doc. 12 (June 30, 2025) (“Pls.’ Br.”). California does, however, make two threshold arguments that the Hunting License Requirement does not merit historical scrutiny. First, it claims that because the Hunting License Requirement does not “meaningfully constrain” the ability of 18-to-20-year-olds to acquire firearms, it does not implicate the plain text. Appellees’ Answering Br. 10, Doc. 27 (Oct. 30, 2025) (“State Br.”) (cleaned up). Second, the State argues that because hunting licenses are granted on a “shall issue” basis,

and it believes that *Bruen* already blessed “shall-issue” regimes, requiring a hunting license of even those who have no desire to hunt can be excused without conducting any historical analysis. *See id.* at 24. This Court should reject both arguments.

A. The Hunting License Requirement is a restriction on firearm acquisition and hence implicates the plain text of the Second Amendment.

Properly applying *Bruen*, the “plain text” question should not be a big hurdle whenever “arms-bearing conduct” is at issue, as it is in this case. *United States v. Rahimi*, 602 U.S. 680, 691 (2024). In *Rahimi*, the Court did not even pause to address the issue, because it was clear that the Second Amendment’s guarantee of a “right to keep and bear arms” was implicated by a law that banned an individual from possessing arms. *Id.* at 693. But the issue is no less clear here. The Hunting License Requirement is a categorical bar on the acquisition of any long guns unless an individual chooses to take a class in California’s hunting regulations and hunter’s safety and applies for a license to hunt, even if the individual has no desire to hunt. If someone had to take a class on the importance of understanding misinformation and judging sources’ comparative veracity before posting on social media or writing on

Substack (to say nothing of paying the attendant fees to the government for the privilege), it is unquestionable that such a requirement would *implicate* the First Amendment’s protections. Whether it would be constitutional or not would depend upon applying First Amendment scrutiny, but a First Amendment analysis would certainly *apply*.

The same should be no less true here. The State nevertheless posits that the Hunting License Requirement should be excused without historical analysis because “[l]aws regulating the sale or transfer of firearms implicate the Second Amendment’s text only if they ‘meaningfully constrain’ the right to keep and bear arms.” State Br. at 18 (quoting *B&L Prods., Inc. v. Newsom*, 104 F.4th 108, 119 (9th Cir. 2024)). But as Plaintiffs explained in their opening brief, that argument overreads *B&L*, which did not hold that any case about firearms acquisition, as opposed to possession or carriage directly, must pass a threshold “meaningful constraints” test. *See* Pls.’ Br. at 30–32. Rather, in *B&L*, as well as in *Teixeira v. County of Alameda*, 873 F.3d 670 (9th Cir. 2017) (en banc), the pre-*Bruen* decision from which this Court derived the test, the laws at issue operated as limitations on *sellers*, not on purchasers, and limited where sellers could operate while staying silent

as to the question of *to whom* those sales could be made. In other words, any constraint on firearm acquisition in those cases was at best incidental, not the direct object of the laws. This law is different, as it operates not on the sellers of firearms, but on the buyers, by locking out of the market a subset of buyers who are 18-to-20-years-old and have not acquired a hunting license. Whether that takes it out of the category of regulations subject to the “meaningful constraints” tests or simply *is*, necessarily, a “meaningful constraint” is not important. In either case, the Hunting License Restriction must be considered to restrict conduct covered by the plain text of the Second Amendment.

This distinction, between laws that constitute a “*general* regulation of firearms purchasing” and those that “merely restrict one particular *means* of acquiring a firearm” was made clear in *Yukutake v. Lopez*, 130 F.4th 1077, 1091 (9th Cir. 2025), *reh’g en banc granted, op. vacated*, 144 F.4th 1119 (9th Cir. 2025) (mem.). The State emphasizes that *Yukutake* was vacated pending rehearing en banc, and points to a more recent case of this Court, *United States v. Vlha*, 142 F.4th 1194 (9th Cir. 2025), as proof that the test applies (and may not always be met) in cases “involv[ing] a broadly applicable licensing requirement.” State Br. at 22.

But *Vlha* abided by this distinction no less than *Yukutake* or *B&L*. *Vlha* involved not a licensing requirement on a *purchaser* of a firearm, but on the *seller*; specifically, it raised the question of the constitutionality of the federal law requiring anyone “engaged in the business” of manufacturing firearms to be licensed by ATF. *See* 142 F.4th at 1197, 1200. In explaining why it had to analyze the question of whether the law even implicated the Second Amendment through the “meaningful constraints” test, *Vlha* articulated the very distinction that Plaintiffs have put forward here. It stated that the “meaningful constraints” test applies in an “ancillary rights” case “[w]here the challenger is an individual whose direct possessory right to ‘keep and bear Arms’ is not implicated.” *Id.* at 1198. Here, the 18-to-20-year-olds subject to the Hunting License Requirement *are* the ones whose direct possessory rights are implicated and therefore the meaningful constraints test does not apply (or is, *per se*, satisfied).

The State’s contrary vision of the test simply cannot be accepted. The State argues, effectively, that even a direct regulation on the right of an individual to acquire a firearm can be excused from all Second Amendment scrutiny if the burden can be characterized as not terribly severe. *See* State Br. at 14. It argues, to excuse its regime from scrutiny,

that the process for acquiring a hunting license “is straightforward and simple” and requires just “ten hours of in-person instruction, or an online course followed by four hours in person” offered at a cost of approximately \$30 for the less time consuming option, followed by a practical firearms test the applicant must pass, and then, of course, the ultimate purchase of a \$60 hunting license. *Id.* at 20–21. It also points to this Court’s previous statement that the Hunting License Requirement “does not impose a significant burden on the Second Amendment right to keep and bear arms.” *Id.* at 20 (quoting *Jones v. Bonta*, 34 F.4th 704, 724 (9th Cir. 2022), *op. vacated in light of Bruen*, 47 F.4th 1124 (9th Cir. 2022)).

Even if Plaintiffs were to accept (and they do not) that requiring 18-to-20-year-olds to pass a hunting exam and become a licensed hunter merely to own a firearm that a person has no intention of hunting with is “straightforward,” *all* of the analysis of how difficult or easy it is to acquire a hunting license is irrelevant. The citation to *Jones* is telling, as that statement about the perceived burden was made in explaining why “the district court properly applied intermediate scrutiny.” 34 F.4th at 724. While that may have been a relevant consideration under Ninth Circuit precedent at the time, it is not now; *New York State Rifle & Pistol*

Ass'n v. Bruen could not possibly have been clearer that interest balancing has no place in the Second Amendment analysis, and arguments that the degree of burden should be considered *before* reaching the appropriate historically centered analysis to exempt a law from scrutiny are no better than the roundly rejected notion that they should come after to excuse it. *See, e.g.*, 597 U.S. 1, 19 (2022). The State's read of the "meaningful constraints" test as a measure of the burden placed on firearm purchasers is squarely contrary to *Bruen*.

Furthermore, as Plaintiffs argued in their opening brief, these same degree-of-the-burden arguments could have been accepted by this Court in *Nguyen v. Bonta*, 140 F.4th 1237 (9th Cir. 2025), but were not. *See* Pls.' Br. at 36; *see also* *Vlha*, 142 F.4th at 1199. The State counters that *Nguyen* is different because that law "meaningfully constrained individuals' right to possess multiple firearms" by limiting them to one purchase a month. State Br. at 23. But as Plaintiffs have already explained, that law at least allowed the purchase of some firearms, "albeit on a delayed basis," and if that is a "meaningful constraint" on the right, then a law *forbidding* purchase to anyone who is not a licensed hunter must be too. Pls.' Br. at 36.

The State further seeks to draw support from *Nguyen*'s treatment of *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024), a case that rejected a challenge to a federal law providing for extra time in which to complete a background check for 18-to-20-year-old purchasers of firearms. *Nguyen* stated that the law challenged in *McRorey* served a “presumptively valid purpose,” *Nguyen*, 140 F.4th at 1243, and the State claims “a materially similar purpose” is served by the Hunting License Requirement. But that is not so. In *McRorey*, the law delayed firearm purchases to effectuate a background check requirement that excluded an individual from acquiring a firearm if they were legally ineligible to possess one. 99 F.4th at 835–36. The Hunting License Requirement, however, is not limited to establishing whether an individual is ineligible to possess a firearm. Rather, it establishes whether an individual is qualified to hunt. It would be comparable to the law in *McRorey* only if non-hunters were ineligible for Second Amendment rights. But of course, that is not true. Indeed, *McRorey* itself was clear that not *all* sales restrictions should evade Second Amendment scrutiny and excused the specific background-check requirement at issue in that case as effectively blessed by *Bruen*'s suggestion that non-abusive background check requirements generally

are permissible. *See id.* at 836–37. *Bruen* said nothing similar about hunting licenses.

B. “Shall issue” licensing regimes are not exempt from Second Amendment scrutiny.

The State’s second argument attempting to evade the historical analysis fares no better. It claims that the Hunting License Requirement is “the type of shall-issue licensing regime endorsed as constitutional in *Bruen*” and that unless Plaintiffs can show it is being “put toward abusive ends” through the imposition of lengthy wait times or exorbitant fees it must be excused without reference to the historical analysis. State Br. at 24–27 (quoting *Bruen*, 597 U.S. at 38 n.9). The fundamental error here is the State’s assumption that *Bruen* established that all laws requiring a permit or a license related to firearms that can be characterized as “shall issue” are constitutional, full stop. To the contrary, *Bruen* was very clear that every law that implicates the plain text of the Second Amendment *must* be subject to the same historical analysis. 597 U.S. at 17. While *Bruen* also stated that “nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes,” *id.* at 38 n.9, it did not exempt such laws from analysis either, *contra* State Br. at 22 n.5. Indeed, it specifically envisioned them. *Bruen*,

597 U.S. at 38 n.9. Nor did it suggest that delay and cost would be the only things that could cause a shall-issue licensing regime to flunk the analysis—it provided those as merely two “example[s]” of ways a “shall-issue” regime might nevertheless be problematic. *Id. Bruen* did not have occasion to determine whether every specific “shall-issue” requirement of a regime would be constitutional, and it certainly never addressed whether the requirement to possess a hunting license before an individual can acquire a firearm passes muster. It is for this Court to make that determination. As this Court explained in *Rhode v. Bonta*, “the Supreme Court indicated that shall-issue regimes may be constitutional, but did not hold that they were per se consistent with the Second Amendment.” 145 F.4th 1090, 1116 (9th Cir. 2025), *reh’g en banc granted, op. vacated*, 159 F.4th 1170 (9th Cir. 2025) (mem.). Although *Rhode* has since been vacated, its reading of *Bruen* on this point is both thorough and correct. It must be—the Supreme Court had only New York’s “may-issue” licensing regime in front of it, and it was in contrast to that regime that the Supreme Court’s dicta about “shall-issue” regimes was made. The Supreme Court had no occasion to examine or bless the specific and varied requirements of the “may issue” carry regimes of the other 43

states, to say nothing of a permit-to-purchase requirement like this one. As it was not addressed, the issue cannot be controlled by *Bruen*.

II. The Hunting License Requirement and Semiautomatic Rifle Ban cannot be historically justified.

The restrictions at issue both prevent individuals, on account of their age, from acquiring firearms. They therefore implicate the Second Amendment, and the burden is on the State to justify them by demonstrating that they are “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17. It has failed to do so.

A. The State has produced *zero* historical support for disarming adults.

This Court need not belabor the historical analysis in this case. As Plaintiffs explained in their opening brief, the alleged historical restrictions on which the district court relied were all historically applicable to minors, while the laws at issue in this case restrict adults. *See, e.g.*, Pls.’ Br. at 49. Following submission of the State’s brief in support, that has not changed. The State still has no evidence, from any time prior to the 20th century, of age-based restrictions on the rights of legal adults to acquire firearms. That is fatal under *Bruen* and *Rahimi*

because a law can only be “relevantly similar” to historical restrictions if it is similar both in “how” and “why” it restricts the right to keep and bear arms. *Bruen*, 597 U.S. at 29. In other words, if the principle underpinning the historical laws does not equally apply to a modern law, the modern law is not historically justified. *Rahimi*, 602 U.S. at 692.

Here, crediting *all* of the State’s alleged historical support, at most it illustrates a principle that permits more restrictive regulations on the firearm access of minors. The State’s chief source of support from the Founding era is a contracting rule that applied only to minors, *because* they were minors. Even assuming (contrary to the evidence discussed below) that these rules restricted firearm access by 18-to-20-year-olds at the Founding, they did so only as an incident to *general* limitations placed on minors because they were not yet adults. The same is true of the State’s later evidence, from the late 19th century, which again, often explicitly, singled out minors for restrictions on purchase of some types of arms. *See Jones*, 34 F.4th at 720. But 18-to-20-year-olds today are adults and an adult, by definition, has the “full enjoyment of his civil and political rights.” 1 JOHN BOUVIER, INSTITUTES OF AMERICAN LAW 148 (1854). The State’s historical evidence therefore cannot support either the

Hunting License Requirement or the Semiautomatic Rifle Ban, even if it is construed as favorably as possible for the State.

The State responds that this argument “is in considerable tension with plaintiffs’ argument elsewhere that 18-to-20-year-olds were always understood to be covered by the Second Amendment’s right to bear arms for self-defense.” State Br. at 49. But there is no tension. Plaintiffs’ position is that *at most* the State’s evidence suggests governments can restrict the Second Amendment rights of minors to a greater extent than adults. That is not in tension with Plaintiffs’ further, independent argument that the Founding-era evidence shows that at that time 18-to-20-year-olds were understood to have full Second Amendment rights *even though they were minors*. But even if the Court were to reject this further argument and adopts the State’s view of Founding-era history, that still would not be enough under *Bruen* to carry the State’s burden because the most restrictive principle which the State’s evidence could possibly prove is that individuals who are minors may have their rights restricted in ways that adults cannot—a principle that has no application in this case.

The State further responds that even if its historical evidence consists of restrictions on minors and 18-to-20-year-olds are adults today,

there are underlying facts about 18-to-20-year-olds—their “relative lack of maturity and responsibility for impulsive decisions”—that make treating them as though they were still minors acceptable and even salutary. *Id.* at 50. The State points out that, for instance, 18-to-20-year-old adults are treated differently with respect to alcohol, tobacco, and gambling, notwithstanding the fact that they are adults, and it argues that this Court should credit the California legislature’s concern that they are “still developing the maturity and discretion required to purchase firearms responsibly and safely.” *Id.* at 50–51.

But as the Supreme Court has made clear, the Second Amendment “takes certain policy choices off the table,” unless they can be historically justified, *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008), and the fact that the Founders did not actually restrict firearm access to this age group, but required them to be armed, as discussed below, refutes this argument. “The members of the first Congress were ignorant of thermal heat imaging devices; with late teenage males, they were familiar,” *NRA v. ATF*, 714 F.3d 334, 342 (5th Cir. 2013) (mem.) (Jones, J., dissental), and they did not treat them as too impulsive to exercise their rights—rather, they mandated that they be armed. In any event, these

arguments which are irrelevant under *Bruen* do not even fit with the line the State itself has drawn, as its own expert acknowledges that “maturity” continues to improve as brain development continues into a person’s mid-20s. See 2-SER-467–73 (Cauffman Rep.). But more fundamentally, the Second Amendment does not protect a right to gamble or to smoke, so any distinction the State makes based on age will not be subject to the Second Amendment’s historically-mandated analysis. Indeed, while the Supreme Court “has said repeatedly that age is not a suspect classification under the Equal Protection Clause,” *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991), the right to keep and bear arms is a fundamental right. Even assuming for the sake of argument that history would support restricting the right of *minors* to acquire firearms independent of the parents responsible for their care and protection, that same history would provide *zero* support for restricting the right of *adults* responsible for *their own* care and protection to acquire firearms. As Plaintiffs explained in their opening brief, the logic of the State’s argument that individuals can be treated as though a historical status applied to them even though it no longer does is perverse. An 18-year-old adult has the self-defense needs of an adult, not a child with a

guardian, and the State’s attempt to disarm individuals in this age group because they previously were considered minors for some purposes is, *at best*, the sort of “law trapped in amber” reasoning that *Rahimi* rightly rejected. 602 U.S. at 691. The same logic, Plaintiffs explained, would permit the State to disarm married women today as they were considered *femes covert* at the Founding. Pls.’ Br. at 51–53. The State does not even mention that argument in its brief.

B. It is indisputable that 18-to-20-year-olds at the Founding were armed.

Turning now to the specific deficiencies of the State’s historical case, the evidence demonstrates that *Jones* was correct when determined that “the founding-era evidence of militia membership undermines” any attempt to suggest that history supports according 18-to-20-year-olds diminished Second Amendment rights. 34 F.4th at 722.

1. Founding era contract law did not prevent 18-to-20-year-olds from acquiring arms.

The State first argues, following the district court, that the Founding-era voidability rule, whereby debts incurred by a minor to acquire goods were voidable by the infant on reaching the age of majority “significantly restricted the ability of individuals under 21 to purchase

firearms at the Founding.” State Br. at 30. That is because, it claims, “firearms were expensive and individuals under 21 lacked disposable income because any wages they might have received belonged to their parents or guardians.” *Id.* (citations omitted).

As Plaintiffs explained in their opening brief, however, there was an important exception to the voidability rule. A contract for “necessaries” was binding on a minor as though he were an adult and firearms would have been considered necessaries. *See* Pls.’ Br. at 54–58. The State offers scant response to this. It asserts that “necessaries” were “limited to items like food, clothing, education, lodging, and medicine,” State Br. at 30, and it cites *Saunders Glover & Co. v. Ott’s Adm’r*, 12 S.C.L. (1 McCord) 572 (S.C. Const. Ct. App. 1822), for the proposition that “[a]t least one court held” that pistols were not necessaries, State Br. at 31. But Plaintiffs have previously explained that all the relevant sources from before, during, and after the Founding, from Lord Coke to Blackstone to James Kent, agreed that “necessaries” were not a closed list of items that minors could purchase, but rather what constituted a necessary was contextual and depended upon the specific circumstances of the minor. Pls. Br. at 54–56. The State simply ignores that argument

and does not respond to it. Nor does the State respond to Plaintiffs’ criticism of its overreading of *Saunders Glover*, which only held that *pistols*, not firearms, were not necessities, and even that only in the case of that one specific minor, not all minors. *Id.* at 55–56.¹

Indeed, the only response the State offers to Plaintiffs’ arguments on this critical issue is to dispute that the fact that 18-to-20-year-olds were legally obliged to own firearms for militia duty would have ensured they were “necessaries.” The State responds that they would have had no need to purchase arms for themselves because several states either required parents to acquire militia firearms for their children or made the parents liable for their children’s failure to do so. *See* State Br. at 31–32. This response is inadequate for three reasons. First, the whole point of a minor supplying himself with a “necessary” was that the parents

¹ In preparing this reply brief, Plaintiffs realized that they erred in their opening brief by including quotation marks around language stating that whether an item was a necessary was a “question of circumstance—not only of age but also of station in life” and thereby attributing that language to *Peters v. Fleming*, 151 Eng. Rep. 314, 6 M. & W. 42 (Exch. 1839). *See* Pls.’ Br. at 56. *Peters* strongly supports that proposition, *see, e.g.*, 6 M.&W. at 46 (“[T]he question is, whether the articles furnished are properly such articles as are necessary and suitable to the station, degree, and condition of the defendant.”), but the language is not a quote from *Peters*.

were unable, or unwilling for some reason, to supply him with it themselves. *See, e.g.*, 10 CHARLES PETERSDORFF, A PRACTICAL AND ELEMENTARY ABRIDGMENT OF THE CASES ARGUED AND DETERMINED IN THE COURTS OF KING’S BENCH, COMMON PLEAS, EXCHEQUER, AND AT NISI PRIUS 376 (1831), *available at* <https://perma.cc/KR36-6J3J> (“If an infant is living under the roof of his parent, who provides every thing which in his judgment appears to be proper, the infant cannot bind himself to a stranger, even for such articles as might, under other circumstances, be deemed necessaries.”). If the parents supplied the minor with a firearm, or he himself acquired the firearm, the point remains, *the minor had a firearm*.

Second, Plaintiffs explained that there were reasons, other than militia service, why a firearm was a necessary for nearly every 18-to-20-year-old at the Founding. Pls.’ Br. at 57. The State attempts no refutation of those reasons.

Third, even if the State’s argument were seen as casting some modicum of doubt on the proposition that 18-to-20-year-olds were able to acquire firearms as “necessaries,” that is not enough to carry its burden under *Bruen*. It is simply not enough for the State, which bears the

burden here, to hypothesize reasons why firearms may not have been necessities and suggest that this Court can thus infer that the voidability rule in fact restricted access by 18-to-20-year-olds to arms. Quite the opposite. A “barren record” devoid of cases actually holding firearms were unavailable under this rule provides an additional reason to reject reliance on it. *See Bruen*, 597 U.S. at 58 n.25. “To the extent that there are multiple plausible interpretations” of this history, the tie goes to Plaintiffs as permitting 18-to-20-year-olds to purchase firearms is “more consistent with the Second Amendment’s command.” *Id.* at 44 n.11.

2. Founding-era militia laws compelled firearm ownership.

The State’s more general arguments regarding the Founding-era militia laws fare no better. Although the State points to them as a potential source of support, they are, in fact, *fatal* to its argument. *See Jones*, 34 F.4th at 722. The State’s argument with respect to these statutes which, again, *required* 18-to-20-year-olds to possess firearms, is that several of the state laws mandating firearm possession provided for parents to acquire them for their dependent 18-to-20-year-olds. *See State Br.* at 32–34. This, the State claims, is proof that the voidability rule in fact barred 18-to-20-year-olds from buying firearms. *Id.* at 32, 34. But it

is also possible that the laws recognized that 18-to-20-year-olds may simply not always have had the financial wherewithal to acquire firearms, not that there was some legal impediment to them acquiring them. And in any event, the whole point of these provisions was to *ensure* that 18-to-20-year-olds acquired firearms, not to put any obstacle in the way of them doing so. A law that imposes barriers to firearm acquisition, and bars acquisition of semiautomatic centerfire rifles through the ordinary channels of commerce entirely, is obviously not “relevantly similar” to laws that *ensured* that 18-to-20-year-olds possessed firearms at the Founding.

3. The State cannot invoke *in loco parentis* authority over ordinary 18-to-20-year-old adults.

Finally, the State also points, in a footnote, to university regulations from this period as another means to support the principle that “18-to-20-year-olds needed parental consent to access firearms.” State Br. at 34 n.7. But it is inappropriate for the government to claim for itself the right to regulate conduct (even of minors) in the way a parent can outside of contexts in which the government assumes parental-type authority over an individual. In fact, these rules demonstrate clearly why any such claim would be problematic. The university regulations, which

applied only to students and not 18-to-20-year-olds generally, restricted their freedoms in other ways that, if applied to the general population, would have certainly been unconstitutional. *See Worth v. Jacobson*, 108 F.4th 677, 695–96 (8th Cir. 2024); *see also Minutes of the Senate Academicus, 1799–1842* at 38, UNIV. GA. LIBRS. (1976), <https://perma.cc/J3ZV-XMEC> (“Every Student, whether a Graduate or Undergraduate, shall be subject to the laws and government of the College and show in speech and behaviour, all proper respect and obedience to the President, Professors and Tutors of the College.”) (1803 restriction); *id.* at 85–86 (“If any scholar shall be guilty of profane swearing [or] [i]f he shall disturb others by noise[,] loud talking[,] or singing during the time of study[] he shall for either of those offences be punished.”) (1810 restriction). This Court should accordingly reject reliance on them, because “[a]ctions taken *in loco parentis* say little about the general scope of Constitutional rights and protections.” *Reese v. ATF*, 127 F.4th 583, 596 (5th Cir. 2025).

C. Late-19th century laws are insufficient to support the State’s restrictions.

Turning to the late 19th century, the State is finally able to point to enactments, from 19 states and the District of Columbia, that did limit

the abilities of 18-to-20-year-old minors to acquire some weapons. *See* State Br. at 35 & n.8. The State claims that these laws “taken as a whole, reveal a ... regulatory tradition of restricting the sale of firearms to individuals under age 21.” *Id.* at 46. It is wrong.

Begin with the timing problem. These laws are simply too little, too late, to establish any “regulatory tradition” at all. As Plaintiffs explained in their opening brief, the Supreme Court’s Second Amendment caselaw “strongly supports the conclusion that the Founding era is the primary benchmark against which historical evidence from later time periods must be measured” and that later evidence which contradicts earlier evidence must be rejected. Pls.’ Br. at 43. This Court previously reached the same conclusion, pre-*Bruen*, in this very case, *see Jones*, 34 F.4th at 722 (“19th-century sources may be relevant to the extent they illuminate the Second Amendment’s original meaning, but they cannot be used to construe the Second Amendment in a way that is inconsistent with that meaning.” (quoting *NRA*, 714 F.3d at 339 n.5 (Jones, J., dissental))). And though this Court has since suggested that it may also “look to historical regulations extant” at the Fourteenth Amendment’s ratification in 1868, it has never suggested that later laws could trump Founding-era

evidence or that laws passed *after* the ratification of the Fourteenth Amendment have much probative value at all.

Timing in relation to the Fourteenth Amendment's enactment and consistency with prior laws are both problems for the State here. As to timing, the State argues that these laws are reliable because they were enacted "around the time of the 1868 ratification of the Fourteenth Amendment." State Br. at 38. In fact, the State cites only two such laws that were "extant" at the time of the Fourteenth Amendment's ratification, both from the pre-Civil War South. *See id.* at 35 & n.8; 1856 Ala. Acts 17, No. 26, § 1; 1856 Tenn. Pub. Acts 92, ch. 81, § 2. The majority of the State's historical evidence of this type comes from much later, in the 1880s and 1890s. *See* State Br. at 35 n.8. The State attempts to suggest that this difference is not salient because the Supreme Court has explained "that evidence of 'how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century' represented a 'critical tool of constitutional interpretation.'" *Bruen*, 597 U.S. at 35 (quoting *Heller*, 554 U.S. at 605); *see* State Br. at 38. But *Bruen* followed that statement immediately with the warning that "to the extent later history contradicts what the text says, the text

controls.” 597 U.S. at 36. And *Bruen* itself treated the distinction between evidence from before 1868 and from the final decades of the 19th century as meaningful. It discussed “[e]vidence from around the adoption of the Fourteenth Amendment,” *id.* at 60, in a separate section from regulations enacted during “the slight uptick in gun regulation during the late-19th century,” *id.* at 66. And the Court relegated the laws in the latter category to the same status as 20th-century evidence: irrelevant to the analysis if it contradicts earlier evidence. *See id.* at 66 n.28 (“As with their late-19th-century evidence, the 20th-century evidence presented by respondents and their *amici* does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.”); *see also* State Br. at 39.

Given that there is directly contrary evidence from the Founding in the form of the militia laws requiring 18-to-20-year-olds to be armed, this Court can, and should, simply ignore this later evidence. *See Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 441 (3d Cir. 2025); *Reese*, 127 F.4th at 599–600. Indeed, the most logical inference from the appearance of these laws is that contrary to the State’s argument, there *were* no background principles of the common law that kept individuals in this

age group from acquiring firearms. To this, the State offers several responses, none adequate.

The State suggests that the existence of these late-in-time laws is, itself, evidence of their historical continuity with earlier laws. It asks why they “would not have sparked more controversy” if they were inconsistent with the scope of the right. State Br. at 38. But that is easily answered. *Bruen* itself acknowledged that the post-1868 period was one in which there was an “uptick in gun regulation,” and, far from suggesting that the uptick itself demonstrated consistency of those regulations with earlier history, *Bruen* rejected reliance on all of them. 597 U.S. at 66 & n.28. It is telling, on this point, that many of these laws that the State touts from this period either arose in the Western territories, which was also true of the laws that *Bruen* specifically noted as inconsistent with the scope of the right, or from the post-bellum South, not an area known for its stewardship of the individual rights of its citizens. *See* State Br. at 35 n.8; *see also Jones*, 34 F.4th at 722 (noting the “deeply offensive nature” of many post-1868 laws).

The State also argues that the late-in-time arrival of these statutes can be explained by the fact that “statutes were ‘comparatively

infrequent' through the middle of the nineteenth century because of the Nation's common law tradition," but that merely restates Plaintiffs' criticism of its historical case, it does not respond to it. State Br. at 41 (citation omitted).

Finally, the State argues that technological and societal changes (increased lethality of firearms and changes in contract norms and in the availability of firearms on the market) made it, belatedly, practically possible for 18-to-20-year-olds to acquire firearms, requiring new laws to maintain the same historic norms. State Br. at 42. But there are two significant problems with that argument.

First, in addition to the laws the State relies on that restricted the rights of minors under the age of 21, several other states enacted laws that set the age well below 21 or even 18, which is inconsistent with the State's position. *See, e.g.*, 1880 Ohio Laws 79. If these laws were, in fact, reinstating historical restrictions on firearms acquisition they would have gone farther.

Second, and independently, the vast majority of these laws did not prevent individuals from acquiring common rifles or shotguns but rather targeted a small subset of "deadly weapons," usually those that were

capable of being carried concealed on the person. *See, e.g.*, 1875 Ind. Acts 59 (prohibiting sale to those under 21 of “any pistol, dirk, or bowie-knife, slung-shot, knucks, or other deadly weapon that can be worn, or carried, concealed upon or about the person”). Unlike the long guns at issue in this case, the targeted weapons, “were far less regulated.” *Jones*, 34 F.4th at 722. In fact, given that states often made concealed carry illegal at this period in favor of open carry, *see Heller*, 554 U.S. at 626, these laws can be best understood as targeting what were effectively thought of as “dangerous and unusual” weapons at the time, *see Bruen*, 597 U.S. at 54 & n.21 (discussing ban on carrying small concealable pistols that preserved the right to carry larger pistols). Indeed, while the State touts a Tennessee Supreme Court decision upholding one of these laws, it is noteworthy that the focus in that case was more on the type of weapon at issue than the age of the purchaser. *Tennessee v. Callicutt*, 679 Tenn. 714, 716–17 (1878) (holding constitutional a law forbidding the sale “of a pistol or other like dangerous weapon to a minor”); *see also Jones*, 34 F.4th at 720 (“In [*Callicutt*], on top of not saying how old the minor was, that court also addressed concealed carry of dangerous weapons, not the right to keep and bear arms more generally.”). California’s reliance on the

statement in Thomas Cooley’s treatise that these laws show “the State may prohibit the sale of arms to minors,” adds nothing to this historical support. State Br. at 36 (quoting THOMAS M. COOLEY, TREATISE ON CONSTITUTIONAL LIMITATIONS 740 n.4 (5th ed. 1883)). The quote comes from Cooley’s discussion of the police power of the state, and he was not weighing in on the legitimacy of the *Callicutt* decision, which he cited for the proposition. Rather, he was “simply identifying [it] as a case related to his discussion, which is how he utilized footnotes to cite thousands of cases throughout the treatise.” 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. U. L.J. 119, 143 (2018).

The State responds that the firearms at issue in this case are analogous to the weapons targeted by most of these laws as they are those “considered most dangerous” for 18-to-20-year-olds today. State Br. at 46. This Court should reject this argument as it has previously held that “long guns and semiautomatic rifles are not dangerous and unusual weapons” that can be banned on this basis. *Jones*, 34 F.4th at 716. That is unquestionably correct, as the Supreme Court itself has recognized that semiautomatic rifles “traditionally have been widely accepted as

lawful possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994). (And in any event, the Hunting License Requirement applies even more broadly, to *all firearms*.) And finally, it argues that this Court has already credited some of these laws, as it cited to them in a footnote in *United States v. Duarte*, 137 F.4th 743, 759 n.14 (9th Cir. 2025). See State Br. at 39. But *Duarte*, in citing these laws as indicative of a 19th-century continuation of a long-standing practice of disarming dangerous people, stopped far short of endorsing them as valid analogues to be relied upon to support the different sort of principle that the State is advancing here. Rather, *Duarte* criticized these laws as “reflect[ing] overgeneralized and abhorrent prejudices that would not survive legal challenges today.” 137 F.4th at 760. This Court should, accordingly, give them no weight.

CONCLUSION

The decision of the district court should be reversed and the Court should remand with instruction to grant summary judgment in Plaintiffs’ favor and enjoin the Semiautomatic Rifle Ban and Hunting License Requirement.

Dated: December 22, 2025

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Respectfully submitted,

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UNITED STATES COURT OF APPEALS
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