

No. _____

**In the
Supreme Court of the United States**

KATHERINE NOVOTNY AND SUSANNAH KIPKE, *et al.*,
Petitioners,

v.

WESLEY MOORE, *et al.*,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Maryland's numerous prohibitions on carrying firearms in many places frequented by the general public violate the Second and Fourteenth Amendments.

PARTIES TO THE PROCEEDING

Petitioners Katherine Novotny, Sue Burke, Esther Rossberg, Maryland Shall Issue, Inc., Second Amendment Foundation, Inc., Firearms Policy Coalition, Inc., Susannah Warner Kipke, and Maryland State Rifle & Pistol Association, Inc. were plaintiffs before the District Court and were Appellants/Cross-Appellees before the Court of Appeals.

Respondents Wes Moore, in his official capacity as the Governor of Maryland, Michael Jackson, in his official capacity as Maryland Secretary of State Police, Ivan Bates, in his official capacity as State's Attorney for Baltimore City; Alison Healey, in her official capacity as State's Attorney for Harford County, Joshua Kurtz, in his official capacity as Maryland Secretary of Natural Resources, Scott Shellenberger, in his official capacity as State's Attorney for Baltimore County; and Kathryn Thomson, in her official capacity as Maryland Secretary of Transportation, were Defendants in the District Court and Appellees/Cross-Appellants in the Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Maryland Shall Issue, Inc. has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Second Amendment Foundation, Inc. has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Firearms Policy Coalition, Inc. has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Maryland State Rifle & Pistol Association, Inc. has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Kipke v. Moore*, No. 24-1799 (4th Cir. Jan. 20, 2026)
- *Novotny v. Moore*, No. 24-1827 (4th Cir. Jan. 20, 2026)
- *Kipke v. Moore*, No. 24-1834 (4th Cir. Jan. 20, 2026)
- *Novotny v. Moore*, No. 24-1836 (4th Cir. Jan. 20, 2026)
- *Kipke v. Moore*, No. 23-cv-1293 (GLR) (D. Md. Aug. 2, 2024)
- *Novotny v. Moore*, No. 23-cv-1295 (GLR) (D. Md. Aug. 2, 2024)
- *Moore v. Kipke*, No. 25-1206 (U.S.) (petition pending)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	iii
STATEMENT OF RELATED PROCEEDINGS.....	iv
TABLE OF AUTHORITIES.....	vii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	3
JURISDICTION	3
CONSTITUTIONAL AND STATUTORY PROVI- SIONS INVOLVED	4
STATEMENT	4
I. Maryland’s Locational Restrictions.....	4
II. Procedural History	6
REASONS FOR GRANTING THE PETITION	12
I. The lower courts are eviscerating the Sec- ond Amendment protected right to carry arms in public.....	12
II. The courts of appeals are divided over how to assess locational restrictions on the right to bear arms.....	17
III. The courts below ignore the importance of security in the historical sensitive-places tradition.....	26
IV. This case is a good vehicle for addressing this important issue.	33

CONCLUSION	34
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JANUARY 20, 2026	1a
APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED AUGUST 2, 2024.....	107a
APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED AUGUST 2, 2024	123a
APPENDIX D — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED SEPTEMBER 29, 2023.....	126a
APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED SEPTEMBER 29, 2023.....	172a
APPENDIX F — RELEVANT STATUTORY PROVISIONS	175a

TABLE OF AUTHORITIES

CASES	PAGE
<i>Antonyuk v. James</i> , 120 F.4th 941 (2d Cir. 2024)	18, 20, 22, 23, 24, 25
<i>Chiles v. Salazar</i> , 607 U.S. ---, 146 S. Ct. 1010 (2026)	17
<i>Christian v. James</i> , --- F.4th ---, 2026 WL 1378796 (2d Cir. May 18, 2026)	22, 25
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	2, 12, 13, 18, 21
<i>Frey v. City of New York</i> , 157 F.4th 118 (2d Cir. 2025)	18, 22, 23
<i>Koons v. Att’y Gen. N.J.</i> , 156 F.4th 210 (3d Cir. 2025)	14, 17, 18, 19, 20
<i>Koons v. Att’y Gen. N.J.</i> , 162 F.4th 100 (3d Cir. 2025)	14
<i>Matter of Rounds</i> , 255 Md. App. 205 (Md. Ct. Spec. App. 2022)	6
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	12, 13
<i>National Rifle Ass’n v. Bondi</i> , 133 F.3d 1108 (11th Cir. 2025)	26
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	1, 12, 13, 16, 17, 22, 23, 24, 25, 26

<i>Schoenthal v. Raoul</i> , 150 F.4th 889 (7th Cir. 2025)	14, 15, 18
<i>Schoenthal v. Raoul</i> , No. 25-541, 2026 WL 922526 (Apr. 6, 2026)	14
<i>State v. Huntly</i> , 25 N.C. (1 Ired.) 418 (1843)	25
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019)	26
<i>United States v. Hemani</i> , 146 S. Ct. 326 (Oct. 20, 2025) (No. 24-1234)	34
<i>United States v. Hunt</i> , 123 F.4th 697 (4th Cir. 2024)	8
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	13, 33
<i>Wolford v. Lopez</i> , 116 F.4th 959 (9th Cir. 2024)	10, 15, 18, 19, 20, 22, 25, 26, 33
<i>Wolford v. Lopez</i> , 125 F.4th 1230 (9th Cir. 2025)	15
<i>Wolford v. Lopez</i> , 146 S. Ct. 79 (2025)	10, 34
STATUTES	
MD. CODE, CRIM. LAW	
§ 4-102(b)	5, 9
§ 4-111(a)(2)(i)	5, 9
§ 4-111(a)(2)(ii)	5, 9
§ 4-111(a)(2)(iii)	5
§ 4-111(a)(4)(i)	5, 8, 9
§ 4-111(a)(8)(i)	5

§ 4-111(a)(8)(ii).....	5
§ 4-111(a)(8)(iii)	5
§ 4-111(a)(8)(iv).....	5
§ 4-111(a)(8)(v)	5
§ 4-111(a)(8)(vi).....	5
§ 4-203(a)(1)(i).....	4
§ 4-203(a)(1)(ii).....	4
§ 4-203(b)(1)	4
§ 4-203(b)(2)	4
§ 4-203(c)	4
§ 4-208.....	5
§ 6-411(d).....	5
MD. CODE, PUB. SAFETY	
§ 5-306(a)(6)	5, 6
§ 5-307.....	4
MD. CODE, TRANSP.	
§ 7-705(b)(6)	4
1786 Va. Acts 35, ch. 9	24, 32
HAW. REV. STAT.	
§ 134-9.1	34
§ 134-9.5	34
MD. CODE REGS.	
§ 04.05.01.03(B)	5
§ 08.01.07.14(B)	5
§ 08.07.01.04(B)	5
§ 08.07.06.04(B)	5
§ 14.25.02.06	5
§ 36.03.10.48	5
MD. CONST. art. 1	
§ 3 (1776).....	30
§ 14 (1776).....	30

Statute of Northampton 1328, 2 Edw. 3, c.3 (Eng.).....	32
OTHER AUTHORITIES	
2023 Maryland Session Laws, Ch. 651 (House Bill 824)	5, 6
2023 Maryland Session Laws, Ch. 680 (Senate Bill 1)	5
A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA (Richmond, Samuel Pleasants & Henry Pace 1803).....	30
A JOURNAL OF THE PROCEEDINGS OF THE HONORABLE SENATE OF THE STATE OF NEW-HAMPSHIRE (Amherst, Joseph Cushing 1808), https://perma.cc/Y7VF-UYV4	29
A MANUAL OF THE LAWS OF NORTH-CAROLINA (Ra- leigh, J. Gales ed., 3d. ed. 1814).....	31
<i>About the Sergeant at Arms: Historical Overview</i> , U.S. SENATE, https://perma.cc/GA5J-Q5F9 ...	29
ABRIDGEMENT OF THE PUBLIC PERMANENT LAWS OF VIRGINIA (Richmond, Augustine Davis ed., 1796).....	30
ACTS AND RESOLVES OF MASSACHUSETTS, 1786–87 (Bos., Adams & Nourse eds., 1893).....	31
An Act Concerning the Circuit Courts, <i>in</i> 1 LAWS OF THE STATE OF NEW YORK (Albany, Charles R. & George Webster eds., 2d ed. 1802)	30, 31
An Act Constituting Courts for the Trial of Small Causes, <i>in</i> LAWS OF THE STATE OF NEW JERSEY (Trenton, James J. Wilson ed., 1811).....	30, 31

An Act Directing the Election of a Representative for this State in the Congress of the United States, <i>in</i> 2 LAWS OF THE STATE OF DELAWARE (Samuel & John Adams eds., 1797)	30
An Act Establishing and Regulating Fees, <i>in</i> THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS (Providence, Carter & Wilkinson ed., 1798)	28
An Act for Erecting an High Court of Errors and Ap- peals, <i>in</i> 10 THE STATUTES AT LARGE OF PENN- SYLVANIA FROM 1682 TO 1801 (Wm. Stanley Ray ed., 1904)	30, 31
An Act for Regulating and Establishing Fees, <i>in</i> 2 LAWS OF THE STATE OF DELAWARE (Samuel & John Adams eds., 1797).....	28
An Act for Regulating Fees, <i>in</i> ACTS AND LAWS OF THE STATE OF CONNECTICUT (New London, Timothy Green ed., 1784).....	31
An Act for Regulating and Fixing the Salaries of Fed- eral Officers, <i>in</i> THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA (Phila., R. Aitken & Son ed., 1790).....	28, 30
An Act for the Better Regulating and Conducting Elections in the Federal Counties of this State, <i>in</i> A DIGEST OF THE LAWS OF THE STATE OF GEORGIA (Phila., R. Aitken ed., 1800)	30
An Act for the Support of Government, and the Ad- ministration of Justice, <i>in</i> 10 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801 (Wm. Stanley Ray ed., 1904).....	28

An Act for the Support of Government, <i>in</i> 1 LAWS OF THE STATE OF NEW YORK (Albany, Charles R. & George Webster eds., 2d ed. 1802)	28
An Act for Vesting Certain Powers in the Commis- sioners of the Court House, <i>in</i> A DIGEST OF THE LAWS OF THE STATE OF GEORGIA (Phila., R. Aitken ed., 1800).....	31
An Act Regulating Fees, <i>in</i> THE LAWS OF THE STATE OF NEW HAMPSHIRE (Portsmouth, John Melcher ed., 1797).....	31
An Act Regulating Fees, <i>in</i> 1 LAWS OF THE STATE OF VERMONT (Randolph, Sereno Wright ed., 1808).....	28
An Act Regulating Fees, <i>in</i> 2 LAWS OF THE STATE OF VERMONT (Randolph, Sereno Wright ed., 1808).....	30, 31
An Act Respecting the Sherriff of Talbot County, <i>in</i> 2 THE LAWS OF MARYLAND, ch. 25 (Annapolis, Frederick Green ed., 1800).....	31
An Act to Appropriate Monies for the Political Year 1808, § 2, <i>in</i> A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA (Augusta, Adams & Duyckinck eds., 1812).....	28
An Act to Regulate the Courts in this State, <i>in</i> 2 LAWS OF THE STATE OF DELAWARE (Samuel & John Adams eds., 1797).....	30
Benjamin Boyd, <i>Take Your Guns to Church: The Sec- ond Amendment and Church Autonomy</i> , 8 LIB- ERTY UNIV. L. REV. 653 (2014)	21
Brief for the Independent Institute as Amicus Curiae Supporting Petitioners, <i>New York State Rifle</i>	

<i>& Pistol Ass’n v. Bruen</i> , No. 20-843 (July 20, 2021).....	27
<i>Chesapeake Forest Lands</i> , MD. DEP’T OF NAT. RES., https://perma.cc/4WTN-UPQ8	16
Clayton E. Cramer, <i>Colonial Firearm Regulation</i> , 16 J. FIREARMS & PUB. POL’Y 1 (2004).....	21
William Hakewell, MODUS TENENDI PARLIAMENTUM: OR, THE OLD MANNER OF HOLDING PARLIA- MENTS IN ENGLAND (1671), https://perma.cc/4MZA-4M4Y	29
Stephen P. Halbrook, <i>Faux Histoire of the Right to Bear Arms</i> , <i>Young v. Hawaii</i> (9th Cir.), SSRN (2021), https://perma.cc/AXF3-PHTF	24, 25
Thomas Jefferson, <i>A Manual of Parliamentary Prac- tice. For the Use of the Senate of the United States</i> § XVIII (1801), https://perma.cc/MC7J- J7FJ	29
THOMAS JEFFERSON, JEFFERSON’S LEGAL COMMON- PLACE BOOK 521 (David Thomas König et al. eds., Princeton Univ. Press 2019)	20, 21
NICHOLAS JOHNSON ET AL., FIREARMS LAW & THE SEC- OND AMENDMENT (3d ed. 2022).....	21
David Kopel & Joseph Greenlee, <i>The “Sensitive Places” Doctrine: Locational Limits on the Right to Bear Arms</i> , 13 CHARLESTON L. REV. 203 (2018).....	21
LAWS OF THE STATE OF NEW JERSEY (Trenton, James J. Wilson ed., 1811).....	30
<i>Maryland’s State Forests</i> , MD. DEP’T OF NAT. RES., https://perma.cc/4UEH-S9KL	16

PROVINCIAL CONGRESS, JOURNAL OF THE VOTES AND PROCEEDINGS OF THE PROVINCIAL CONGRESS OF NEW JERSEY (Burlington, Isaac Collins ed., <i>re- printed by</i> Woodbury, Joseph Sailer 1835)....	28
RAPHAEL SEMMES, CAPTAINS AND MARINERS OF EARLY MARYLAND (1937), https://perma.cc/7T7C- 8WA4	29, 30
Reply Br. of Appellees/Cross-Appellants, <i>Kipke v. Moore</i> , No. 24-1799, 2025 WL 692388 (4th Cir. Feb. 26, 2025).....	6
<i>Saturday, December 20, 1783</i> , JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA (Richmond, Thomas W. White ed., 1828).....	28
RAPHAEL SEMMES, CAPTAINS AND MARINERS OF EARLY MARYLAND (1937), https://perma.cc/7T7C- 8WA4	29, 30
R. Sheardown, THE DUTY OF CONSTABLES (1790), https://perma.cc/4EYV-2T5Q	31
Mark W. Smith, <i>Enlightenment Thinker Cesare Bec- caria and His Influence on the Founders: Un- derstanding the Meaning and Purpose of the Second Amendment’s Right to Keep and Bear Arms</i> , 2020 PEPP. L. REV. 71 (2020)	20, 21
JACOB R. STRAUS, CONG. RSCH. SERV., 98-748, SER- GEANT AT ARMS AND DOORKEEPER OF THE SEN- ATE: LEGISLATIVE AND ADMINISTRATIVE DUTIES (2011), https://perma.cc/D9HY-8WAF	29
THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS (Providence, Carter & Wilkinson ed., 1798)	31

VOTES AND PROCEEDINGS OF THE HOUSE OF DELEGATES OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 (1791)	29
VOTES AND PROCEEDINGS OF THE SENATE OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 (1791).....	29

PETITION FOR WRIT OF CERTIORARI

This Court should grant review to provide much needed guidance to lower courts that have struggled to define the historical limitations on the right to carry firearms in public against a burgeoning trend of location-specific restrictions enacted by states, such as Maryland, that are openly hostile to the exercise of that right. The constitutionality of these so-called “sensitive place” bans is among the most critical questions facing the judiciary in the wake of this Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Indeed, the Court’s answer to this question will determine whether *Bruen* establishes a meaningful right to public carry at all. If, as Maryland maintains and the Fourth Circuit below held, the right to carry a firearm “in public” does not include public locations that are owned by the government, or where First Amendment protected activity is being carried out, or where people go to eat and to drink or gather for amusement and recreation, then it is hard to know what the right to carry a firearm “in public” actually protects.

This case highlights the conflict that pervades the lower courts on this issue, and it demonstrates the deep disagreements that prevent consensus on any of these issues from emerging, necessitating this Court’s review.

This Court’s previous discussions of the history of laws such as those at issue in this case, while preliminary and incomplete, pointed to a “narrow exception to allow governments to restrict individuals’ Second Amendment rights in ‘sensitive places.’ [But] Maryland’s laws would convert that exception into a broad license to prohibit firearms in locations where

people gather for almost any purpose so long as those purposes are separately listed to give the appearance of limited scope.” Cross.App.105a–06a (Agee, J., concurring in part and dissenting in part). The lower courts have embraced a dizzying array of disparate historical principles which, they claim, justify upholding pieces of state laws enacted in reaction to this Court’s decision in *Bruen*. In doing so, the lower courts have expressed deep frustration with their own analyses and have diverged both in result and in rationale, creating an incoherent morass.

The central point of agreement among almost every lower court opinion to address these restrictions in the wake of *Bruen*, including the decision below, is the conclusion that firearms can be banned in “crowded” spaces. But that specific rationale was considered and definitively rejected by this Court in *Bruen*. The lower courts’ intransigence on the point is justification enough to grant certiorari and reverse the decision below.

Beyond that, because this case addresses a wide variety of locations, it is an ideal vehicle for this Court to clarify the narrow scope of the historical “sensitive places” limitation on the right to keep and bear arms. There is no historical tradition of banning carrying firearms in “crowded” places or places where “vulnerable” people are present. Quite the opposite is true, as *Heller* noted in recognizing that many colonies “required individual arms bearing for public-safety reasons” in such places. *District of Columbia v. Heller*, 554 U.S. 570, 601 (2008) (emphasis added). By contrast, there *is* historical support for banning firearms in *secured* places. Where the government takes upon itself the burden to prevent unlawful entry with arms

into a place frequented by the general public, then, and only then, may the individual right to armed self-defense be subject to a temporary restriction. Today, such security—familiar to anyone entering a federal courthouse—typically takes the form of armed guards and magnetometers.

Unfortunately, the decision below failed to recognize the narrow historical scope of the “sensitive places” exception and, joining several other courts of appeals in defiance of this Court’s precedents and of the lessons of our history, approved restrictions on unsecured places where ordinary citizens’ self-defense needs are acute. This Court should grant certiorari to correct this evisceration of the Second Amendment right to carry.

OPINIONS BELOW

The opinion of the court of appeals is reported at 165 F.4th 194 (2026) and is reproduced at Cross.App.1a–106a. The memorandum opinion of the district court is unpublished but can be found at 2024 WL 3638025 and is reproduced at Cross.App.107a–122a.

JURISDICTION

The court of appeals issued its judgment on January 20, 2026. Cross.App.1a. On April 17, 2026, the Chief Justice extended the time to file a petition for certiorari to May 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). The defendants below filed a petition for certiorari on April 20, 2026. *Moore v. Kipke*, No. 25-1206. Because this cross-petition is filed

within the time allowed for an initial petition, it is not a conditional cross-petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The texts of the Second Amendment and Section One of the Fourteenth Amendment to the United States Constitution and relevant provisions of the Maryland Code and Code of Maryland Regulations are reproduced in the appendix beginning at Cross.App.175a.

STATEMENT

I. Maryland’s Locational Restrictions.

It is a crime in Maryland to “wear, carry, or transport a handgun, whether concealed or open, on or about the person,” or “in a vehicle traveling on a road or parking lot,” unless the individual possesses a Maryland carry permit or is otherwise (as in the case of law enforcement officers, for example) exempt from the permitting requirement. MD. CODE, CRIM. LAW, § 4-203(a)(1)(i)–(ii), (b)(1)–(2). Carrying a handgun outside of these exceptions is a misdemeanor, punishable upon first offense with up to five years of imprisonment. *Id.* § 4-203(c). Permit holders must carry concealed. MD CODE, PUB. SAFETY, § 5-307.

Possessing a permit to carry, however, only modestly enlarges the places where an individual can lawfully carry in the state. Even a permitted individual cannot carry in a host of public places. In proceedings below, Petitioners challenged bans in or on:

- Mass transit facilities and vehicles, MD. CODE, TRANSP., § 7-705(b)(6);

- Public demonstrations (including any area within 1,000 feet of a demonstration), MD. CODE, CRIM. LAW, § 4-208;
- State parks and forests, MD. CODE REGS. §§ 08.01.07.14(B), 08.07.01.04(B), 08.07.06.04(B);
- Four types of healthcare facilities, MD. CODE, CRIM. LAW, § 4-111(a)(2)(iii);
- “Places of amusement,” including museums, stadiums, racetracks, video lottery facilities, amusement parks, and casinos, MD. CODE, CRIM. LAW, § 4-111(a)(8)(ii)–(vi); MD. CODE REGS. §§ 14.25.02.06, 36.03.10.48;
- Locations that sell alcohol for on-site consumption, MD. CODE, CRIM. LAW, § 4-111(a)(8)(i);
- Government buildings, MD. CODE, CRIM. LAW, § 4-111(a)(4)(i); MD. CODE REGS. § 04.05.01.03(B); and
- School grounds, MD. CODE, CRIM. LAW, §§ 4-102(b), 4-111(a)(2)(i)–(ii).

Maryland also effectively bans firearms even at places not otherwise swept in by these capacious restrictions by flipping the ordinary default rule to presumptively forbid carrying on all private property held open to the public. MD. CODE, CRIM. LAW § 6-411(d).

The bans on firearms on public transit, at public demonstrations, and in State parks and State forests predate this Court’s decision in *Bruen*. The rest are new carry limitations that were enacted as part of the sweeping “Gun Safety Act of 2023.” 2023 Maryland Session Laws, Ch. 680 (Senate Bill 1). Companion legislation enacted during that same legislative session removed the requirement that licenses to carry only be granted upon a showing of a “good and substantial

reason,” 2023 Maryland Session Laws, Ch. 651 (House Bill 824), amending MD. CODE, PUB. SAFETY, § 5-306(a)(6), as Maryland courts had held that requirement unconstitutional in light of *Bruen*, see *Matter of Rounds*, 255 Md. App. 205, 212 (Md. Ct. Spec. App. 2022). As Maryland forthrightly admitted below, the two developments were directly related: “there was little practical need for broad locational restrictions” as long as Maryland was able to “significantly restrict[] the number of people who were able to obtain public carry permits.” See Reply Br. of Appellees/Cross-Appellants at *6 n.1, *Kipke v. Moore*, No. 24-1799, 2025 WL 692388 (4th Cir. Feb. 26, 2025). But “when it generally became easier to carry firearms in Maryland” because of *Bruen*, that changed. See *id.*

II. Procedural History

Petitioners are plaintiffs in two separate cases below which were consolidated both before the district court and the court of appeals. Petitioners filed their suits on May 16, 2023, in the District of Maryland, the same day the Senate Bill 1 was signed into law. Cross.App.111a. In both cases, Petitioners sought declaratory and injunctive relief, alleging, as relevant here, that the locational restrictions identified above and the private property default rule violated their rights protected under the Second and Fourteenth Amendments to the United States Constitution. Cross.App.111a–112a.¹ The district court consolidated the cases on July 13, 2023. Cross.App.112a. The

¹ The *Kipke* and *Novotny* Petitioners challenged overlapping but slightly different subsets of Maryland’s locational restrictions, but the differences are immaterial to the present joint Petition.

district court had jurisdiction over these suits under 28 U.S.C. § 1331.

A. Petitioners moved for a preliminary injunction against enforcement of the challenged restrictions and for summary judgment. Cross.App.112a–113a. The State responded by cross-moving for summary judgment. *Id.* The district court granted the motions for preliminary injunction in part, enjoining enforcement of the private property default rule and the locational restrictions on locations selling alcohol and at public demonstrations. Cross.App.172a–174a. In all other respects it denied Petitioners’ motions and denied, without prejudice, the dispositive motions on both sides, inviting the parties to “refile dispositive motions after having the opportunity to supplement them and participate in discovery prior to a trial on the merits.” Cross.App.170a.

B. After entry of the preliminary injunction order, the parties informed the district court that they did not intend to seek any discovery and requested that the court renew their dispositive motions. Cross.App.114a. The district court, noting that there had been no factual development in the case, held “for the same reasons stated in the [preliminary injunction decision]” it reached the same result, and converted the preliminary injunction into a permanent injunction with respect to the private property default rule and the ban on carrying in locations selling alcohol for on-site consumption and at public demonstrations. Cross.App.117a, 123a–125a. In all other respects, it granted summary judgment to Maryland. Cross.App.124a–125a.

C. A partially divided panel of the court of appeals affirmed in part and reversed in part. A majority

of the panel, joined in part by Judge Agee, approved all of Maryland’s challenged locational bans but unanimously held that the presumptive ban on carry on private property open to the public violated the Second Amendment.

1. Writing for the majority, Judge Gregory acknowledged that “[t]o date, we have not addressed the proper sensitive place analysis following” this Court’s decision in *Bruen*. Cross.App.10a. The majority therefore undertook “to clarify the sensitive place doctrine and its role within the broader *Bruen* analysis.” *Id.* Concluding that Petitioners’ “ ‘proposed course of conduct,’ namely, the carrying of guns in public,” fell within the Second Amendment’s plain text, the Fourth Circuit concluded the question before it was whether the “sensitive place” restrictions before it could be “justified by historical tradition.” Cross.App.14a (cleaned up). In so holding, the majority stated that “the historical sources we look to at *Bruen* step one are limited to the Founding Era, and the sources we look to at *Bruen* step two can come throughout American history.” Cross.App.13a.²

The majority upheld each of the “sensitive place” bans challenged by Petitioners for different reasons. For instance, it conducted no historical analysis with respect to the restrictions placed on “a building or any part of a building owned or leased by a unit of State

² The Fourth Circuit effectively conducts dual historical inquiries. First, at the putatively “plain text” stage, where challengers bear the burden to show their conduct does not fall within “the limitations on the scope of the Second Amendment right identified in *Heller*,” and one at the historical inquiry, approximately along the lines outlined in *Bruen*. See *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024) (citation omitted).

or local government,” MD. CODE, CRIM. LAW, § 4-111(a)(4)(i), or with respect to the ban on “public school property” or the “grounds” of “private ... school[s],” *Id.* §§ 4-102(b), 4-111(a)(2)(i)–(ii), because it took statements from *Heller* and *Bruen* regarding those locations to be “more than sufficient to uphold Maryland’s prohibition of firearms in government buildings.” Cross.App.15a (government buildings); *see also* Cross.App.24a (“[S]chool grounds are analogous to school buildings.”).

As to the ban on carrying on public transit and at public transit facilities, the majority upheld the “provision under the proprietary property doctrine,” concluding that Maryland, as proprietor of public transit operated or controlled by the Mass Transit Administration, was free to ban firearms there. Cross.App.16a. And furthermore, the court concluded that the transit restriction “comports with our history and tradition.” Cross.App.19a. Although it could find no historical legal restrictions on the right, the court credited historical restrictions imposed by private railroads on “carrying loaded or improperly stored guns.” Cross.App.19a–20a.

As to the ban on carrying at or near public demonstrations, the court held it “is consistent with our national historical tradition of promoting peaceful assemblies,” and with the history of barring “riotous assembl[ies].” Cross.App.26a–27a. The court deemed the ban on carrying in state parks and forests justified because “modern-style” urban parks purportedly had first come into existence in the mid-19th century and several urban parks at that period (most prominently, Central Park in New York) had rules forbidding the carrying of firearms. Cross.App.30a–31a. As for state

forests and non-urban parks, the majority “rel[ie]d] on the Supreme Court’s teaching that a challenged regulation can survive a Second Amendment challenge even where it does not precisely match its historical precursors.” Cross.App.31a. Because state forests, like urban parks, “offer diverse and substantial recreational and educational opportunities,” the court concluded that they were similar enough to justify extending the ban on carrying firearms to them. Cross.App.32a.

The court found the constitutionality of the ban in health care facilities was justified by both a “historical tradition of proscribing guns in places that serve vulnerable populations” and a tradition of “banning guns in places used for scientific purposes.” Cross.App.33a. As for the ban on various “places of amusement” such as amusement parks, racetracks, and museums, the court concluded that there existed an “extensive set of historical regulations banning firearms at places of amusement and social gathering,” relying on the Ninth Circuit’s identification of “several examples in” *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), *cert. granted in part*, 146 S. Ct. 79 (2025) (mem.), to substantiate that claim. Cross.App.35a–36a. Finally, in upholding the ban on firearms at places that sell alcohol for on-site consumption, the court credited both a tradition of banning firearms in “crowded places,” as well as a history of “legislation aimed at the mixing of firearms and liquor,” including colonial era laws restricting sale of liquor to on-duty militiamen, and laws restricting the use of firearms while intoxicated, to conclude that Maryland’s prohibition “is constitutionally permissible.” Cross.App.36a–38a.

Turning to the presumptive ban on carry on private property, the court agreed with every court to consider the issue except for (in part) the Ninth Circuit in *Wolford*, that, at least as to private property held open to the public, no relevant historical tradition supported the ban, holding that portion of Maryland’s ban unconstitutional. Cross.App.41a.

2. Judge Agee concurred in the judgment with respect to several of the locational restrictions but dissented with respect to the bans affecting public transit, public demonstrations, state parks and forests, places of amusement, museums, and places selling alcohol for on-site consumption. More broadly, he argued that “the majority opinion simply fails to follow how the Supreme Court has directed courts to consider the historical tradition of firearm regulation when examining whether a particular law violates the Second Amendment right to carry arms in public.” Cross.App.44a.

Specifically, Judge Agee was critical of the majority’s indiscriminate reliance on historical restrictions of whatever type and from whatever time in our nation’s history. The majority, Judge Agee reasoned, “grossly misread[s] *Bruen*” by allowing “a smattering of mid-to-late 19th century and later laws [to] serve as the *only* historical analogues on which the majority opinion pins its analysis.” Cross.App.57a. Judge Agee urged instead a more focused analysis on “the text followed by any ‘public meaning’ at the Founding, as exemplified by regulations adopted around the time of the Second Amendment’s enactment in 1791.” Cross.App.52a. And he noted that, unlike the majority, this Court has “never relied exclusively or even to any substantial degree on laws from

1868 or later to identify a historical tradition of firearms regulation” that could sustain a modern restriction. Cross.App.54a.

Judge Agee stressed that a focus on the Founding era meant that both the absence of restrictions and the “enactment of contemporary provisions *permitting* or even *requiring* possession of firearms in analogous public spaces must drive the analysis.” Cross.App.62a. For example, he noted that while trains did not exist at the Founding, there *were* forms of public transportation such as ferries and stage-coaches and Maryland had no evidence to suggest that firearms were banned on those, decrying the majority’s fig-leaf excuse for looking later in time as an “end-run around what can be gleaned from the Founding Era[]” evidence. Cross.App.70a. He also dismissed the majority’s “crowding” rationale as directly contrary to *Bruen* and antithetical to “the core purpose behind the Second Amendment.” Cross.App.71a–72a. On Petitioners’ motion the Fourth Circuit stayed its mandate pending disposition of this petition for writ of certiorari.

D. On April 20, 2026, Maryland filed a petition for writ of certiorari challenging the panel’s decision with respect to the presumptive ban on carrying firearms on private property.

REASONS FOR GRANTING THE PETITION

I. The lower courts are eviscerating the Second Amendment protected right to carry arms in public.

This Court has, several times, pointed to historical regulations on the right to keep and bear arms in discrete locations that it has called “sensitive place[]”

laws. *See Heller*, 554 U.S. at 626; *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Bruen*, 597 U.S. at 30–31. But as Judge Agee noted below, this Court so far “has offered scant guidance on what constitutes a ‘sensitive place’ beyond identifying a handful of examples” of them, an unsettled position that has “le[ft] some legislatures eager to label scores of locations ‘sensitive’ and prohibit the carrying of firearms in them.” Cross.App.47a (Agee, J., concurring in part and dissenting in part). Alongside those legislatures, many courts have demonstrated an equal eagerness to bless these restrictions. *United States v. Rahimi* made clear that the historical analysis in *Bruen* is focused on distilling the “principles that underpin our regulatory tradition.” 602 U.S. 680, 692 (2024). In this case, the Fourth Circuit purported to find that various historical principles supported allowing governments to ban guns at or in a multitude of locations, including:

- In buildings owned or controlled by the government. Cross.App.15a (government buildings).
- Wherever the government acts as proprietor. Cross.App.16a (mass transit).
- On railways. Cross.App.20a (mass transit).
- Places frequented by children. Cross.App.23a–24a, 34a (school grounds; places of amusement).
- Places that serve an educational purpose. Cross.App.35a (school grounds; places of amusement; museums).
- Places of “social gathering.” Cross.App.35a (places of amusement).
- Where people peaceably assemble for demonstrative purposes. Cross.App.27a (public demonstrations).

- In “modern public parks.” Cross.App.30a (state parks and state forest lands).
- In places that serve vulnerable populations. Cross.App.33a (health care facilities).
- “[I]n places used for scientific purposes.” Cross.App.33a (health care facilities).
- In “public forums and quintessentially crowded places.” Cross.App.38a (bars and restaurants).

The panel also found a general tradition of permitting regulation “aimed at the mixing of firearms and liquor.” Cross.App.36a (places where alcohol is served for on-site consumptions).

In its credulous acceptance of a multitude of possible historical justifications for banning firearms at public locations, the panel was not alone. A panel of the Third Circuit, in a recently vacated opinion addressing New Jersey’s similarly broad post-*Bruen* “sensitive place” law, blessed effectively all of the restrictions by adopting *twenty-three* distinct “principles.” *Koons v. Att’y Gen. N.J.*, 156 F.4th 210, 275–76 (3d Cir. 2025) (Porter, J., concurring in part and dissenting in part), *reh’g en banc granted and opinions vacated*, 162 F.4th 100 (3d Cir. 2025) (mem.).

The indiscriminate acceptance of proffered historical justifications has done little to settle the law for future litigants and legislatures, or even to suggest that the law *could ever* be settled through the circuits’ current misguided approach. In *Schoenthal v. Raoul*, 150 F.4th 889 (7th Cir. 2025), *cert. denied*, No. 25-541, 2026 WL 922526 (Apr. 6, 2026) (mem.), for instance, the Seventh Circuit dealt with just a single locational restriction on public transportation. But the court upheld that one restriction by finding *five* relevant

features of the ban that it said made it (in the court’s view) consistent with historical limitations, and the court then went out of its way to stress that even those features should not be used as a test in other Second Amendment challenges. *Schoenthal*, 150 F.4th at 919. The court concluded by openly questioning whether the uncertainty of the law in this area was the result of “legal growing pains that will subside with age” or a sign of a “malady in need of a cure.” *Id.* at 923.

Similarly, in *Wolford*, the Ninth Circuit embraced a variety of historical principles to largely uphold California and Hawaii’s locational restrictions. The court held that “Plaintiffs are likely to succeed on their challenge to California’s prohibition of firearms at hospitals and other medical facilities,” 116 F.4th at 1000, and rejected California’s complete ban of all firearms (loaded or unloaded) on mass transit, *id.* at 1001. The court likewise held likely unconstitutional California’s ban on possession in places that require the issuance of a permit, such as a “public gathering” or “event.” *Id.* at 997–98. The court concluded its analysis by bemoaning that “the lists of places where a State likely may ban, or may not ban, the carry of firearms appear arbitrary” and that “the lack of an apparent logical connection among the sensitive places is hard to explain in ordinary terms.” *Id.* at 1003.

The arbitrary and irrational nature of *Wolford*’s approach is evident throughout the majority’s decision below. For example, the majority below relied on *Wolford*’s erroneous affirmance of Hawaii’s ban on arms in State parks, *see Wolford v. Lopez*, 125 F.4th 1230, 1242–44 (9th Cir. 2025) (VanDyke, J., dissenting from the denial of rehearing en banc), to sustain Maryland’s total ban on firearms carried for self-

defense by permit holders in hundreds of thousands of acres of State forest lands.³ Cross.App.31a–32a. The majority’s rationale was that these State lands “promote a balanced emphasis on economic, social, and environmental goals” and “offer diverse and substantial recreational and educational opportunities.” Cross.App.32a. That ban, the majority held, was constitutional even though Maryland “permits regulated hunting within [S]tate forests.” *Id.*

That result and reasoning is impossible to reconcile with *Bruen*, where this Court explained that a “sensitive place” is a location where “carrying of firearms” may be “altogether prohibited.” 597 U.S. at 30. By that definition, hundreds of thousands of acres of rural wilderness where hunting with firearms is permitted cannot be a “sensitive place.” Certainly, no law or tradition from the Founding era banned firearms carried for self-defense in the wilderness, much less because of any “diverse ... recreational and educational opportunities” afforded by such lands. Cross.App.32a. As Judge Agee noted in dissent, “[t]he signers of the Constitution and proponents of the Bill of Rights would surely consider prohibitions on carrying firearms on such expansive and uninhabited public lands ludicrous.” Cross.App.94a. The majority’s holding can only be explained as interest-balancing in disguise. *Bruen*, 597 U.S. at 29 n.7 (noting that courts may not engage in “means-end scrutiny under the guise of analogical inquiry”).

³ Maryland has over 214,000 acres of State Forest. *Maryland’s State Forests*, MD. DEPT OF NAT. RES., <https://perma.cc/4UEH-S9KL>. Chesapeake Forest Lands are an additional 75,376 acres. *Chesapeake Forest Lands*, MD. DEPT OF NAT. RES., <https://perma.cc/4WTN-UPQ8>.

What these varying approaches have in common is a general destruction of individual's right to carry in public. In the First Amendment context, to which this Court has often compared the Second Amendment analysis, this Court has "stress[ed] ... that discrete traditions of content-based regulations cannot be aggregated together to sustain some new and broader category of lesser-protected speech." *Chiles v. Salazar*, 607 U.S. ---, 146 S. Ct. 1010, 1027 (2026). At best that is what has happened here, as courts have accepted a series of disparate alleged historical "traditions" to justify what amounts to an effective ban on carrying in any public place. As Judge Porter explained in his panel dissent in *Koons*, "[v]irtually the only places that are not 'sensitive' are locations where people don't care about assembling with others, eating and drinking, commerce, divisive opinions, amusement, recreation, education, worship, public travel, leisure, community, and where children or vulnerable people are not normally present. In such wastelands, the majority grudgingly allows, one may carry a firearm for self-defense." 156 F.4th at 276 (Porter, J., concurring in part and dissenting in part).

As long as the lower courts are allowed to continue in this vein, confusion will only grow. Further legislation designed to curtail the places where people can lawfully carry arms will be encouraged; it is no trick to fit new bans into the seemingly endless list of "principles" courts are willing to create and embrace.

II. The courts of appeals are divided over how to assess locational restrictions on the right to bear arms.

A. The decision below, and the decisions in *Wolford*, *Schoenthal*, *Koons*, *Antonyuk v. James*, 120

F.4th 941 (2d Cir. 2024), and *Frey v. City of New York*, 157 F.4th 118 (2d Cir. 2025), illustrate multiple stark disagreements among the courts of appeals. With respect to mass transit bans, *Wolford* held that California’s public transportation ban was unconstitutional because it provides no means to transport an arm in inoperable condition on public transit. 116 F.4th at 1001–02. Similarly, *Schoenthal* and the *Koons* panel upheld public transit carry bans as long as the bans allowed for the transportation of inoperable firearms. *Schoenthal*, 150 F.4th at 915; *Koons*, 156 F.4th at 270–71. In contrast, the Fourth Circuit below and the Second Circuit in *Frey* both upheld a total ban on carrying on public transit without reference to whether the ban provided a method for transporting an unloaded and secured firearm. In *Frey*, the court relied on a purported “historical tradition of regulating firearms in quintessentially crowded places,” 157 F.4th at 135, while the majority below relied on the “proprietary property doctrine,” Cross.App.23a. All these restrictions preclude access to a firearm “for the purpose of immediate self-defense.” *Heller*, 554 U.S. at 635.

Wolford and the majority below also diverged with respect to medical facilities and public gatherings requiring a permit. *Wolford* held that restrictions at hospitals were invalid because “medical facilities of some sort have existed since colonial times,” and there was no evidence of any historical restrictions in such places. 116 F.4th at 999. By contrast, the court below unanimously upheld Maryland’s ban at “health care facilities,” because “[h]ospitals serve medical patients, a vulnerable population” and because of a putative “tradition of banning guns in places used for scientific purposes.” Cross.App.33a. Similarly, *Wolford* rejected California’s argument that there was “a national

tradition of banning firearms at public gatherings in general.” 116 F.4th at 998. But the majority below sustained Maryland’s ban on firearms within 1000 feet of a public demonstration, finding that there was a “national historical tradition of promoting peaceful assemblies.” Cross.App.26a.

These divergences are indicative of a fundamental incoherence among the courts of appeals. Consider, for example, *Wolford*, which concluded that a ban on firearms on public transit depends upon the ability to transport one in an inoperable condition. Elsewhere, *Wolford* embraced the rationale that the government, acting as a proprietor, could ban firearms to the same extent a private property owner could, noting that while a broad ban on carrying firearms in all banks was unconstitutional, a ban on carrying in a state-operated bank would likely be fine. 116 F.4th at 970–71. In *Koons*, despite agreeing with *Wolford* on the public transit restriction, the Third Circuit panel, in its now-vacated opinion, “respectfully part[ed] ways with the Ninth Circuit,” concluding that there was no such government “proprietor” principle and that “the prospect of enabling the government, in its proprietary capacity, to prohibit the possession or carry of firearms on property it owns would work great damage to individuals’ Second Amendment rights.” 156 F.4th at 250. The Fourth Circuit below, by contrast, accepted *Wolford*’s “government proprietor” principle and used it to reach the *opposite* result of *Wolford* with respect to total bans on arms on public transit. Cross.App.23a.

There is also a conflict concerning the “vulnerable.” The Fourth Circuit majority held that firearms bans may be sustained “in places that serve vulnerable populations.” Cross.App.33a. Two other panels

have also invoked this rationale. *See Koons*, 156 F.4th at 268; *Antonyuk*, 120 F.4th at 1010–11 (claiming a broad tradition of “protecting vulnerable populations from either misusing arms or having arms used against them”). But *Wolford* rejected that rationale, holding that “[w]e find it unlikely that Defendant will establish a tradition of regulating firearms at all places that contain a vulnerable population.” 116 F.4th at 1000.

Wolford got that part right. The contrary decision of the majority below is premised on the false notion that a state may disarm individuals (the “vulnerable”) who may be *most* in need of arms for their own self-defense. Disarming the vulnerable does nothing to prevent “arms [being] used against them.” *Antonyuk*, 120 F.4th at 1011. Indeed, disarming people *for their protection*, without providing security for them, is anathema to the right itself. The Founders well understood that disarming people in public places *without* providing security to prevent unlawful use of weapons in those places would only “make things worse for the assaulted and better for the assailants.” Mark W. Smith, *Enlightenment Thinker Cesare Beccaria and His Influence on the Founders: Understanding the Meaning and Purpose of the Second Amendment’s Right to Keep and Bear Arms*, 2020 PEPP. L. REV. 71, 83 (2020) (explaining that the Founders were influenced by prominent Enlightenment thinker Cesare Beccaria, who was critical of gun control laws for this reason); THOMAS JEFFERSON, JEFFERSON’S LEGAL COMMONPLACE BOOK 521 (David Thomas Konig et al. eds., Princeton Univ. Press 2019) (quoting Beccaria on this point).

Consistent with this understanding, beginning in the colonial period, and continuing through the Founding, there was a robust tradition of permitting—and sometimes *requiring*—firearm carriage in crowded places of public assembly where people would otherwise be vulnerable to armed violence. *See* David Kopel & Joseph Greenlee, *The “Sensitive Places” Doctrine: Locational Limits on the Right to Bear Arms*, 13 CHARLESTON L. REV. 203, 232–34 & n.108 (2018); Clayton E. Cramer, *Colonial Firearm Regulation*, 16 J. FIREARMS & PUB. POL’Y 1 (2004); Benjamin Boyd, *Take Your Guns to Church: The Second Amendment and Church Autonomy*, 8 LIBERTY UNIV. L. REV. 653, 697–99 (2014); NICHOLAS JOHNSON ET AL., FIREARMS LAW & THE SECOND AMENDMENT 189–91 (3d ed. 2022) (summarizing laws requiring carriage at places of public assembly such as churches from Virginia in 1619, 1632, and 1665; Connecticut in 1643 and 1644; Massachusetts Bay in 1637 and 1643; Rhode Island in 1639; Maryland in 1642; South Carolina in 1740 and 1743; and Georgia in 1770). *Heller* cited a 1770 Georgia law that required men to carry firearms “to places of public worship.” 554 U.S. at 601 (citation omitted). This history defeats any notion that the Founders would have understood that there is something inherent in vulnerability that justified disarmament.

B. The lower courts’ points of agreement in cases such as this one are even more troubling than their disagreements, because they defy this Court’s Second Amendment jurisprudence. For instance, the majority below upheld the ban on carrying at “location[s] licensed to sell or dispense alcohol ... for on-site consumption” because there is a “well-established tradition of prohibiting firearms at crowded places.” Cross.App.36a–37a (quoting *Wolford*, 116 F.4th at

986). Other courts have claimed such a tradition exists and have used it to excuse bans in a wide variety of different places. See *Wolford*, 116 F.4th at 986 (places of amusement and places serving alcohol); *Antonyuk*, 120 F.4th at 1019, 1026, 1031, 1038 (urban parks, zoos, theaters, and places serving alcohol); *Frey*, 157 F.4th at 134 (the subway and Times Square); *Christian v. James*, --- F.4th ---, 2026 WL 1378796, at *10 (2d Cir. May 18, 2026) (urban parks); *Schoenthal*, 150 F.4th at 915 (public transit).

This *exact* “crowded” places tradition was expressly rejected as a historical justification in *Bruen*. There, this Court pointed to historical restrictions on carrying in “legislative assemblies, polling places, and courthouses,” and “assume[d] it settled that these locations were ‘sensitive places’ where arms carrying could be prohibited consistent with the Second Amendment” at the Founding. *Bruen*, 597 U.S. at 30. In analyzing those laws, the Court declined to do a full-some historical analysis or to finally determine what principle undergirded them. But it *did* make clear that the principle was *not* that they were sometimes crowded because any such rule would “eviscerate” the general right to public carry arms for self-defense. *Id.* at 31.

The Fourth Circuit’s conclusion that there is a “well-established tradition of prohibiting firearms at crowded places,” Cross.App.37a (quoting *Wolford*, 116 F.4th at 986), is flatly contrary to this Court’s analysis. But that holding is just one example of direct defiance of this part of *Bruen*’s reasoning. While this Court said that the whole island of Manhattan cannot be declared sensitive based on crowding, the Second Circuit has used crowding to justify a ban on the 39-

square block area of Manhattan that New York City defines as “Times Square.” *Frey*, 157 F.4th at 134. That purported distinction between the whole of Manhattan and a huge subpart of Manhattan is patently unsound. And as with the “vulnerable” principle discussed above, Founding-era laws requiring carriage of firearms at public meetings and at churches shows that the Founders treated crowding in precisely the opposite way.

In support of its “crowding” principle, the majority below chiefly relied on the analyses of *Wolford* and *Antonyuk*. The laws it did mention itself—an 1817 New Orleans law that banned weapons in ballrooms, a Texas law from 1870, and an 1875 Missouri law that applied in public assemblies—are too few to represent any tradition and too late to illustrate the Founders’ understanding. See *Bruen*, 597 U.S. at 65–66 (discussing Texas law as an “outlier[]”). As Judge Agee explained in dissent, the majority’s reliance on the latter laws “misdirects attention away from the recognition of what the Second Amendment encompassed around 1791,” and the New Orleans law that is at least arguably from the right period was an “outlier[]” from an “individual municipalit[y]” which is not probative under *Bruen*. Cross.App.62a.

The Second Circuit’s *Antonyuk* decision took as its starting point for this tradition the Statute of Northampton’s “forbidding going or riding ‘armed by night[] or by day, in fairs, markets.’” 120 F.4th at 1019 (quoting Statute of Northampton 1328, 2 Edw. 3, c.3 (Eng.)). But this Court addressed that specific provision of that statute, holding that the prohibition was “no obstacle to public carry for self-defense” anywhere

and applied only to *terrifying* carry. *Bruen*, 597 U.S. at 45.

In its subsequent decision in *Frey*, another Second Circuit panel candidly admitted to being “not so certain” that *Antonyuk* had properly analyzed this statute, because “*Bruen* undermines [its] interpretation.” *Frey*, 157 F.4th at 133 n.6. But *Bruen* does not just undermine it, it flatly refutes it. *Frey* nevertheless proceeded to assert that even with its foundation removed, the principle was still valid because “Founding-era Virginia and North Carolina laws evince that lawmakers were sensitive to the potential mayhem gun-wielding may cause in crowded locations.” *Id.* The flaw with *that* alternative view is that the Virginia law in question—a Statute of Northampton analogue from 1786—made explicit the limitation that *Bruen* found in the Statute of Northampton itself, by prohibiting only going or riding “armed by night nor by day, in fairs or markets ... *in terror of the county*.” 1786 Va. Acts 35, ch. 49 (emphasis added).

And the North Carolina law was not an enactment of the North Carolina legislature. Rather, it was a copy of the English Statute of Northampton, complete with its references to the King and his ministers, included in a private lawyer’s collection of British statutes thought to be still in effect in North Carolina following the Revolution. See Stephen P. Halbrook, *Faux Histoire of the Right to Bear Arms*, Young v. Hawaii (9th Cir.) at 21, SSRN (2021), <https://perma.cc/AXF3-PHTF>. And again, the Statute was understood to bar only *terrifying* carry in places like fairs and markets. Otherwise “citizens were ‘at perfect liberty’ to carry for ‘lawful purposes.’” *Bruen*, 597 U.S. at 52 n.15 (quoting *State v. Huntly*, 25 N.C.

(1 Ired.) 418, 423 (1843) (per curiam)) (cleaned up). As *Huntly* held, public carry for self-defense was completely permissible in North Carolina “so long as it was not ‘in such [a] manner as naturally will terrify and alarm.’ ” 25 N.C. at 423; *see also Bruen*, 597 U.S. at 47.

In yet another obvious error, both the Second Circuit and Ninth Circuit have accepted the false premise that a special historical inquiry is applicable to challenges to *state* laws, and the Fourth Circuit’s broad reliance on *Antonyuk* and *Wolford* effectively incorporated that error into its holding as well. In *Antonyuk*, the Second Circuit held that “[b]ecause the [New York statute] is a state law,” “the understanding that prevailed when the States adopted the Fourteenth Amendment ... is, along with the understanding of that right held by the founders in 1791, a relevant consideration.” *Antonyuk*, 120 F.4th at 973–74 (emphasis added) (quotation marks omitted); *see also Christian*, 2026 WL 1378796, at *4.

The Ninth Circuit followed suit in *Wolford*, stating that “[i]t bears emphasizing that the laws at issue here are *state* laws,” and that “[w]e thus agree with the Second Circuit that, at least when considering the ‘sensitive places’ doctrine, we look to the understanding of the right to bear arms *both* at the time of the ratification of the Second Amendment in 1791 *and* at the time of the ratification of the Fourteenth Amendment in 1868.” 116 F.4th at 980 (citing *Antonyuk v. Chiumento*, 89 F.4th 271, 304–05 (2d Cir. 2023), *vacated and remanded sub nom.*, *Antonyuk v. James*, 144 S. Ct. 2709 (2024) (mem.)).

This approach is contrary to this Court’s repeated holdings “that individual rights enumerated in

the Bill of Rights and made applicable against the States through the Fourteenth Amendment *have the same scope as against the Federal Government.*” *Bruen*, 597 U.S. at 37 (emphasis added). Thus, regardless of whether the key date for establishing the meaning of the Second Amendment is 1791 or 1868 (it can only be 1791), *see* Cross.App.52a (Agee, J., dissenting in part), “there is no daylight between the federal and state conduct it prohibits or requires.” *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). It therefore matters not at all whether a state or federal law is under review. *See National Rifle Ass’n v. Bondi*, 133 F.3d 1108, 1115 (11th Cir. 2025) (en banc); *Christian*, 2026 WL 1378796, at *16–17 (Menashi, J., concurring in part and dissenting in part).

Finally, the *Wolford* court held that there was a “difference between the ‘distinctly similar’ test applied in *Bruen* to New York’s law and the more lenient standard that applies when analyzing the regulation of firearms at ‘sensitive places.’” 116 F.4th at 979. But *Bruen* never held that there is lesser, “more lenient” historical inquiry applicable to sensitive area designations. The State’s burden is the same: “[T]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, 597 U.S. at 19. Outliers are no more permissible to justify sensitive-areas bans than for other kinds of restraints on the right.

III. The courts below ignore the importance of security in the historical sensitive-places tradition.

The lower courts have failed to identify a historically grounded principle that can explain the

“sensitive place” tradition that this Court referenced in *Bruen*. To resolve this case, the Court need only reject the errors committed by the lower courts and hold that Maryland failed to carry its burden under *Bruen*’s historical analysis.

In particular, the lower courts have failed to identify a principle underlying the historical restrictions at polling places, courthouses, and legislatures *and* that helps explain how those restrictions can be analogized to modern locations like commercial airports—the presence of security. That guiding principle is that “the self-defense right decreases only to the extent that the government’s protective ability increases,” a principle that “sounds in the philosophy of Cesare Beccaria.” Br. for the Independent Institute as Amicus Curiae Supporting Petitioners at 17, *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, (July 20, 2021) (No. 20-843). That principle is well-supported.

In any truly “sensitive place,” where the government believes the presence of firearms pose unusual and unacceptable dangers, the government has historically (and to this day) provided security to ensure that firearms are *actually* excluded, thereby diminishing the need, in that discrete, secure location, for individual armed self-defense. This principle is based on the historical sources specifically identified by this Court in discussing this tradition. Begin with the three locations *Bruen* pointed to as historically “sensitive:” legislative assemblies, courthouses, and polling places. Founding era examples of government-provided security at these locations abound. Rhode Island, Delaware, Pennsylvania, South Carolina, New York, Georgia, New Jersey, Virginia, and Vermont all

enacted statutes during the period compensating law enforcement to attend and provide security at legislatures.⁴ Maryland and New Hampshire appointed sergeants-at-arms or door-keepers.⁵ As their name

⁴ See An Act Establishing and Regulating Fees, in THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS 220, 222 (Providence, Carter & Wilkinson ed., 1798) (providing fees for sheriffs, town sergeants, and constables to attend general assembly); An Act for Regulating and Establishing Fees, in 2 LAWS OF THE STATE OF DELAWARE 1100, 1118 (Samuel & John Adams eds., 1797) (similar); An Act for the Support of Government, and the Administration of Justice, in 10 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801 376, 378 (Wm. Stanley Ray ed., 1904) (referencing sergeant-at-arms and door-keeper for legislature); An Act for Regulating and Fixing the Salaries of Federal Officers, in THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA 426–27 (Phila., R. Aitken & Son ed., 1790) (providing payment of door-keepers for legislature); An Act for the Support of Government, in 1 LAWS OF THE STATE OF NEW YORK 534 (Albany, Charles R. & George Webster eds., 2d ed. 1802) (similar); An Act to Appropriate Monies for the Political Year 1808, § 2, in A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA 372–73 (Augusta, Adams & Duyckinck eds., 1812) (similar); PROVINCIAL CONGRESS, JOURNAL OF THE VOTES AND PROCEEDINGS OF THE PROVINCIAL CONGRESS OF NEW JERSEY 239–40 (Burlington, Isaac Collins ed., *reprinted by* Woodbury, Joseph Sailer 1835) (similar); *Saturday, December 20, 1783*, JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA 77 (Richmond, Thomas W. White ed., 1828) (similar); An Act Regulating Fees, in 1 LAWS OF THE STATE OF VERMONT 382, 387 (Randolph, Sereno Wright ed., 1808) (similar).

⁵ See VOTES AND PROCEEDINGS OF THE HOUSE OF DELEGATES OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 at 2 (1791) (recording appointment of sergeant-at-arms and door-keeper); VOTES AND PROCEEDINGS OF THE SENATE OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 at 1 (1791) (similar); A JOURNAL OF THE PROCEEDINGS OF THE HONORABLE SENATE OF

suggests, these positions carried with them obligations to secure the legislature, including from armed attack. Both were positions the Americans adapted from England's Parliament. See *About the Sergeant at Arms: Historical Overview*, U.S. SENATE, <https://perma.cc/GA5J-Q5F9>. In Parliament, both doorkeepers and sergeants-at-arms had long been tasked with securing the legislative chambers against unauthorized visitors and threats, see, e.g., WILLIAM HAKEWELL, *MODUS TENENDI PARLIAMENTUM: OR, THE OLD MANNER OF HOLDING PARLIAMENTS IN ENGLAND* 22–23 (London, 1671), <https://perma.cc/4MZA-4M4Y>, and they carried out those functions here following the Revolution, see THOMAS JEFFERSON, *A MANUAL OF PARLIAMENTARY PRACTICE. FOR THE USE OF THE SENATE OF THE UNITED STATES* § XVIII (Washington, 1801), <https://perma.cc/MC7J-J7FJ> (“[T]he door of the house ought not to be shut, but to be kept by porters, or serjeants at arms, assigned for that purpose.”); see also JACOB R. STRAUS, *CONG. RSCH. SERV.*, 98-748, *SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE: LEGISLATIVE AND ADMINISTRATIVE DUTIES* 1–2 (2011), <https://perma.cc/D9HY-8WAF>. In one notable 18th-century incident, for example, three members of the Upper House of the Maryland legislature were refused admission to the Lower House “unless [they] first left [their] sword[s] with the doorkeeper,” which they refused to do. RAPHAEL SEMMES, *CAPTAINS AND MARINERS OF EARLY MARYLAND* 285–86 (1937), <https://perma.cc/7T7C-8WA4>.

THE STATE OF NEW-HAMPSHIRE 6 (Amherst, Joseph Cushing ed., 1808), <https://perma.cc/Y7VF-UYV4> (similar).

Polling places were likewise secured, including in Georgia, Virginia, New Jersey, Maryland, Delaware, and South Carolina.⁶ And courthouses also, then as now, were secured by law enforcement. South Carolina, Virginia, Delaware, New Jersey, New York, and Pennsylvania by statute required law enforcement officials to attend court.⁷ Furthermore, the legislative

⁶ See An Act for the Better Regulating and Conducting Elections in the Federal Counties of this State, *in* A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 611 (Phila., R. Aitken ed., 1800) (“[T]he sheriff of each county or his deputy, is required to attend at such elections, for the purpose of enforcing the orders of the presiding magistrates in preserving good order.”); ABRIDGEMENT OF THE PUBLIC PERMANENT LAWS OF VIRGINIA 325 (Richmond, Augustine Davis ed., 1796) (similar); LAWS OF THE STATE OF NEW JERSEY 36 (Trenton, James J. Wilson ed., 1811) (providing security at polling places); MD. CONST. art. 1 §§ 3, 14 (1776) (similar); An Act Directing the Election of a Representative for this State in the Congress of the United States, *in* 2 LAWS OF THE STATE OF DELAWARE, *supra*, at 984 (similar); THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA, *supra*, at 386–88, (table of fees includes payment to sheriffs for polling-place security).

⁷ See THE PUBLIC LAWS OF SOUTH CAROLINA, *supra*, at 271, (“The said sheriffs by themselves, or lawful deputies respectively, attend all the courts hereby appointed, or directed to be held, within their respective districts.”); A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA 69–71 (Richmond, Samuel Pleasants & Henry Pace ed., 1803) (similar); An Act to Regulate the Courts in this State, *in* 2 LAWS OF THE STATE OF DELAWARE, *supra*, at 1088, 1091 (similar); An Act Constituting Courts for the Trial of Small Causes, *in* LAWS OF THE STATE OF NEW JERSEY, *supra*, 49–50, 58 (similar); An Act Concerning the Circuit Courts, *in* 1 LAWS OF THE STATE OF NEW YORK, *supra*, at 176 (requiring during court “all justices of the peace, coroners, bailiffs, and constables within their respective counties, that they be then and there in their own persons... . And the said respective sheriffs and their officers shall then and there attend in their own proper persons.”); An Act for Erecting an High Court

record in other states indicates that law enforcement officials were compensated for attending judicial proceedings.⁸ As a contemporary manual for law enforcement made clear, it was “for [the] very purpose” of “preserv[ing] quietness, order, and decency, in the Courts of Justice” that they were required to attend court. R. SHEARDOWN, *THE DUTY OF CONSTABLES* 16 (1790), <https://perma.cc/4EYV-2T5Q> (emphasis omitted).

In fact, the historical pedigree of restricting arms bearing at discrete, secured locations stretches back to some of the very earliest legal restrictions in our tradition. A clause of the Statute of Northampton prohibits any man “except the Kings’ Servants in his presence, and his Ministers in executing of the King’s Precepts, or of their Office, and such as be in their Company assisting them ... be so hardy to come before the King’s Justices, or other of the King’s Ministers

of Errors and Appeals, *in* 10 *STATUTES AT LARGE OF PENNSYLVANIA*, *supra*, at 57 (similar).

⁸ See An Act for Regulating Fees, *in* *ACTS AND LAWS OF THE STATE OF CONNECTICUT* 63–65 (New London, Timothy Green ed., 1784); An Act for Vesting Certain Powers in the Commissioners of the Court House, *in* *A DIGEST OF THE LAWS OF THE STATE OF GEORGIA*, *supra*, 471, 473–74, 478 (1792 law); An Act Respecting the Sherriff of Talbot County, *in* 2 *THE LAWS OF MARYLAND*, ch. 25 (Annapolis, Frederick Green ed., 1800) (1799 law); *ACTS AND RESOLVES OF MASSACHUSETTS*, 1786–87 at 235 (Bos., Adams & Nourse eds., 1893) (1786 law); An Act Regulating Fees, *in* *THE LAWS OF THE STATE OF NEW HAMPSHIRE* 112–16 (Portsmouth, John Melcher ed., 1797); *A MANUAL OF THE LAWS OF NORTH-CAROLINA* 190–91, 196 (Raleigh, J. Gales ed., 3d. ed. 1814) (1779 law); *THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS*, *supra*, at 220, 222; An Act Regulating Fees, *in* 2 *LAWS OF THE STATE OF VERMONT* 382, 387 (Randolph, Sereno Wright ed. 1808) (1798 law).

doing their office, with force and arms.” 2 Edw. 3, c. 3 (1328) (cleaned up). This provision, *preceding* the textual “affray” element of the Statute, suggested that where the King’s business was being conducted, and his ministers were going armed themselves, the right of others to be armed could be momentarily curtailed.

This reading of the statute is confirmed by the Virginia analogue to the Statute of Northampton that was in place when the Second Amendment was adopted. In addition to the explicit “terror” element to the second restriction, it made the first restriction effectively about regulating who could possess arms in court, forbidding anyone “except the Ministers of Justice in executing the precepts of the courts of justice” and those “assisting them” from “com[ing] before the justices of any court, or either of their Ministers of Justice, doing their office, with force of arms.” 1786 Va. Acts 35. In other words, it fits the Statute of Northampton’s restrictions into the same tradition as the other laws on arms bearing in courts of law. And it likewise fits with the tradition, discussed above, of *requiring* firearms to be carried at certain public meetings or church gatherings.

Finally, the principle that a place may be “sensitive” if the government takes it upon itself to secure the location is a *robust* principle, both providing the government with flexibility to designate those places where there really is some “inherent danger[]” in the carrying of weapons, Cross.App.36a, and adequate to explain locational restrictions wherever the government validly enacts them. As noted above, the Seventh and Ninth Circuits have both expressed dissatisfaction with their own answers to the question of where the government can ban firearms, with the

Ninth Circuit in particular lamenting that the distinctions “appear arbitrary.” *Wolford*, 116 F.4th at 1003. The Second Amendment does not comport with a series of arbitrary restrictions. Rather, it is consistent with reasoned judgment and common sense. See *Rahimi*, 602 U.S. at 698 (noting that “the surety and going armed laws confirm what common sense suggests”). It makes sense that, if the government could be permitted to disarm its citizens in any public place, it can only be in locations where it takes steps to ensure it is providing for their protection and not leaving them at the mercy of those who will not balk at ignoring a “gun free” designation.

IV. This case is a good vehicle for addressing this important issue.

This case presents an excellent vehicle for this Court to provide much needed clarity on these important questions. Unlike *Antonyuk*, the decision below is a final judgment on the merits. And unlike *Schoenthal*, it addresses the constitutionality of a wide variety of restrictions, providing this Court with the opportunity to discuss sensitive places with reference to a number of modern applications where sharp conflicts among the lower courts abound. And as all of the recent cases addressing similar schemes demonstrate, there is little chance that additional percolation will do much to clarify the issues or to bring additional historical analogues to light. The issue is ripe for this Court’s review.

While this Court has granted certiorari in two other Second Amendment cases this term, *Wolford v. Lopez*, 146 S. Ct. 79 (Oct. 3, 2025) (No. 24-1046) (mem.), and *United States v. Hemani*, 146 S. Ct. 326 (Oct. 20, 2025) (No. 24-1234) (mem.), decisions in

those cases may not meaningfully assist courts of appeals in deciding the constitutionality of the wide variety of “sensitive place” restrictions. *Hemani*, for example, addresses the question of *who* can exercise the right to keep and bear arms.

While the Ninth Circuit’s decision in *Wolford* dealt with “sensitive place” restrictions like the Maryland provisions at issue here, the issue before this Court *solely* deals with Hawaii’s presumptive ban on carrying firearms in private property open to the public. That presumptive ban only applies to locations that Hawaii has *not* deemed sensitive, since in those locations carry is *absolutely* prohibited, regardless of the wishes of the property owner. *See* HAW. REV. STAT. §§ 134-9.1, 134-9.5 (2025). A decision in *Wolford* thus may not directly address sensitive places. Alternatively, should *Wolford* establish a principle that addresses the doctrinal incoherence among the lower courts detailed above, Petitioners respectfully request that this Court grant, vacate, and remand for reconsideration in light of *Wolford*.

CONCLUSION

The Court should grant the non-conditional cross-petition for a writ of certiorari or, if otherwise appropriate, GVR the cross-petition in light of the Court’s decision in *Wolford*.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JANUARY 20, 2026	1a
APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED AUGUST 2, 2024	107a
APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED AUGUST 2, 2024	123a
APPENDIX D — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED SEPTEMBER 29, 2023	126a
APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, FILED SEPTEMBER 29, 2023	172a
APPENDIX F — RELEVANT STATUTORY PROVISIONS	175a

**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT,
FILED JANUARY 20, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1799

SUSANNAH WARNER KIPKE; MARYLAND
STATE RIFLE AND PISTOL ASSOCIATION, INC.,

Plaintiffs-Appellants,

v.

WES MOORE, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF MARYLAND; ROLAND L.
BUTLER, JR., IN HIS OFFICIAL CAPACITY AS
MARYLAND STATE POLICE SUPERINTENDENT
AND SECRETARY; JOSHUA KURTZ, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
NATURAL RESOURCES,

Defendants-Appellees.

EVERYTOWN FOR GUN SAFETY; BRADY
CENTER TO PREVENT GUN VIOLENCE;
GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE; DISTRICT OF COLUMBIA;
ILLINOIS; CALIFORNIA; COLORADO;
CONNECTICUT; DELAWARE; HAWAII; MAINE;
MASSACHUSETTS; MINNESOTA; NEVADA; NEW
JERSEY; NEW YORK; OREGON; PENNSYLVANIA;
RHODE ISLAND; VERMONT; WASHINGTON,

Amici Supporting Appellees.

2a

Appendix A

No. 24-1827

KATHERINE NOVOTNY; SUE BURKE; ESTHER
ROSSBERG; MARYLAND SHALL ISSUE,
INC.; SECOND AMENDMENT FOUNDATION;
FIREARMS POLICY COALITION,

Plaintiffs-Appellants,

v.

WESLEY MOORE, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF MARYLAND; ALISON M.
HEALEY, IN HER OFFICIAL CAPACITY AS
STATES ATTORNEY FOR HARFORD COUNTY,
MARYLAND; SCOTT D. SHELLENBERGER, IN
HIS OFFICIAL CAPACITY AS STATES ATTORNEY
FOR BALTIMORE COUNTY, MARYLAND; IVAN J.
BATES, IN HIS OFFICIAL CAPACITY AS STATES
ATTORNEY FOR BALTIMORE CITY, MARYLAND;
COL. ROLAND L. BUTLER, JR., IN HIS
OFFICIAL CAPACITY AS SUPERINTENDENT
OF THE MARYLAND STATE POLICE; PAUL J.
WIEDEFELD, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF TRANSPORTATION; JOSHUA
KURTZ, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF NATURAL RESOURCES,

Defendants-Appellees.

EVERYTOWN FOR GUN SAFETY; BRADY
CENTER TO PREVENT GUN VIOLENCE;
GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE; DISTRICT OF COLUMBIA;
ILLINOIS; CALIFORNIA; COLORADO;
CONNECTICUT; DELAWARE; HAWAII; MAINE;

3a

Appendix A

MASSACHUSETTS; MINNESOTA; NEVADA; NEW
JERSEY; NEW YORK; OREGON; PENNSYLVANIA;
RHODE ISLAND; VERMONT; WASHINGTON,
Amici Supporting Appellees.

No. 24-1834

SUSANNAH WARNER KIPKE; MARYLAND
STATE RIFLE AND PISTOL ASSOCIATION, INC.,
Plaintiffs-Appellees,

v.

WES MOORE, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF MARYLAND; ROLAND L.
BUTLER, JR., IN HIS OFFICIAL CAPACITY AS
MARYLAND STATE POLICE SUPERINTENDENT
AND SECRETARY; JOSHUA KURTZ, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
NATURAL RESOURCES,
Defendants-Appellants.

EVERYTOWN FOR GUN SAFETY; BRADY
CENTER TO PREVENT GUN VIOLENCE;
GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE; DISTRICT OF COLUMBIA;
ILLINOIS; CALIFORNIA; COLORADO;
CONNECTICUT; DELAWARE; HAWAII; MAINE;
MASSACHUSETTS; MINNESOTA; NEVADA; NEW
JERSEY; NEW YORK; OREGON; PENNSYLVANIA;
RHODE ISLAND; VERMONT; WASHINGTON,
Amici Supporting Appellants.

4a

Appendix A

No. 24-1836

KATHERINE NOVOTNY; SUE BURKE; ESTHER
ROSSBERG; MARYLAND SHALL ISSUE,
INC.; SECOND AMENDMENT FOUNDATION;
FIREARMS POLICY COALITION,

Plaintiffs-Appellees,

v.

WESLEY MOORE, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF MARYLAND; ALISON M.
HEALEY, IN HER OFFICIAL CAPACITY AS
STATES ATTORNEY FOR HARFORD COUNTY,
MARYLAND; SCOTT D. SHELLENBERGER, IN
HIS OFFICIAL CAPACITY AS STATES ATTORNEY
FOR BALTIMORE COUNTY, MARYLAND; IVAN J.
BATES, IN HIS OFFICIAL CAPACITY AS STATES
ATTORNEY FOR BALTIMORE CITY, MARYLAND;
COL. ROLAND L. BUTLER, JR., IN HIS
OFFICIAL CAPACITY AS SUPERINTENDENT
OF THE MARYLAND STATE POLICE; PAUL J.
WIEDEFELD, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF TRANSPORTATION; JOSHUA
KURTZ, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF NATURAL RESOURCES,

Defendants-Appellants.

EVERYTOWN FOR GUN SAFETY; BRADY
CENTER TO PREVENT GUN VIOLENCE;
GIFFORDS LAW CENTER TO PREVENT
GUN VIOLENCE; DISTRICT OF COLUMBIA;
ILLINOIS; CALIFORNIA; COLORADO;

Appendix A

CONNECTICUT; DELAWARE; HAWAII; MAINE;
MASSACHUSETTS; MINNESOTA; NEVADA; NEW
JERSEY; NEW YORK; OREGON; PENNSYLVANIA;
RHODE ISLAND; VERMONT; WASHINGTON,

Amici Supporting Appellants.

Appeals from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, Chief District Judge. (1:23-cv-01293-GLR; 1:23-cv-01295-GLR; 1:23-cv-01293-GLR; 1:23-cv-01295-GLR).

Argued: May 7, 2025

Decided: January 20, 2026

Before DIAZ, Chief Judge, GREGORY, and AGEE, Circuit Judges.

Affirmed in part and reversed in part by published opinion. Judge Gregory wrote the opinion, in which Chief Judge Diaz joined. Judge Agee wrote a separate opinion concurring in part and dissenting in part.

GREGORY, Circuit Judge:

Plaintiffs challenged numerous Maryland regulations prohibiting guns in various places as violative of the Second Amendment. Maryland defends each prohibition by invoking the sensitive place exception to the Second Amendment, first identified in *District of Columbia v. Heller*, 554 U.S. 570, 626-27, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). The Court splits on the constitutionality of many of the regulations so, for ease of reference, we

Appendix A

summarize our holdings here, noting which parts of each of our respective opinions are controlling.

As to the proper sensitive place framework, Judge Gregory writes for the court. Chief Judge Diaz agrees and Judge Agee writes separately.

We unanimously hold that Maryland's prohibition on guns in government buildings is constitutional and affirm the district court. *See* Md. Code, Crim. Law § 4-111(a)(4) (i); Code of Md. Regs. § 04.05.01.¹ Judge Gregory, joined by Chief Judge Diaz and Judge Agee, writes for the Court on this question.

We hold that Maryland's prohibition on guns in public transportation is constitutional and affirm the district court. *See* Md. Code, Transp. § 7-705(b)(6). Judge Gregory, joined by Chief Judge Diaz, writes for the Court on this question, and Judge Agee dissents.

We unanimously hold that Maryland's prohibition on guns on school grounds is constitutional and affirm the district court. *See* Md. Code, Crim. Law §§ 4-102(b), 4-111(a)(2)(i)-(ii). Judge Gregory, joined by Chief Judge Diaz and Judge Agee, writes for the Court on this question.

We hold that Maryland's prohibition on guns within 1,000 feet of a public demonstration is constitutional and reverse the district court. *See* Md. Code, Crim. Law

1. Any citations to Maryland's regulations reference the version current at the time of the parties' briefing.

Appendix A

§ 4-208. Judge Gregory, joined by Chief Judge Diaz, writes for the Court on this question, and Judge Agee dissents.

We hold that Maryland's prohibition on guns in state parks, *see* Code of Md. Regs. § 08.07.06.04(B), is constitutional and that Maryland's prohibitions on guns in state forests, *see* Code of Md. Regs. § 08.07.01.04(B), and Chesapeake Forest Lands, *see* Code of Md. Regs. § 08.01.07.14(B), are likewise constitutional. Judge Gregory, joined by Chief Judge Diaz, writes for the Court on this question. Judge Agee would hold that Maryland's restriction on guns in state parks and forests is unconstitutional.

We hold that Maryland's prohibition on guns in museums is constitutional and affirm the district court. *See* Md. Code, Crim. Law § 4-111(a)(8)(iii). Judge Gregory, joined by Chief Judge Diaz, writes for the Court, and Judge Agee dissents.

We unanimously hold that Maryland's prohibition on guns in healthcare facilities is constitutional and affirm the district court. *See* Md. Code, Crim. Law § 4-111(a)(2)(iii). Judge Gregory, joined by both Chief Judge Diaz and Judge Agee, writes for the Court.

We hold that Maryland's prohibitions on guns at stadiums, racetracks, amusement parks, and casinos are constitutional and affirm the district court. *See* Md. Code, Crim Law § 4-111(a)(8)(ii), (iv), (v), (vi); Code of Md. Regs. §§ 14.25.02.06, 36.03.10.48. Judge Gregory, joined by Chief Judge Diaz, writes for the Court, and Judge Agee dissents.

Appendix A

We hold that Maryland's prohibition on guns in locations that sell alcohol is constitutional and reverse the district court. *See* Md. Code, Crim. Law § 4-111(a)(8). Judge Gregory, joined by Chief Judge Diaz, writes for the Court, and Judge Agee dissents.

We hold that Maryland's prohibition on carrying guns on private property held open to the public is unconstitutional and affirm the district court. *See* Md. Code, Crim. Law § 6-411(d). Judge Gregory, joined by Chief Judge Diaz, writes for the Court, and Judge Agee joins. With respect to property not held open to the public, however, we hold that Plaintiffs lack standing. Judge Gregory, joined by Chief Judge Diaz, writes for the Court, and Judge Agee joins.

In sum, all sections of Judge Gregory's opinion are controlling.

I.

In this consolidated cross-appeal, two sets of plaintiffs challenge various Maryland regulations prohibiting guns in certain locations. As relevant here, both sets of plaintiffs challenge firearm restrictions related to: 1) government buildings; (2) mass transit facilities and vehicles; (3) school grounds; (4) public demonstrations (and areas within 1,000 feet thereof); (5) state parks and forests; (6) healthcare facilities; (7) places of amusement, including museums, stadiums, racetracks, video lottery facilities, amusement parks, and casinos; (8) locations that sell alcohol; and (9) private property.

Appendix A

Both sets of plaintiffs moved for preliminary injunction and summary judgment. The State also moved for summary judgment as to all claims. After consolidating the cases, the district court denied injunctive relief to the majority of Plaintiffs' claims, including those with regards to restrictions at museums, health care facilities, mass transit facilities and vehicles, state parks and forests, places of amusement, school grounds, and government buildings. The district court granted injunctive relief as to the private building restriction, as well as the restrictions at public demonstrations and locations that sell alcohol for on-site consumption.

The district court denied all summary judgment motions without prejudice. The parties then renewed those motions, which the district court granted in part and denied in part. All parties timely appealed.

II.

“We review de novo the district court’s decision on the parties’ cross-motions for summary judgment” and summary judgment may be granted “only if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 220 (4th Cir. 2024) (en banc) (quoting Fed. R. Civ. P. 56(a)) (internal quotation marks omitted).

III.

Plaintiffs argue that Maryland’s regulations violate the Second Amendment. The Second Amendment states:

Appendix A

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. Amend. II.

With the exception of the Kipke Plaintiffs’ challenge to Maryland’s government buildings prohibition, *see infra* at § III.B.1, Plaintiffs’ challenge to the prohibition of guns at schools, *see infra* at § III.B.3, and the Kipke Plaintiffs’ challenge to the private property restriction, *see infra* at § III.B.9, all other claims are facial challenges. “[A] facial challenge ‘is the most difficult challenge to mount successfully, because it requires [the challenger] to establish that no set of circumstances exists under which the Act would be valid.’” *United States v. Nutter*, 137 F.4th 224, 229 (4th Cir. 2025) (quoting *United States v. Rahimi*, 602 U.S. 680, 693, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024)) (internal quotation marks omitted). To prevail on a facial Second Amendment challenge, “the Government need only demonstrate that [the challenged regulation] is constitutional in *some* of its applications.” *Id.* (quoting *Rahimi*, 602 U.S. at 693).

In defense of each restriction, Maryland argues that they apply to “sensitive places.” *See, e.g., Heller*, 554 U.S. at 626-27. To date, we have not addressed the proper sensitive place analysis following the Supreme Court’s clarification of the scope of the Second Amendment right to bear arms in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). This case, therefore, requires us to clarify the sensitive place doctrine and its role within the broader *Bruen* analysis. This opinion proceeds by first addressing

Appendix A

the sensitive place framework and then conducts a location-by-location analysis.

A. Framework

When interpreting the Second Amendment, “we are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Heller*, 554 U.S. at 576. Precedent interpreting the Second Amendment was relatively limited as litigation regarding its meaning and application was infrequent until 2008 when the Supreme Court issued its decision in *Heller*. Over a decade later, the Court issued its decision in *Bruen*, articulating a two-part test meant to guide lower courts in assessing Second Amendment challenges.

At *Bruen* step one, our job is to construe the Second Amendment’s plain text according to its original public meaning. *See Bruen*, 597 U.S. at 34 (“Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.”) (quotation omitted). We do so by answering three questions: (1) whether the petitioner is “part of the people whom the Second Amendment protects”; (2) whether the weapons at issue are “in common use for a lawful purpose”; and (3) whether the Second Amendment protects the “proposed course of conduct.” *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) (en banc) (cleaned up). Once those three questions have been answered affirmatively, the step one inquiry is at an end, and the court must proceed to step two. *Bruen*, 597 U.S. at 24.

Appendix A

At *Bruen* step two, our job is different, we must determine whether “a firearm regulation is *consistent* with this Nation’s historical tradition.” *Bruen*, 597 U.S. at 17 (emphasis added). Why and how the regulation burdens the right are central to this inquiry. *Rahimi*, 602 U.S. at 692. “For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Id.* However, “[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.* “And when a challenged regulation does not precisely match its historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* (internal quotation marks omitted). The law must comport with the principles underlying the Second Amendment, but it need not be a “dead ringer” or a “historical twin.” *Id.* In other words, “unprecedented societal concerns or dramatic technological changes” can prompt new kinds of regulations that are constitutional. *Bruen*, 597 U.S. at 27.

The Court has made clear that the Second Amendment does not impose “a law trapped in amber” and allows for regulations beyond “ones that could be found in 1791.” *Rahimi*, 602 U.S. at 691. Accordingly, we look beyond the Founding Era to determine whether our national tradition of firearm regulation supports a government’s restriction today. See *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 114 (10th Cir. 2024) (noting that “the burden at step one differs from step two’s history and tradition test

Appendix A

in that it does not necessitate bringing forth evidence of *historical practice*").

This two-pronged approach to the use of history is how this Court resolved *Bianchi v. Brown*, 111 F.4th 438, 472 (4th Cir. 2024) (en banc). There, we explained that at *Bruen* step one, the scope of the Second Amendment is based on its “particular meaning in the ratifying public’s consciousness, with baked-in prerogatives and qualifications alike.” *Bianchi*, 111 F.4th at 447. Accordingly, we looked at only Founding Era common law to understand the scope of “the individual right to keep and bear arms.” *Id.* at 448-50. Our conclusion that modern military-style weapons fall beyond the Second Amendment’s protections as a textual matter was based on our reading that Founding Era common law did not prevent the government from banning dangerous and unusual weapons. We also engaged in a step two analysis that looked at historical sources from throughout American history, including well beyond the Reconstruction Era. *See id.* at 446 (referencing the aims of the drafters of the Fourteenth Amendment). That analysis allowed us to take a “long view” of history to situate restrictions on modern military-style weapons within our national tradition of firearm regulation. *Id.* at 471. Hence, the historical sources we look to at *Bruen* step one are limited to the Founding Era, and the sources we look to at *Bruen* step two can come throughout American history.

When analyzing the sensitive places doctrine and determining where it fits within the *Bruen* framework and the three step one questions discussed in *Price*, we

Appendix A

hold that this doctrine goes to the “proposed course of conduct,” namely, the carrying of guns in public, which the Second Amendment protects. *See Bruen*, 597 U.S. at 70-71; *see also United States v. Gould*, 146 F.4th 421, 427 (4th Cir. July 29, 2025) (holding that a law “bar[ring] an individual who is otherwise law-abiding from possessing a weapon in common use for a common purpose” regulates conduct “covered by the Second Amendment’s plain text” at step one).

Sensitive-place laws “directly impact the right to bear” arms and are therefore, as the Fifth Circuit concluded, “subject to *Bruen*’s historical analysis” at step two. *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024). Moreover, “*Bruen* used . . . sensitive-place regulations to exemplify the analogical approach it envisioned” in the historical tradition analysis, “impl[ying] that sensitive-place regulations are justified by historical tradition at step two, not by plain text at step one.” *Price*, 111 F.4th 392, 417 n.2 (4th Cir. 2024) (en banc) (Quattlebaum, J., concurring). As such, this very approach will guide our analysis.

B. Location-by-Location Analysis

Against this backdrop, and having determined the proper framework for sensitive place analyses, we now address the district court’s ruling with respect to the following ordinances: (1) government buildings; (2) mass transit facilities and vehicles; (3) school grounds; (4) public demonstrations (and areas within 1,000 feet thereof);

Appendix A

(5) state parks and forests; (6) healthcare facilities; (7) places of amusement, including museums, stadiums, racetracks, video lottery facilities, amusement parks, and casinos; (8) locations that sell alcohol; and (9) private property.

1. Government Buildings

Maryland bans the carrying of firearms in “a building or any part of a building owned or leased by a unit of State or local government,” Md. Code, Crim. Law § 4-111(a)(4)(i), and “[e]xcept for official purposes and by authorized personnel, an individual on [State public buildings, improvements, grounds, and multiservice centers under the jurisdiction of the Department of General Services] may not carry open or concealed firearms,” Code of Md. Regs. §§ 04.05.01.01, 04.05.01.03.

We uphold Maryland’s government building provision. The Supreme Court has expressly recognized, first in *Heller*, and then again in *Bruen*, that government buildings are sensitive places. *See Heller*, 554 U.S. at 626 (noting that “nothing in our opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as . . . government buildings”); *Bruen*, 597 U.S. at 31 (stating, in the context of schools and government buildings, that “[w]e therefore can assume it settled that these locations were ‘sensitive places’ where arms carrying could be prohibited consistent with the Second Amendment”). This guidance from the Supreme Court is more than sufficient to uphold Maryland’s prohibition of firearms in government buildings.

*Appendix A***2. Mass Transit**

Maryland law states: “[i]t is unlawful for any person” to “[c]arry or possess any . . . concealed weapons” “in any transit vehicle or transit facility, designed for the boarding of a transit vehicle, which is owned or controlled by the [Mass Transit] Administration [“MTA”] or a train owned or controlled by the Administration or operated by a railroad company under contract to the Administration to provide passenger railroad service.” Md. Code, Transp. § 7-705(b)(6).

We uphold Maryland’s public transportation provision under the proprietary property doctrine. The Supreme Court has “long held the view that there is a crucial difference, with respect to constitutional analysis, between the government exercising the power to regulate or license, as lawmaker, and the government acting as proprietor, to manage its internal operation.” *Engquist v. Or. Dep’t of Ag.*, 553 U.S. 591, 598, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008) (cleaned up); *see also United States v. Kokinda*, 497 U.S. 720, 725, 110 S. Ct. 3115, 111 L. Ed. 2d 571 (1990) (“The Government’s ownership of property does not automatically open that property to the public” and it is “long-settled” “that governmental actions are subject to a lower level of . . . scrutiny when . . . [the government is functioning] as proprietor.”). This is because “the government—like other property owners—has power to preserve the property under its control for the use to which it is lawfully dedicated.” *Int’l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 679-80, 112 S. Ct. 2701, 120 L. Ed. 2d 541 (1992) (cleaned up). So,

Appendix A

in contrast to when it regulates the use of “open spaces, [] meeting hall[s], park[s], street corner[s], or other public thoroughfare[s],” *id.* at 725 (cleaned up), “a State generally may ‘manage its own property when it pursues its purely proprietary interests . . . where analogous private conduct would be permitted,’” *Wolford v. Lopez*, 116 F.4th 959, 971 (9th Cir. 2024) (quoting *Bldg. & Constr. Trades Council v. Assoc. Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 231-32, 113 S. Ct. 1190, 122 L. Ed. 2d 565 (1993)). This includes when the government is engaging in commerce, rather than in regulation. *Kokinda*, 497 U.S. at 725 (discussing *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303, 94 S. Ct. 2714, 41 L. Ed. 2d 770 (1974) (plurality)). The Ninth and D.C. Circuits have extended the propriety function doctrine to the Second Amendment context and today we join them. *Wolford*, 116 F.4th at 970-71, 1000; *United States v. Class*, 930 F.3d 460, 464, 442 U.S. App. D.C. 257 (D.C. Cir. 2019), *abrogated on other grounds by Bruen*, 597 U.S. 1. We hold that, when the government is acting in its proprietary capacity or as a market participant, rather than as a steward of public land, it may prohibit guns without offending the Second Amendment.

To determine when the government is operating a space in its propriety capacity, we turn to the First Amendment. In doing so, we are in good company. The Supreme Court has recognized the similarities between First and Second Amendment doctrine, emphasizing that the *Bruen* history and tradition test “accords with how we protect . . . the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the

Appendix A

right to keep and bear arms.” *Bruen*, 697 U.S. at 24. The D.C. Circuit also analogized to the First Amendment framework to determine whether the government acted in its proprietary capacity in banning guns near the Capitol Building. *Class*, 930 F.3d at 464.

In the First Amendment context, the Supreme Court has held that the proprietary property doctrine applies to other mass transit systems. *See, e.g., Int’l Soc. for Krishna Consciousness, Inc.*, 505 U.S. at 682 (the government may prohibit solicitation in airport terminals); *Lehman*, 418 U.S. at 301 (city operated street cars are not public forums). In the *Lehman* plurality opinion, the Court explained that, by operating a streetcar, “the city is engaged in commerce” and that its purpose was to “provide rapid, convenient, pleasant, and inexpensive service to [its] commuters.” *Id.* (plurality). In other words, by operating a streetcar system, the government acts in its proprietary function. So, the Court concluded that, so long as its policies survived rational basis review, the city could prohibit certain types of advertisements in its streetcars. *Id.* at 303-04 (plurality); *see also White Coat Waste Proj. v. Greater Richmond Transit Co.*, 35 F.4th 179, 197 (4th Cir. 2022) (“[A]s the Supreme Court and our sister circuits have concluded, transit advertising space is a nonpublic forum.”). This reasoning is not limited to transit advertising. For example, the Second Circuit held that the entire New York City subway system was not a public forum for First Amendment purposes. *Young v. N.Y.C. Transit Auth.*, 903 F.2d 146, 161 (2d Cir. 1990). We think it proper to import this reasoning from the First to the Second Amendment here. Just like the city

Appendix A

in *Lehman* acted in its proprietary capacity when it ran its streetcars, Maryland acts in its proprietary capacity when it runs the MTA.

The dissent contends that Maryland’s law reaches well beyond State-owned buildings devoted to transit. Certainly, the propriety property doctrine does not extend to property not owned or controlled by the State. We think, however, that the provision is cabined to exclude such property, as the provision applies only to items “owned or controlled by the [MTA] or . . . operated by a railroad company under contract to the [MTA].” Md. Code Ann., Transp. § 7-705(b)(6). To be sure, the term “control” could be interpreted more broadly than is appropriate under the Second Amendment. But courts generally interpret statutes to avoid constitutional difficulties. *Off. of Senator Mark Dayton v. Hanson*, 550 U.S. 511, 514, 127 S. Ct. 2018, 167 L. Ed. 2d 898 (2007). If the statute is improperly applied to facilities not owned or properly controlled by the State, that would be an issue of statutory interpretation for another time.

Additionally, Maryland’s prohibition on carrying guns in mass transit comports with our history and tradition. The dissent argues that our holding conflicts with Founding Era laws permitting the carry of firearms on transportation. But as Professor Saul Cornell, one of Maryland’s historical experts, explained, at the time of the Founding “[t]here was no modern-style mass transportation” and “forms of transport were privately owned.” J.A. 153, Declaration of Saul Cornell (“Cornell Decl.”), ¶ 13. Indeed, “[u]ntil the twentieth century,

Appendix A

transportation services were typically operated by private companies vested with the authority to fashion their own rules and regulations for customers.” J.A. 353-54, Declaration of Brennan Gardner Rivas (“Rivas Decl.”), ¶ 13.

As such, to understand the scope of the Second Amendment and our historical tradition of firearm regulations on public transportation, we turn to the policies of privately-owned historic railroad companies. This was the approach adopted by Ninth Circuit in *Wolford*, where the court explained that these companies “were providing essentially a public service and were more properly characterized as mixed public-private entities.” 116 F.4th at 1001. Thus, railroad regulations are a useful source in determining the scope of our historical tradition of regulations. *Id.*; see generally Joshua Hochman, *The Second Amendment on Board*, 133 Yale L. J. 1676 (2024) (urging courts to look at private companies’ regulations to determine our historical tradition).

Early railroad companies routinely prohibited travelers from carrying loaded or improperly stored guns. By one scholar’s count, “at least six U.S. railroads between 1835 and 1900—including at least three of the nation’s dominant players—. . . regulate[d] firearm carriage in passenger cars.” *Id.* at 1690; see also *Wolford*, 116 F.4th at 1001.² “Generally, these rules barred passengers from

2. We note that “companies did not necessarily choose to keep their older records” of past regulations. J.A. 358 (Rivas Decl.). So, our archival record is admittedly slim. But we think it reasonable to assume that other companies adopted similar regulations.

Appendix A

carrying loaded or uncased firearms, or firearms not inspected by the company.” Hochman, *supra*, at 1690. For example, by 1835, the South Carolina Canal and Rail Road Company stated, “No Gun or Fowling Piece shall be permitted to enter the car unless examined by the Conductor.” *Id.* at 1692. Likewise, both the North Pennsylvania Railroad Company (by 1875) and the Albany Railway (by 1900) prohibited passengers from taking guns into the rail cars. *Id.* at 1693, 1695. Looking to these regulations, the Ninth Circuit found “a historical tradition of prohibiting the carry of loaded firearms or the carry of firearms not properly stored.” *Wolford*, 116 F.4th at 1001.

Despite identifying this tradition, the Ninth Circuit struck down a California ban on carrying firearms in “[a] bus, train, or other form of transportation paid for in whole or in part with public funds.” *Wolford*, 116 F.4th at 1000 (discussing Cal. Penal Code § 26230(a)(8)). The Ninth Circuit found California’s ban that prohibited all firearms too broad because “most of the [historic railroad] companies” allowed passengers to check unloaded firearms as part of their luggage. *Id.* at 1001.

But passengers using the MTA system cannot “check” luggage in most cases. As the MTA Director of Treasury explained, MTA operates “buses, a subway, light rail system and commuter trains” throughout the state. J.A. 371, Declaration of Thomas Randall, ¶ 3. Unlike traditional long-distance rail service, passengers do not part with their luggage on a bus or subway. Nor do commuter trains have separate luggage cars—all cars are passenger cars. So for the most part, guns carried on the MTA system

Appendix A

are readily accessible; the only way to prevent passengers from accessing guns is to prohibit them altogether. As Plaintiffs have brought only a facial challenge to this regulation and it is permissible in at least some types of transportation that MTA operates, Maryland's prohibition falls within our historical tradition. *See e.g., Nutter*, 137 F.4th at 229 (recognizing that, to succeed on a facial challenge, plaintiffs must demonstrate that “no set of circumstances exists under which the Act would be valid”) (cleaned up).

In a last attempt to convince us otherwise, Plaintiffs cite to nineteenth-century state laws excepting travelers from concealed carry laws. But, as Dr. Rivas, another one of Maryland's historical experts, explains, the travel exceptions did not describe “the everyday movement through public spaces like town squares and commercial districts, or the kind of travel associated with modern public transportation.” J.A. 350 (Rivas Decl.). “Instead,” the traveler exceptions “encompassed a type of travel that separated a person, small group, or family from the protections of the law that went hand-in-hand with organized society.” *Id.* For example, the Supreme Court of Arkansas explained that “[t]he exception in the [concealed carry] statute [for individuals on a journey] is to enable travelers to protect themselves on the highways, or in transit through populous places—not to allow them the privilege of mixing with the people in ordinary intercourse, about the streets, armed in a manner which, upon a sudden fit of passion, might endanger the lives of others.” *Carr v. State*, 34 Ark. 448, 449 (1879). The Supreme Court of Tennessee likewise explained that its concealed carry

Appendix A

exception for “person[s] who are on a journey” did not “embrace a mere ramble in one’s own neighborhood across the lines of contiguous counties.” *Smith v. State*, 50 Tenn. 511, 513 (1872). Because MTA provides commuter and short-distance travel, the historical tradition of allowing travelers to carry guns does not apply.

Looking to the *why* (preventing public transportation passengers from accessing guns) and *how* (prohibiting passengers from carrying readily accessible guns in passenger compartments) of the regulations, we hold that—even independent of the proprietary property doctrine—Maryland’s prohibition of guns on mass transit comports with our historical tradition.

3. School Grounds

Maryland prohibits the “carry[ing] or possess[ing of] a firearm . . . on public school property[.]” Md. Code, Crim. Law § 4-102(b), and, separately, bans the carrying of guns at “a preschool or prekindergarten facility or the grounds of the facility” and at “a private primary or secondary school or the grounds of the school.” Md. Code, Crim. Law § 4-111(a)(2)(i)-(ii). While not challenging “Maryland’s prohibition of firearms inside school buildings,” Plaintiffs bring an as-applied challenge, arguing that the district court erred in upholding Maryland’s law “banning firearms on the grounds of schools[.]” Opening Br. at 51-52 (emphasis removed).

We hold that Maryland’s prohibition of guns on school grounds is constitutional. The Supreme Court has noted

Appendix A

(albeit in dicta) that schools are sensitive places, and “courts can use analogies” to the historical regulation of schools “to determine that modern regulations prohibiting the carry of firearms in . . . analogous sensitive places are constitutionally permissible.” *See Bruen*, 597 U.S. at 31.³ Here, we hold that school grounds are analogous to school buildings. Like schools themselves, school grounds serve children through many school activities and places, such as recess and drop-off and pickup locations. In addition, the purposes underlying firearms restrictions, namely, to protect children and to preserve a peaceful learning environment, are comparable between schools and school grounds and the burden on the right to self-defense is the same. Accordingly, school grounds are considered sensitive for the same reasons schools are considered sensitive, and Maryland’s prohibition is constitutionally permissible.

4. Public Demonstrations

Under Maryland law, a “person may not have a firearm in the person’s possession or on or about the person at a demonstration in a public place or in a vehicle that is within 1,000 feet of a demonstration in a public place after: (i) the person has been advised by a law enforcement officer that a demonstration is occurring at the public place; and (ii) the person has been ordered by the law enforcement

3. We adopted the Supreme Court’s dicta as to schools in *LaFave v. The County of Fairfax*, 149 F.4th 476 (4th Cir. 2025). There, we rejected a facial challenge to the County’s ban on possessing and carrying firearms in county parks because four of the parks had preschools on park property.

Appendix A

officer to leave the area of the demonstration until the person disposes of the firearm.” Md. Code, Crim. Law § 4-208(b)(2).⁴ We hold that, while Plaintiffs have standing to bring their challenge, their claim fails on the merits.

To establish Article III standing, plaintiffs must show (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). With respect to the injury-in-fact element, in particular, the injury must be “concrete and particularized[.]” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (internal citation omitted), though “it is not necessary that petitioner first expose [her]self to actual arrest or prosecution to be entitled to challenge a statute that [s]he claims deters the exercise of [her] constitutional rights.” *Steffel v. Thompson*, 415 U.S. 452, 459, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1974). “[O]nce it is established that at least one party has standing to bring the claim, no further inquiry is required as to another party’s standing to bring that claim.” *Maryland Shall*

4. The provision defines a demonstration as “one or more persons demonstrating, picketing, speechmaking, marching, holding a vigil, or engaging in any other similar conduct that involves the communication or expression of views or grievances and that has the effect, intent, or propensity to attract a crowd or onlookers” and clarified that a demonstration “does not include the casual use of property by visitors or tourists that does not have the intent or propensity to attract a crowd or onlookers.” Md. Code, Crim. Law § 4-208(a)(2).

Appendix A

Issue, Inc. v. Hogan, 971 F.3d 199, 209 (4th Cir. 2020), *as amended* (Aug. 31, 2020).

While Maryland contends that Plaintiffs failed to satisfy the injury-in-fact requirement, we disagree. Plaintiff Kipke, for example, demonstrated an intent to engage in conduct proscribed by the statute. In her affidavit, Kipke asserted that, “each year for the past several years[,]” she has attended an annual public demonstration in Annapolis, Maryland and “intend[s] to continue doing so.” J.A. 83, Declaration of Susannah Kipke (“Kipke Decl”), ¶ 7. She further stated that “but for [her] fear of prosecution [she] would not leave the area [of the public demonstration] even after being advised by a law enforcement officer that a demonstration is occurring and being ordered by the law enforcement officer to leave the areas of the demonstration until [she] dispose[d] of [her] firearm.” J.A. 100, Supplemental Declaration of Susannah Kipke, ¶ 2. Thus, Kipke’s course of conduct is “arguably affected with a constitutional interest.” *Susan B. Anthony List*, 573 U.S. at 159 (citing *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)); *see Bruen*, 597 U.S. at 8 (“[T]he Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.”). As such, Kipke has sufficiently demonstrated an injury-in-fact and has standing to challenge the public demonstration ban.

Turning to the merits, we hold that Maryland’s prohibition on carrying guns near public demonstrations is consistent with our national historical tradition of promoting peaceful assemblies, particularly given the

Appendix A

interaction between the rights the First and Second Amendments preserve.

To start, the First Amendment protects “the right of the people *peaceably* to assemble.” U.S. Const. amend. I (emphasis added). By including the “peaceably” caveat, the Founders made clear that not all assemblies are lawful, and that the government may constitutionally disperse assemblies that threaten the public peace. As the Supreme Court explained, “violence has no sanctuary in the First Amendment, and the use of weapons, gunpowder, and gasoline may not constitutionally masquerade under the guise of ‘advocacy.’” *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 916, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982) (citation omitted). So, we must read the right to bear arms in conjunction with the First Amendment’s protection of the right to peaceably assemble. Though the right to bear arms surely is “not a second-class right,” *Bruen*, 597 U.S. at 70 (citation omitted), neither are the rights to free speech and free assembly.

Second, our history, both before and after the ratification of the Second Amendment, demonstrates a long-standing tradition of government regulating permissible assemblies, including regulating arms at public assemblies. Beginning with the reign of King Edward IV in the fifteenth century, and subject to only minor alterations, “[t]he *riotous assembling* of *twelve* persons, or more, and not dispersing upon proclamation,” was a criminal offense under English law up until the Revolution. 2 *Blackstone’s Commentaries: With Notes of Reference* 142-43 (St. George Tucker ed. 1803) [hereinafter “Tucker’s

Appendix A

Blackstone”]. As Blackstone concluded, “our ancient law . . . seems pretty well to have guarded against any violent breach of the public peace; especially as any riotous assembly on a public or general account . . .” *Id.* at 147. The American colonies built on this tradition, enacting unlawful assembly statutes that ordered dispersal of assemblies, particularly where individuals were armed with weapons.⁵

So, evidence from the time of the Founding demonstrates that the Founders had a tradition of limiting and carefully scrutinizing any threats of violence at public assemblies and saw the presence of weapons as a greater threat to the public peace than unarmed assemblies. Justices of the Peace were entrusted with broad authority to arrest groups of citizens who threatened the peace. One action that was considered to threaten that peace was to show armor--in other words, showing an intention, or “at least an apparent tendency,” to engage in violence. Hening, *New Virginia Justice* at 383. As states enacted statutes codifying this tradition, they lowered the number of individuals necessary to constitute a riot if those individuals were armed, demonstrating an anxiety around armed assemblies. And the oft-included requirements that Justices of the Peace must first order a dispersal is akin to the Maryland provision requiring a police officer

5. See, e.g., Act of 1786, ch. 8, 1786 Mass. Acts 502-503. Pennsylvania likewise adopted an unlawful assembly statute in 1771. See Act of 1771, ch. 618, in 8 Statutes at Large of Pennsylvania from 1682-1801, at 5. Virginia followed suit in 1786, as did New Jersey in 1797. See Act of 1792, ch. 103, VA. CODE ANN. §§ 8-9 (1792); Act of 1797, 1797 Laws of New-Jersey 234.

Appendix A

to first instruct an individual with a gun to leave before that individual can be found in violation of the statute. Md. Code, Crim. Law § 4-208(b)(2)(ii).

Continuing into the 19th century, numerous jurisdictions, including Tennessee, Texas, Arizona, Oklahoma, and Missouri, historically prohibited carrying firearms at places of public assembly or gathering. J.A. 392-421. Maryland's bans on firearms are consistent with these historical traditions.

As such, we hold that Maryland's prohibition on carrying guns is constitutionally permissible.

5. State Parks and Forests

Maryland prohibits the carrying of firearms in state parks (Code of Md. Regs. 08.07.06.04(B)), state forests (Code of Md. Regs. 08.07.01.04(B)), and Chesapeake Forest Lands (Code of Md. Regs. 08.01.07.14(B)).⁶ Because “as soon as modern parks arose, municipalities and states enacted laws prohibiting the carrying of firearms into parks,” *Wolford*, 116 F.4th at 982, we join the reasoning of the Second and Ninth Circuits and hold that Maryland's prohibition on carrying guns in urban public parks is constitutional. *Antonyuk*, 120 F.4th at 1025-26. We likewise hold that Maryland's prohibitions on guns in state forests and Chesapeake Forest Lands are constitutional.

6. Maryland does, however, allow hunting and target shooting on certain state lands. *See, e.g.*, Code of Md. Regs. § 08.01.07.14(D).

Appendix A

As an initial matter, “[t]here were no modern-style parks in the era of the Second Amendment.” J.A. 176, Cornell Dec., ¶ 54; *see Woford*, 116 F.4th at 982 (explaining that “green spaces began to take the shape of a modern park, in the middle of the 19th century”); *Antonyuk*, 120 F.4th at 1024-1025 (same). So, though green spaces existed during the Founding era, today’s modern public parks—more akin to “municipal institutions”—are distinct. *Antonyuk*, 120 F.4th at 1022. *See Woford*, 116 F.4th at 982 (explaining that the Boston Common was “used primarily for grazing animals and for holding military exercises and was not akin to modern parks.”); *Antonyuk*, 120 F.4th at 1024 (recognizing that “[t]he modern idea of the park emerged in the nineteenth century, before which open spaces that were not privately owned . . . consisted of grazing areas open to all”) (internal citation and quotation marks omitted). As parks did not appear in their modern form until the middle of the nineteenth century, “one way that Defendants can show a historical tradition is by establishing that, when [parks] . . . first arose in modern form, states and municipalities began to regulate the possession of firearms [in parks], the regulations were considered constitutional at the time, and the regulations were comparable to a tradition of regulating a similar place or places in the earlier years of the Nation.” *Woford*, 116 F.4th at 981.

Defendants made that showing here: “As soon as green spaces began to take the shape of a modern park, . . . municipalities and other governments imposed bans on carrying firearms into the parks.” *Id.* at 982. *See Antonyuk*, 120 F.4th at 1022 (“The proliferation of these urban public

Appendix A

park regulations between 1861 and 1897 coincides with the rise of public parks as municipal institutions over the latter half of the 19th century.”). For example, New York banned the carrying of firearms in Central Park, “perhaps the Nation’s first modern public park,” in 1858, the year the park opened. *Wolford*, 116 F.4th at 982. The Ninth Circuit identified “similar prohibitions as parks emerged across the Nation” and noted that “[m]any municipalities, including major cities, prohibited the carry of firearms at all parks” *Id.* at 982-83. *See id.* (summarizing prohibitions in several states). In addition, as Professor Cornell explained, the nation’s five largest cities (New York, Chicago, Philadelphia, St. Louis, and Boston) all adopted prohibitions on carrying firearms in public parks between 1861 and 1886. J.A. 177, Cornell Decl., ¶ 56. Put simply, then, the *how* (banning all guns in urban parks) and the *why* (preserving the tranquility of parks) of these regulations mirror Maryland’s prohibitions.⁷

The same logic applies to Maryland’s limitations on guns in forests. Here, we rely on the Supreme Court’s teaching that a challenged regulation can survive a Second Amendment challenge even where it does not precisely match its historical precursors.

7. Separately, the Second and Ninth Circuits have not found evidence that courts questioned the constitutionality of these laws. *Wolford*, 116 F.4th at 983 (“Plaintiffs have not pointed to—and we have not found—any evidence that those laws were questioned as unconstitutional.”); *Antonyuk*, 120 F.4th at 1022 (“[T]he ordinances were not merely adopted by legislative bodies in the respective cities in which they applied—they were apparently accepted without any constitutional objection by anyone.”). Nor have we.

Appendix A

Maryland's state forests and lands have evolved from being viewed principally as resources for commercial exploitation to places that promote a balanced emphasis on economic, social, and environmental goals. *See A Brief History of the Forest Service*, Md. Dep't of Nat. Resources Forest Serv., <https://dnr.maryland.gov/forests/pages/aghistory.aspx>; <https://perma.cc/U7R3-KUDP> (last visited November 18, 2025). To that end, many of Maryland's forests offer diverse and substantial recreational and educational opportunities. *See Maryland's State Forests*, Md. Dep't of Nat. Resources Forest Serv., <https://dnr.maryland.gov/forests/Pages/mdforests.aspx>; <https://perma.cc/5J5A-3U5Y> (last visited November 18, 2025). In that way, they are sufficiently analogous to state parks so as to require us to reject the Plaintiffs' facial challenge to the ban on firearms.

And while there is a robust historical tradition of protecting hunting rights in rural lands, Maryland's statute falls within that tradition because it permits regulated hunting within state forests and Chesapeake Forest Lands. *See* Code of Md. Regs. § 08.07.06.04(B), 08.07.06.03, 08.01.07.04. As such, this regulation does not run afoul of, or impede upon, one's Second Amendment rights.

Accordingly, we hold that Maryland's prohibitions on carrying guns in urban public parks, state forests and Chesapeake Forest Lands are constitutional.

*Appendix A***6. Health Care Facilities**

Maryland prohibits the carrying of firearms in “a health care facility.” Md. Code, Crim. Law § 4-111(a)(2)(iii).⁸ We unanimously hold that this prohibition is constitutional.

“[M]odern hospitals and medical facilities do not resemble the hospitals at the Founding.” *Wolford*, 116 F.4th at 999. Nevertheless, Maryland’s health care facilities prohibition falls within our historical tradition of proscribing guns in places that serve vulnerable populations. Hospitals serve medical patients, a vulnerable population, and there is a “tradition of prohibiting firearms in locations where vulnerable populations congregate . . .” *Antonyuk*, 120 F.4th at 1012. In addition, a subset of medical patients—including “the intellectually disabled, mentally ill,” and “those with substance use disorders”—have “historically been considered a vulnerable population justifying firearm regulation.” *Id.* There is also a historical tradition of banning guns in places used for scientific purposes. *Id.* at 1020. Health care facilities fall well within that historical tradition.

8. The Code defines a “health care facility” as “(1) a hospital . . . ; (2) a related institution . . . ; (3) an ambulatory surgical facility or center which is any entity or part thereof that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and seeks reimbursement from third party payors as an ambulatory surgical facility or center; [and] (4) a facility that is organized primarily to help in the rehabilitation of disabled individuals.” Md. Code, Ins. § 15-10B-01(g)(1)-(4).

Appendix A

In light of our historical tradition of prohibiting the carrying of guns in places that serve vulnerable populations and engage in scientific pursuits, the *why* and the *how* of Maryland’s regulation match that of historic regulations. We therefore uphold Maryland’s prohibition of firearms in healthcare facilities.

7. Places of Amusement

Maryland prohibits the carrying of firearms in various places of amusement: “a stadium,” “an amusement park,” “a racetrack,” and a “video lottery facility.” Md. Code Crim Law § 4-111(a)(8)(ii), (iv), (v), (vi). It also bans the carrying of firearms at Camden Yards, a baseball stadium, Code of Md. Regs. § 14.25.02.06, in casinos, Code of Md. Regs. § 36.03.10.48, and in museums, Md. Code, Crim. Law § 4-111(a)(8)(iii). We hold that these statutes and regulations are constitutional.

First, various places of amusement, including stadiums, racetracks, casinos, and amusement parks did not exist in modern form in 1791. *See Wolford*, 116 F.4th at 987 (noting that “casinos, stadiums, [and] amusement parks . . . did not exist in modern form at the Founding”). Though gambling existed during the Founding, many states banned gambling, and the casinos that did exist were often privately operated. *See Hochman, supra*, at 1721. Also, sporting venues did not have modern stadium-esque facilities, and amusement parks did not exist in the United States until 1846. *See Horse Racing*, Britannica, <https://www.britannica.com/sports/horse-racing>; <https://perma.cc/35X2-BBG4> (last visited, July 21, 2025);

Appendix A

Roster of the World's Oldest 50 Amusement Parks, Nat'l Amusement Park Historical Ass'n, <https://www.napha.org/Resources/Facts-Figures/Worlds-Oldest-Operating-Parks>; <https://perma.cc/8X79-Q4Q2> (last visited, July 21, 2025). Finally, although museums and historical societies existed around the time of the Founding, they “were private institutions,” while today’s museums are crowded municipal spaces that are frequented by children. J.A. 153, Cornell Decl., ¶ 13. Even though “all places where people gather are *necessarily* sensitive places,” locations that serve an educational purpose, or serve children, are historically protected. *Wolford*, 116 F.4th at 981 (emphasis added); see *Antonyuk*, 120 F.4th at 1026-27 (stating that there is a “tradition of regulating firearms in places of educational and scientific opportunity”). As such, we look to the historical record for more analogous regulations of those places. And the record “supports the conclusion that prohibitions on firearms at places of amusement fall within the national historical tradition of prohibiting firearms at sensitive places.” *Wolford*, 116 F.4th at 987.

“Both before and shortly following the ratification of the Fourteenth Amendment,” states, cities, and territories alike prohibited firearms at a “wide range of places for social gathering and amusement that are analogous to modern casinos, stadiums, amusement parks, zoos,” and museums. *Id.* The Ninth Circuit discussed several examples in *Wolford*, including New Orleans’ prohibition of firearms at any public ballroom in 1817 and Missouri’s ban of firearms at any gathering for educational, literary, or social purposes in 1875. *Id.*

Appendix A

This extensive set of historical regulations banning firearms at places of amusement and social gathering “justifies the conclusion” that modern-day places of amusements such as stadiums, amusement parks, racetracks, video lottery facilities, casinos, and museums “fall within the national historical tradition of prohibiting firearms at sensitive places.” *Wolford*, 116 F.4th at 988. In other words, the *how* of these regulations (a complete ban) mirrors Maryland’s, and the *why* is likewise the same. Consistent with that tradition, Maryland’s prohibitions are constitutionally permissible.

8. Locations that Sell Alcohol

Maryland prohibits firearms at “location[s] licensed to sell or dispense alcohol . . . for on-site consumption[.]” Md. Code, Crim. Law § 4-111(a)(8)(i). We uphold Maryland’s prohibition of firearms at these locations. Restricting firearms at locations that sell alcohol is consistent with the historical tradition of banning firearms in sensitive places. Specifically, there is a historical tradition of regulations recognizing the inherent dangers of mixing alcohol and firearms; prohibiting guns at social gatherings; and, starting in the mid-nineteenth century, prohibiting firearms in places that sell liquor.

First, in the Founding Era, several states enacted legislation aimed at the mixing of firearms and liquor. Some states prohibited the sale of liquor to members of the militia. J.A. 216-217, Declaration of Patrick J. Charles (compiling statutes); *see also Wolford*, 116 F.4th at 985 (citing, e.g., a “1746 New Jersey law prohibit[ing] the sale of liquor to members of the militia while on duty”). The

Appendix A

Supreme Court used similar regulations as an example in *Rahimi*, recognizing “[a]t the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year’s Eve revelers.” 602 U.S. at 691 (citing Act of Mar. 1, 1783, 1783 Mass. Acts and Laws ch.13, pp. 218-219; 5 Colonial Laws of New York ch. 1501, pp. 244-246 (1894)). Virginia had a broader version of this rule that prohibited intoxicated individuals from using firearms in nearly all circumstances. *See* Act of Mar. 10, 1655-6, 1 Stat. at Large of Va. 401-02 (1808) (prohibiting persons from “shooting any gunns at drinkeing (marriages and ffunerals onely excepted))” (errors in original)).

Later, “[s]ome cities, for example, Chicago in 1851 and St. Paul, Minnesota in 1858[,] prohibited retailers of liquor from keeping gunpowder.” *Wolford*, 116 F.4th at 985. And, between 1867 and 1889, three states “prohibited intoxicated persons from carrying firearms.” *Antonyuk*, 120 F.4th at 1030.⁹ These regulations show that “from before the Founding and continuing throughout the Nation’s history, governments have regulated in order to mitigate the dangers of mixing alcohol and firearms.” *Wolford*, 116 F.4th at 986.

Second, there is a “well-established tradition of prohibiting firearms at crowded places.” *Id.*; *see Antonyuk*, 120 F.4th at 1019 (recognizing a national

9. The three states discussed by the Second Circuit were Kansas, Wisconsin, and Missouri. *Antonyuk*, 120 F.4th at 1030. *See, e.g., id.* (citing Wis. Stat. Ann. § 4379(b) (West 1889) (“It shall be unlawful for any person in a state of intoxication to be armed with any pistol or revolver.”)).

Appendix A

tradition of “regulating firearms in public forums and quintessentially crowded places”). For example, in 1817, New Orleans prohibited firearms in ballrooms. *Wolford*, 116 F.4th at 986. Texas did the same in 1870. *Id.* And, in 1875, Missouri prohibited firearms at public assemblies. *Id.* To be sure, ballrooms and public assemblies are not identical to locations that sell liquor. But at their core, these places share the same characteristics. *See id.*; *Antonyuk*, 120 F.4th at 1019.

Third, various jurisdictions in this period enacted laws that are “directly on point” with Maryland’s prohibition. *Wolford*, 116 F.4th at 986. For example, in 1853, New Mexico banned firearms at any “room adjoining [a ball or fandango] where [l]iquors [were] sold,” and in 1890, Oklahoma banned firearms in “any place where intoxicating liquors [were] sold.” *Wolford*, 116 F.4th at 986.

Taking these three types of regulations together, we, like the Ninth Circuit, “conclude that those laws establish that bars and restaurants that sell alcohol are among the Nation’s ‘sensitive places’ where firearms may be prohibited.” *Id.* As such, Maryland’s prohibition of firearms at alcohol locations is constitutionally permissible.

9. Private property without permission

Under Maryland law, “[a] person wearing, carrying, or transporting a firearm may not: (1) enter or trespass on property unless the owner or the owner’s agent has posted a clear and conspicuous sign indicating that it is permissible to wear, carry, or transport a firearm on the

Appendix A

property; or (2) enter or trespass on property unless the owner or the owner's agent has given the person express permission to wear, carry, or transport a firearm on the property." Md. Code, Crim. Law § 6-411(d).

We hold that Plaintiffs have standing to challenge Maryland's rule on private property held open to the public and their claim succeeds on the merits. However, Plaintiffs lack standing to challenge the rule for property *not* held open to the public. We begin with Plaintiffs' challenge to Maryland's rule on private property held open to the public. As mentioned previously, to establish Article III standing, plaintiffs must show (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61. Plaintiffs have made the required showing.

First, Plaintiffs have adequately alleged injury-in-fact. Namely, Plaintiffs allege that they intend to continue carrying firearms on private property open to the public, J.A. 80, 82-83, 85, 86-87, 88-89, 92, 94, 96-97, 102, 104, 107, and the law requires that they seek permission before doing so, placing a new burden on their right to carry. If Plaintiffs carry firearms on private property without first seeking consent, they will violate Maryland's law and face the threat of criminal prosecution. As for causation, there is a causal connection between the injury—Plaintiffs' burden on their right to carry—and the conduct complained of—Maryland prohibiting firearms on private property without permission. Finally, "the relevant injury for standing purposes is the credible threat of arrest and

Appendix A

prosecution that Plaintiffs face” if they carry firearms onto private property “without first receiving permission” and “*that* injury is clearly redressable by an injunction against enforcement of the private-property restriction.” *Antonyuk*, 120 F.4th at 1043. As such, Plaintiffs have established Article III standing.

Plaintiffs also succeed on the merits of their claim, as Maryland’s restriction on bringing firearms onto private property held open to the public without express consent is unconstitutional. Maryland’s prohibition is directed at gun owners, not property owners. It is a criminal statute that nowhere references the right of the property owner to exclude a gun owner. *See* Md. Code, Crim. Law § 6-411(c)-(d). With or without the private-property consent rule, Maryland property owners have the right to exclude unwanted people (including those with guns) from their property. And we see nothing in the rule that alters Maryland property law. Therefore, Maryland’s reliance on the trespass tradition is inapposite, and we diverge from the Ninth Circuit’s conclusion that similar statutes merely operate to “arrang[e] the default rules that apply specifically to the carrying of firearms onto private property.” *Wolford*, 116 F.4th at 995.

Maryland’s other support for the prohibition is also wanting. Many of the historical statutes Maryland cites appear to regulate hunting on others’ property without permission, as the Second Circuit concluded. *See Antonyuk*, 120 F.4th at 1046. The statutes do not support a broader tradition of excluding all weapons for all purposes from the private property of others without express permission. And the other statutes Maryland cites

Appendix A

(a 1771 New Jersey statute, an 1865 Louisiana statute, an 1866 Texas statute, and an 1893 Oregon statute) appear to be outliers. Appellees' Br. at 56-57.

Maryland's rule would effectively declare most public places "gun-free zones." But that likely stretches the sensitive places doctrine too far. *See Bruen*, 597 U.S. at 31 (holding that "the island of Manhattan [is not] a 'sensitive place'"). In short, there is no relevant historical tradition supporting Maryland's private-property consent rule, at least on this record and as to property held open to the public.

With respect to property not held open to the public, however, Plaintiffs lack standing to challenge Maryland's regulation.

The Kipke Plaintiffs did not bring a facial challenge to the regulation; they instead only challenge Maryland's rule as to property held open to the public (i.e., not dwellings). The Novotny Plaintiffs did bring a facial challenge to Maryland's regulation, but they lack standing to challenge the restriction as to property not held open to the public.

A close reading of the Novotny Plaintiffs' standing declarations shows that they attest only to their intent to bring guns to "stores and other privately owned buildings that are otherwise open to the public" and the sensitive places that give rise to Plaintiffs' other challenges. *E.g.*, J.A. 104, Declaration of Sue Burke, ¶ 6. No Plaintiff states that they wish to bring a firearm into a dwelling. Without such a statement, Plaintiffs have not alleged a

Appendix A

“concrete intention to (arguably) violate” that portion of the restriction, as required to bring a pre-enforcement challenge. *Hogan*, 971 F.3d at 218. Plaintiffs therefore lack standing for their claim related to property not held open to the public.

IV.

To sum up, we:

- Affirm the district court’s grant of summary judgment to Maryland regarding firearm carry restrictions in
 - (1) government buildings, Md. Code, Crim. Law § 4-111(a)(4)(i), Code of Md. Regs. §§ 04.05.01.03, 04.05.01.01;
 - (2) mass transit facilities, Md. Code, Transp. § 7-705(b)(6);
 - (3) schools and school grounds, Md. Code, Crim. Law §§ 4-102(b), 4-111(a)(2)(i)-(ii);
 - (4) state parks, Code of Md. Regs. § 08.07.06.04(B), State Forests Code of Md. Regs. 08.07.01.04(B), and Chesapeake Forest Lands, Code of Md. Regs. 08.01.07.14(B);
 - (5) museums, Md. Code, Crim. Law § 4-111(a)(8)(iii);

Appendix A

- (6) healthcare facilities, Md. Code, Crim. Law § 4-111(a)(2)(iii); and
- (7) stadiums, racetracks, amusement parks, and casinos, Md. Code Crim Law §§ 4-111(a)(8)(ii), (iv), (v), (vi); Code of Md. Regs. §§ 14.25.02.06, 36.03.10.48;
- Reverse the district court’s grant of summary judgment to Plaintiffs and reverse the district court’s order enjoining Maryland from enforcing the prohibition on guns within 1,000 feet of a public demonstration, Md. Code, Crim. Law § 4-208;
- Reverse the district court’s grant of summary judgment to Plaintiffs and the district court’s order enjoining Maryland from enforcing the regulation regarding firearms carrying restrictions in locations selling alcohol for onsite consumption, Md. Code, Crim. Law § 4-111(a)(8)(i); and
- Affirm the district court’s grant of summary judgment to Plaintiffs and enjoin Maryland from enforcing the regulations regarding firearms carrying restrictions in private buildings or property without the owner’s consent. Md. Code, Crim. Law § 6-411(d).

AFFIRMED IN PART AND REVERSED IN PART

Appendix A

AGEE, Circuit Judge, concurring in part and dissenting in part:

I join the majority opinion's conclusion that the firearms restrictions pertaining to government buildings (Maj. Op. III.B.1) and school grounds (Maj. Op. III.B.3) are constitutional. I also join in full the majority's articulation of why Plaintiffs have standing to challenge the statute that flips the presumption that firearms are permitted on private property held open to the public and that this provision is unconstitutional (Maj. Op. III.B.9). I also join in full the view that Plaintiffs lack standing to challenge the presumption-flipping statute insofar as it regulates private property not held open to the public (Maj. Op. III.B.9). In addition, with respect to healthcare facilities, I concur in the majority's judgment that the prohibition is permitted, but write separately to explain my reasoning on this point (Maj. Op. III.B.6).

As to all the other challenged Maryland provisions, however, I would hold that they violate the Second Amendment. In my view, the majority opinion simply fails to follow how the Supreme Court has directed courts to consider the historical tradition of firearm regulation when examining whether a particular law violates the Second Amendment right to carry arms in public. Accordingly, I write separately to articulate the proper approach adhering to the Supreme Court's direction and applying it to the challenged provisions of Maryland law.

I therefore respectfully concur in part and dissent in part.

*Appendix A***I.**

The Second Amendment sets a high barrier for when the government can prohibit its citizenry from possessing and bearing firearms: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, *shall not be infringed.*” U.S. Const. amend. II (emphasis added). Its protections are “among the ‘fundamental rights necessary to our system of ordered liberty.’” *United States v. Rahimi*, 602 U.S. 680, 690, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)).¹ In light of this clear mandate, courts should approach all firearms regulations skeptically.

1. So fundamental is the Second Amendment to the other rights enshrined in the Bill of Rights that Founding-era constitutional legal scholar at the College of William & Mary, St. George Tucker, said it “may be considered as the true palladium of liberty”:

The right of self-defence is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept-up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

Stephen P. Hallbrook, *St. George Tucker’s Second Amendment: Deconstructing “the True Palladium of Liberty”*, 3 Tenn. J. L. & Pol’y 120, 125 (quoting 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 States; and of the Commonwealth of Virginia* app. D at 300 (William Young Birch & Abraham Small 1803)).

Appendix A

In *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the Supreme Court articulated a two-part framework for analyzing Second Amendment challenges to firearms restrictions. At step one, courts “look[] to the text of the Second Amendment to see if it encompasses the desired conduct at issue.” *Bianchi v. Brown*, 111 F.4th 438, 445-46 (4th Cir. 2024) (en banc). If the conduct in question does fall within the scope of the right, then “the Constitution presumptively protects that conduct.” *Bruen*, 597 U.S. at 24. If it does not, “that conduct falls outside the ambit of the Second Amendment, and the government may regulate it.” *Bianchi*, 111 F.4th at 446.

When a court finds that the text of the Second Amendment *does* cover the regulated conduct, then “the analysis moves to the second step,” where the government bears the burden to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* (quoting *Bruen*, 597 U.S. at 24). “Only if such consistency is shown can a court conclude that the regulation is constitutionally permissible.” *Id.*

I agree with the majority that the challenged Maryland provisions rise or fall at step two of the *Bruen* framework. See Maj. Op. at 13. That is to say, the *Bruen* step-one inquiry shows that each provision regulates a “‘proposed course of conduct,’ namely, the carrying of guns in public, which the Second Amendment protects.” Maj. Op. at 13 (quoting *Bruen*, 597 U.S. at 32). Therefore, Maryland’s restrictions are presumptively unconstitutional unless the State can carry its burden of showing that regulating

Appendix A

firearms at each challenged location “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

Throughout its Second Amendment cases, the Supreme Court has identified as one category of firearms laws that withstands scrutiny at step two prohibitions on the possession and carriage of firearms in so-called “sensitive places.” *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (stating, in dicta, that nothing about its decision “should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places”); *McDonald*, 561 U.S. at 786 (reiterating *Heller*’s “assurances” that “longstanding regulatory measures” such as laws forbidding the carrying of firearms in “sensitive places” do not violate the Second Amendment). But the Supreme Court has offered scant guidance on what constitutes a “sensitive place” beyond identifying a handful of examples: “places such as schools and government buildings,” *Heller*, 554 U.S. at 626, as well as “legislative assemblies, polling places, and courthouses,” *Bruen*, 597 U.S. at 30. These delineated sensitive places are not exhaustive, *Heller*, 554 U.S. at 627 n.26, leaving some legislatures eager to label scores of locations “sensitive” and prohibit the carrying of firearms in them. But labels alone do not suffice to demonstrate that a particular restriction aligns with what the Supreme Court had in mind. Courts must instead consider on a case-by-case basis whether such “sensitive place” restrictions align with the Nation’s history and tradition of firearms regulation, and it is up to the State to prove that is so.

Appendix A

In *Bruen*, the Supreme Court made it clear that whether a place qualifies as a “sensitive place[]” depends on the standard step-two analysis that case describes, fixing this question firmly to its more dynamic discussion of the nation’s “longstanding” history of certain constitutionally permitted firearms restrictions. 597 U.S. at 30. Thus, for example, the New York restriction “disarm[ing] law-abiding citizens” in “all places where people typically congregate” throughout Manhattan relied on a “far too broad[]” concept of a sensitive place and would “in effect exempt cities from the Second Amendment and [] eviscerate the general right to publicly carry arms for self-defense[.]” *Id.* at 31 (cleaned up). Instead, the Supreme Court instructed that the first point of inquiry is whether firearms were historically restricted in such places and, if so, whether disputes arose “regarding the lawfulness of such prohibitions.” *Id.* at 30. If not, then courts can “assume it settled that these locations [are] ‘sensitive places’ where arms carrying could be prohibited consistent with the Second Amendment.” *Id.* In addition, the Supreme Court recognized that courts can “use analogies to those historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carrying of firearms in *new* and *analogous* places are constitutionally permissible.” *Id.* (second emphasis added).

Thus, the Court’s guidance on “sensitive places” leads to its general discussion of the step-two inquiry as to whether a particular restriction has authentic and well-grounded roots in the Nation’s historical tradition of regulating firearms. At this stage, courts are to consider “how and why the regulations burden a law-abiding citizen’s right to armed selfdefense.” *Id.* at 29. A

Appendix A

“fairly straightforward” inquiry can take place “when a challenged regulation addresses a general societal problem that has persisted since the 18th century.” *Id.* at 26. In that event, the absence or existence of relevant Founding-Era analogues will drive the Court’s analysis as “the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Id.* “Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.” *Id.* at 26-27. So too if “some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.” *Id.* at 27.² Conversely, “if laws at the founding regulated firearm use to address particular problems, that will

2. Plaintiffs urge the Court to adopt a more exacting standard for what constitutes a sensitive place, arguing that the Supreme Court’s list of examples share the common trait of either being a place where the Government acts *in loco parentis* over students (schools) or provides its own substantial security over the location (government buildings, legislative assemblies, polling places). While this argument rests on questionable factual support, it more fundamentally lacks foundation in the Supreme Court’s cases. Nothing in *Heller*, *McDonald*, or *Bruen* tethers the “sensitive places” construct to these features. Instead, *Bruen* reasons that firearms restrictions in sensitive places are constitutional because they are “longstanding” and undisputed, 597 U.S. at 30, concepts that align with the step-two inquiry. For this reason, I do not accept Plaintiffs’ concept of when a place-based restriction survives a Second Amendment challenge. *See Schoenthal v. Raoul*, 150 F.4th 889, 908-10 (7th Cir. 2025).

Appendix A

be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Rahimi*, 602 U.S. at 692. But “[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” *Id.* As these examples demonstrate, when undertaking the *Bruen* step-two inquiry, it’s important to remember that “[t]he question is not whether the new regulation is broadly analogous to an older regulation at a high level of generality, but whether it ‘comport[s] with the principles underlying the Second Amendment.’” *Koons v. Att’y Gen. N.J.*, 156 F.4th 210, 278 (3d Cir. 2025) (Porter, J., concurring in part and dissenting in part) (quoting *Rahimi*, 602 U.S. at 692), *reh’g en banc granted and opinions vacated by Koons v. Att’y Gen. N.J.*, Nos. 23-1900 & 23-2043, 2025 U.S. App. LEXIS 32473, 2025 WL 3552513 (Dec. 11, 2025).³

Relatedly, when looking to the Nation’s historical regulation of firearms, “not all history is created equal.” *Bruen*, 597 U.S. at 34. “Constitutional rights are enshrined with the scope they were understood to have

3. On December 11, 2025, the Third Circuit granted rehearing en banc in *Koons*, an act that vacated the opinions and judgment that had, inter alia, upheld many New Jersey firearms restrictions enacted under the auspices of their regulating firearms in “sensitive places.” Because I am persuaded by the reasoning of one aspect of the panel majority (rejecting the proprietary actor construct) and several components of the separate opinion of Judge Porter concurring in part and dissenting in part regardless of their continued force of law within the Third Circuit, I continue to cite those opinions in this opinion.

Appendix A

when the people adopted them.” Id. (quoting *Heller*, 554 U.S. at 634-35). Firearms laws that come too early or too late do not aid in understanding what the right meant to those who enacted the Second Amendment.

Significantly, the Second Amendment codified a preexisting right, one “inherited from our English ancestors.” *Heller*, 554 U.S. at 599 (quoting *Robertson v. Baldwin*, 165 U.S. 275, 281, 17 S. Ct. 326, 41 L. Ed. 715 (1897)). But “the English common law ‘is not to be taken in all respects to be that of America.’” *Bruen*, 597 U.S. at 39 (quoting *Van Ness v. Pacard*, 27 U.S. 137, 144, 7 L. Ed. 374 (1829) (Story, J., for the Court)). And that’s particularly true for the right to bear arms, which the American colonies intentionally and robustly protected in marked contrast to some restrictions they disliked in the English tradition. “Post-independence, Americans were contemptuous of what they considered to be the constricted nature of the English right to arms.” David B. Kopel & Joseph G.S. Greenlee, *The “Sensitive Places” Doctrine: Locational Limits on the Right to Bear Arms*, 13 *Charleston L. Rev.* 205, 230 (2018). As but one example, St. George Tucker annotated Blackstone’s legal texts to highlight “when and how American law differed from British law,” and quite pointedly “denounced statutory infringements of the English right to arms, particularly the English game laws, which he thought had disarmed almost the entire population.” *Id.* at 231 & n.105; see Halbrook, *supra*, at 126-28. Thus, the Supreme Court has cautioned that historical evidence long predating the Second Amendment’s enactment often does not reflect the contemporary view of the scope of the right as it existed

Appendix A

at the time the amendment was adopted. *Bruen*, 597 U.S. at 34-35.

Firearms laws post-dating 1791 constitute an even more problematic recourse because the Supreme Court has made clear that, “to the extent later history contradicts what the text says, the text controls,” and “post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text.” *Id.* at 36 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1274 n.6, 399 U.S. App. D.C. 314 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)).

The force of this directive is that, rather than relying indiscriminately on enactments throughout the Nation’s history, courts must look first to the text followed by any “public meaning” at the Founding, as exemplified by regulations adopted around the time of the Second Amendment’s enactment in 1791. To the extent earlier or later laws confirm the original understanding, the Supreme Court has noted that this *consistency* only adds additional support to the already-fixed public understanding of the amendment’s scope at the Founding, which is the lodestar of the inquiry. *Id.* at 35-36; *see also id.* at 37 (stating that in *Heller*, “19th-century evidence was treated as mere confirmation of what the Court thought had already been established” (cleaned up)). But where later-enacted regulations diverge from the enactment-era record, the Supreme Court has instructed that such provisions do not support the constitutionality of the challenged law. *E.g., id.* at 58 n.28 (“As with their

Appendix A

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.”)⁴ Focusing on the Founding Era understanding is, of course, not unique to the Second Amendment context; the Supreme Court has looked to the same era—and discounted the relevance of later enactments much more numerous than any proffered in this case—when interpreting other rights enshrined in the Bill of Rights. *E.g.*, *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 482, 140 S. Ct. 2246, 207 L. Ed. 2d 679 (2020) (rejecting Montana’s argument “that a tradition *against* state support for religious schools arose in the second half of the 19th century, [with] more than 30 States—including Montana—adopt[ing] no-aid provisions,” because “[s]uch a development, of course, cannot by itself establish an early American tradition”).

As was true in *Bruen*, while Plaintiffs assert a “Second Amendment” challenge to the Maryland laws, “[s]trictly speaking, [a state] is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second.” *Bruen*, 597 U.S. at 37. Although the Supreme Court has recognized that an “open scholarly debate” is

4. As reflected by my joining the dissent in *Bianchi*, I disagree with the *Bianchi* majority’s distinction—which the majority in this case now doubles down on—that a broader array of historical evidence could be used at step two than at step one. *Compare* Majority Op. at 12-13, *with Bianchi*, 111 F.4th at 500-16 (Richardson, J., dissenting). Regardless of what historical evidence the en banc Court determined it could rely on in *Bianchi*, I must adhere to the narrower approach directed by the Supreme Court.

Appendix A

ongoing as to whether state firearms regulations should account for both 1791 and 1868 “public meaning” (as evidenced by regulations of the day) to determine the scope of the Second Amendment as incorporated to the States via the Fourteenth Amendment, the Court has only noted its existence within academia, not set further precedent. *See id.* at 37-38.⁵ When undertaking the *Bruen* step-two analysis itself, the Supreme Court has relied only on the understanding of the right to carry as it was understood in 1791, and it has never relied exclusively or even to any substantial degree on laws from 1868 or later to identify a historical tradition of firearms regulation as the historical analogue of a modern-day regulation. *E.g., Heller*, 554 U.S. at 614 (observing that post-Civil War authority “do[es] not provide as much insight into [the Second Amendment’s] original meaning as earlier sources”); *Bruen*, 597 U.S. at 35 (cautioning “against giving postenactment [i.e., post-1791] history more weight than it can rightly bear”); *Samia v. United States*, 599 U.S. 635, 655, 143 S. Ct. 2004, 216 L. Ed. 2d 597 (2023) (Barrett, J., concurring) (“[E]vidence . . . from the late 19th and early 20th centuries [is] far too late to inform the meaning of [the scope of a constitutional right enumerated] at the time of the founding.”).

5. Not only has the Supreme Court twice expressly declined to address this debate in its decisions in *Bruen* and *Rahimi*, but over the past year, it has repeatedly declined to grant certiorari in petitions directly seeking guidance on this point. *See, e.g., Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1900, 221 L. Ed. 2d 646 (2025); *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), *cert. granted on other grounds*, S. Ct. , 222 L. Ed. 2d 1241, 2025 WL 2808808 (Oct. 3, 2025) (limiting grant of certiorari to a different question presented).

Appendix A

Nor would doing so comport with the Court’s statements in which it recognized that it has “generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.” *Bruen*, 597 U.S. at 37; see *Lara v. Comm’r Penn. State Police*, 125 F.4th 428, 439-40 (3d Cir. 2025) (quoting this language as being a “strong hint” that a state firearms regulation technically governed by the Fourteenth Amendment is to be analyzed based on the “public meaning of the right when the Second Amendment was ratified”). That is particularly true in the specific context of when the right to carry is at issue, because the Supreme Court has repeatedly observed that “the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.” *Bruen*, 597 U.S. at 38.⁶

Somewhat removed from the concern of pure time is the concern of whether a particular state law can truly

6. Reasons beyond simply following what the Supreme Court has said to date also support the conclusion that an 1868 understanding of the scope of the right to carry is substantively the same as the 1791 understanding. Judge Porter fleshes these out in his separate opinion in *Koons*, and I won’t belabor those same points here. 156 F.4th at 289-95 (Porter, J., concurring in part and dissenting in part). Briefly, put, Judge Porter cites, among other things, contemporary statements from those who enacted the Fourteenth Amendment to demonstrate that they believed their actions to be guaranteeing the rights originally espoused in the Bill of Rights—including the Second Amendment—not expanding on those rights. *Id.* at 290-93. In other words, advocates of the Fourteenth Amendment did not claim to “redefine fundamental rights” but rather “protect the preexisting rights and freedoms enumerated in the Constitution.” *Id.* at 292-93 (cleaned up).

Appendix A

serve as a model of the contemporary understanding of the Second Amendment’s scope, given that states were not subject to the Second Amendment until it became incorporated via the Fourteenth Amendment. Until then, and unless a state’s constitution protected a right to bear arms—some did not—its citizens were subject to a host of laws that may have restricted the right to carry in a way fundamentally at odds with the Second Amendment. *See Koons*, 156 F.4th at 286 (Porter, J., concurring in part and dissenting in part); *accord id.* at 286-87. And “[e]ven after ratification of the Fourteenth Amendment, ‘the laws of the ratifying states frequently fell far short of the standards of the first eight amendments, and ratification produced no effort to bring those laws into conformity with the Bill of Rights.’” *Id.* at 287 (quoting L. Rosenthal, *The New Originalism Meets the Fourteenth Amendment: Original Public Meaning and the Problem of Incorporation*, 18 J. Contemp. Legal Issues 361, 390 (2009)). Accurately understanding the Second Amendment’s scope requires more than merely identifying a state law’s existence.

For these reasons, as is true with the Second Amendment in general, “post-ratification history [of the Fourteenth Amendment] can *confirm* a court’s understanding of Founding-Era public meaning,” but the Supreme Court has drawn “a firm line where later evidence ‘contradicts earlier evidence[.]’” *Lara*, 125 F.4th at 441 (quoting *Bruen*, 597 U.S. at 66) (emphasis added). And “[i]n that circumstance, [where] ‘later history contradicts what the text says, the text controls.’” *Id.* (quoting *Bruen*, 597 U.S. at 36). For all these reasons, it is unnecessary—and, absent a heretofore undiscovered,

Appendix A

unique, and extraordinary post-Founding factor, always inappropriate—to look beyond the public meaning of the Second Amendment’s scope that existed in 1791 when considering the constitutionality of a state firearm regulation.

At bottom, the Supreme Court has made clear that the historical analogues from which courts discern the principles on which the how and why of firearms regulations are compared originate in the Founding Era, not later. The district court’s decision and the majority opinion grossly misread *Bruen* to treat Reconstruction-era and later firearms regulations as relevant historical analogues to assess whether the modern challenged laws are constitutional. *See Koons*, 156 F.4th at 280 (Porter, J., concurring in part and dissenting in part) (describing this approach as “methodological error” because “while mid-or late-19th century evidence might reinforce an early-American tradition, it cannot create one in the first place”).

More troubling still, for many of the challenged Maryland provisions, a smattering of mid-to-late 19th century and later laws serve as the *only* historical analogues on which the majority opinion pins its analysis. That diversion only further attenuates its conclusions from *Bruen*’s mandate to understand the Second Amendment’s scope based on its widespread meaning at the Founding. *See, e.g., Bruen*, 597 U.S. at 46 (seeking the “*early American practice* of regulating public carry by the general public” (emphasis added)); *see also id.* at 65-66 (rejecting as “outliers” a duly enacted law from the

Appendix A

1870s because it “contradict[ed] the overwhelming weight of other evidence regarding the right to keep and bear arms for defense in public”) (cleaned up)).

That said, the State need not come forward with a precise “historical twin” from the Founding Era for its modern-day restrictions to be constitutional. *See Lara*, 125 F.4th at 441 (“*Rahimi* teaches that public meaning is not just those regulations that could be found in 1791, but rather the principles underlying the Second Amendment, with historical regulations providing evidence of those principles.” (cleaned up)). But it must be “well-established and representative.” *Bruen*, 597 U.S. at 30.

The *Bruen* Court recognized that some cases “implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Id.* at 27. While the Second Amendment’s “meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Id.* at 28. “So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* at 29-30. However, “courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.” *Id.* at 30 (cleaned up).

How the Supreme Court has undertaken this historical inquiry demonstrates that the absence of Founding-Era regulations appropriately analogous

Appendix A

to a challenged law means that the challenged law is unconstitutional, regardless of the later historical record. In *Heller*, the District of Columbia had enacted a “flat ban on the possession of handguns in the home” to redress the scourge of “firearm violence in densely populated communities.” *Bruen*, 597 U.S. at 27. As the Supreme Court observed, this same problem existed in the Founding Era such that “the Founders themselves could have adopted [a comparable prohibition] to confront that problem,” so the fact they did not do so was dispositive. *Id.* Therefore, when looking at the historical record, the Court considered “‘founding-era historical precedent,’ including ‘various restrictive laws in the colonial period,’ and [found] that none was analogous to the District’s ban.” *Id.* (quoting *Heller*, 554 U.S. at 631). That was enough for the Court to deem the provision unconstitutional. “19th-century evidence was ‘treated as mere confirmation of what the Court thought had already been established.’” *Id.* at 37 (quoting *Gamble v. United States*, 587 U.S. 678, 702, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019)).

So too in *Bruen*. There, the Supreme Court deemed the historical inquiry “relatively simple to draw,” observing that the challenged law sought to address “the same alleged societal problem addressed in *Heller*: ‘handgun violence,’ primarily in ‘urban area[s].’” *Id.* at 27 (quoting *Heller*, 554 U.S. at 631). The Court looked to the “‘historical precedent’ from before, during, and even after the founding” and concluded that it reflected no “tradition of regulation” comparable to the challenged New York licensing regime, *id.* (quoting *Heller*, 554 U.S. at 631), which required citizens to demonstrate “proper

Appendix A

cause” to secure a license to carry a firearm outside the home, *id.* at 12. So once again, the absence of a proper historical analogue from the Founding Era determined the outcome of the case and the Court never referenced later evidence when undertaking the step-two analysis.

Most recently in *Rahimi*, although the Supreme Court upheld the federal criminal provision at issue, “it did not include a single source dating from the Civil War onwards” as a basis for its decision. *Koons*, 156 F.4th at 284 (Porter, J., concurring in part and dissenting in part). Instead, it “looked exclusively to pre-Revolution, Founding-era, and early antebellum sources” as the only historical analogues on which to hinge its analysis. *Id.* at 284-85.

These cases reinforce that the Supreme Court has practiced what it has preached and grounded its Second Amendment analysis in the public meaning of the right to carry that existed in the Founding Era. Neither *Heller* nor *Bruen* used post-Founding-Era regulations to rehabilitate a challenged law that falls within the Second Amendment’s plain text and for which no comparable Founding-Era regulations existed. And *Rahimi* did not deem Reconstruction-era or later regulations relevant at all to its identification of a historical analogue. Instead, when faced with an absence of analogous restrictions on the right to public carry from the Founding Era, the Supreme Court ended its analysis and deemed modern regulations on that right unconstitutional. That approach makes constitutional sense under *Bruen*’s burden-shifting framework. “Unlike cases where challenged laws enjoy the presumption of constitutionality, a modern gun prohibition

Appendix A

at *Bruen* step two is presumptively unconstitutional unless the government can show that it fits within a relevant tradition of historical firearms regulation.” *Koons*, 156 F.4th at 286 (Porter, J., concurring in part and dissenting in part). So, “the absence of analogous regulations from the Founding and antebellum periods is highly relevant, because they are the best available source of” identifying that “tradition of historical firearms regulation.” *Id.* at 285, 286.

Moreover, these first principles dictate that to prevail at step two of *Bruen*, Maryland must come forward with proof that each of its regulations prohibiting firearms in a place it has designated as “sensitive” find relevant historical analogues either (a) in the non-exhaustive list of delineated places that the Supreme Court has specifically recognized, or (b) in the commonly understood public meaning of the Second Amendment at the time of its enactment. Earlier and later regulations—in particular, Reconstruction-era and later laws—may only *confirm* a particular understanding of the pre-existing right to public carry at the Founding, but they cannot serve as an analogue when they contradict it.

This approach differs markedly from that taken by the majority opinion (and the district court), which treats later-19th-and 20th-century evidence on par with evidence from the Founding Era when considering the *Bruen* step-two analysis. *E.g.*, Maj. Op. 12-13. That perspective is erroneous and contravenes Supreme Court authority in three significant ways.

Appendix A

First, it improperly includes laws from the wrong timeframe when ascertaining historical analogues to compare with today's regulations. Second, by taking the "long view of history," the majority opinion misdirects attention away from the recognition of what the Second Amendment encompassed around 1791 and thereby ignores the significance of that era's context. Maj. Op. 13. Founding-Era silence as well as enactment of contemporary provisions *permitting* or even *requiring* possession of firearms in analogous public spaces must drive the analysis. Third, the majority opinion improperly expands the scope of the inquiry by looking to laws from outliers such as individual municipalities and territories that *Bruen* said are not "instructive" to the step-two inquiry. *Bruen*, 597 U.S. at 67; *see id.* at 66-68 (discussing why territorial and municipal restrictions do not "overcome the overwhelming evidence of an otherwise enduring American tradition of permitting public carry," noting that "miniscule territorial populations . . . would have lived under them" as compared to the population of the nation as a whole). Relatedly, in the context of mass transit, the majority strays even further, looking not to any duly enacted law at all in its quest to conjure support for Maryland's law, but rather to *private companies'* rules about firearm carriage adopted in the mid-to-late 19th century. Such rules are too removed in both kind (private, not governmental) and time (too late) to be appropriate *Bruen* analogues.

Unsurprisingly, a focused understanding of what the Supreme Court has directed courts to consider when undertaking this analysis leads to a different result than

Appendix A

the amorphous and atextual approach the majority opinion uses, as explained in the location-by-location analysis that follows.

II.

At the outset, when approaching the specific challenged places at issue here, it's important to recognize that we are not free to second-guess the locations the Supreme Court has identified as falling within its concept of “sensitive places.” For that reason, as the majority opinion sets out, we readily dispose of Plaintiffs’ challenges to Maryland’s prohibitions of firearms on “school grounds” and “government buildings.” *See* Maj. Op. III.B.1 and 3. Simply put, there’s no daylight between the delineated place “schools” and the remaining property on which they sit, which often perform identical functions and serve the same populations as the school buildings themselves. Similarly, “government buildings”—while potentially capacious—have similarly been identified by the Supreme Court as places where governments have historically been able to control access to firearms. If the Supreme Court later wishes to narrow those locations, that is within their province to do so. But it is not within ours as a lower court.

In my view, “government buildings” is particularly notable because it brings within its scope many places that may also fall within other categories of the places challenged here.⁷ Because governments can therefore

7. Although some circuit courts of appeals have noted in dicta that the Supreme Court may not have literally meant that every government building is a sensitive place, that is what the Court

Appendix A

generally control firearm possession in such *buildings*, Maryland remains free under this principle to prohibit possession of firearms in those places. And that is true of any state-controlled building that might also fall within one of the other challenged provisions of state law here. For example, as discussed later, nothing in my conclusion that the State cannot prohibit firearms in *all* museums because museums are not per se “sensitive places” would prevent the State from prohibiting entrants from possessing firearms in a government building operated as a museum.⁸

Even more broadly, nothing in the analysis that precedes or follows prevents *private* property owners

has said—and repeated. *Compare Schoenthal*, 150 F.4th at 917 (“The Supreme Court has recognized that ‘government buildings’ have maintained a longstanding tradition of firearm restriction, although we do not read *Bruen* to necessarily situate all government buildings within the category of widely-accepted sensitive places.” (quoting *Bruen*, 597 U.S. at 30)), and *Koons*, 156 F.4th at 250, with *McDonald*, 561 U.S. at 786 (“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as . . . laws forbidding carrying of firearms in sensitive places such as schools and government buildings[.] . . . We repeat those assurances here.” (cleaned up)). So until the Supreme Court clarifies a different meaning, I would take its reference to “government buildings” to mean exactly what it says, no more and no less.

8. My view stems directly from the Supreme Court’s previous recognition that its sensitive place doctrine extends to “government buildings” and not from the proffered basis that the State can ban firearms in spaces in which it acts as a proprietor. I address why it is inapt to rely on that doctrine later, in the section addressing Maryland’s mass transit restriction.

Appendix A

from exercising their long-standing entrenched right to prohibit individuals on their property from possessing firearms. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021) (“The right to exclude is ‘one of the most treasured’ rights of property ownership. . . . [It] is ‘universally held to be a fundamental element of the property right,’ and is ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” (citations omitted)). Thus, regardless of the *government’s* limited regulatory authority under the Second Amendment, *private* owners remain free to prohibit entrants from possessing firearms in their healthcare facilities, parks, museums, places of amusement, establishments where alcohol is sold, and the like.

The sole question before the Court is whether a *government* can categorically interfere with the Second Amendment right to carry firearms in public in the challenged locations. My conclusion that many of these provisions do not withstand a proper Second Amendment “sensitive places” inquiry means only that Maryland cannot act in the sweeping way it has attempted.

A. Healthcare Facilities

With exceptions that are not at issue in this facial challenge, the Maryland law states that “[a] person may not wear, carry, or transport a firearm in” certain healthcare facilities. Md. Code Ann., Crim. Law §§ 4-111(a)(2)(iii), (c). A cross-referenced provision defines covered healthcare facilities as: hospitals and their related institutions (each

Appendix A

of which has their own further statutory definition); ambulatory surgical facilities or centers “that operate[] primarily for the purpose of providing surgical services to patients not requiring hospitalization and seek[] reimbursement from third party payors as an ambulatory surgical facility or center”; and facilities primarily focused on the rehabilitation of disabled individuals. Md. Code Ann., Ins. Law §§ 15-10B-01(g)(1)-(4).

The covered healthcare facilities exist for purposes of the assembly of individuals seeking medical treatment, including those in intensive care units, undergoing surgeries, and needing rehabilitation due to physical impediments. I can conceive of few places more holistically devoted to the gathering and protection of a defenseless and vulnerable population group and those who are attending to them than healthcare facilities. Put simply, however sensitive places are defined beyond the current delineations from the Supreme Court, healthcare facilities would fall within that scope. *Bruen*, 597 U.S. at 30. That’s sufficient, in my view, to support the constitutionality of the Maryland prohibition. *See Rahimi*, 602 U.S. at 693 (reiterating that facial challenges are the “‘most difficult challenge[s] to mount successfully,’ because [they] require[] a defendant to ‘establish that no set of circumstances exists under which the Act would be valid,’” and that, “to prevail, the Government need only demonstrate that [the statute] is constitutional in *some* of its applications” (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987))). I therefore concur in the judgment of the majority affirming the district court’s grant of summary judgment as to the claim based on §§ 4-111(a)(2)(iii), (c).

*Appendix A***B. Mass Transit**

Maryland also prohibits individuals from carrying or possessing “concealed weapons” “in any transit vehicle or transit facility, designed for the boarding of a transit vehicle, which is owned or controlled by the [Mass Transit] Administration [(“MTA”)] or a train owned or controlled by the [MTA] or operated by a railroad company under contract to the [MTA] to provide passenger railroad service.” Md. Code Ann., Transp. § 7-705(b)(6). A division of the Maryland Department of Transportation, the MTA operates a variety of local transit services (e.g., bus, light rail, and metro subway systems) as well as statewide transit services (such as the Maryland Area Regional Commuter (“MARC”) train service connecting Washington, D.C., and a paratransit system for individuals with disabilities). “About Us,” <http://mta.maryland.gov/about> [<https://perma.cc/3677-8XXG>] (last visited Jan. 13, 2026). Maryland statutes further define the terms used in this Second Amendment restriction as follows:

- “Transit vehicle” means “a mobile device used in rendering transit service,” Md. Code Ann., Transp. § 7-101(s);
- “Transit service” means “the transportation of persons and their packages and baggage and of newspapers, express, and mail in regular route, special, or charter service by means of transit facilities” (but not to include vanpool or railroad services), *Id.* § 7-101(q); and

Appendix A

- “Transit facility” means “any one or more or combination of tracks, rights-of-way, bridges, tunnels, subways, rolling stock, stations, terminals, ports, parking areas, equipment, fixtures, buildings, structures, other real or personal property, and services incidental to or useful or designed for use in connection with the rendering of transit service by any means, including rail, bus, motor vehicle, or other mode of transportation, but does not include any railroad facility.” *Id.* § 7-101(o).

These provisions reflect that Maryland’s law reaches well beyond State-owned buildings devoted to transit. As noted earlier, I conclude that the Supreme Court’s designation of “government buildings” as sensitive places would be sufficient grounds to conclude that Maryland can prohibit arms in “government buildings” devoted to transit purposes. But a “building” does not encompass the massive infrastructure or “vehicles” that this prohibition includes. Nor are they sufficiently analogous in purpose or type to “government buildings” or any other *Heller*- or *Bruen*-delineated “sensitive place” to end the inquiry there. Instead, for each of those “places,” it’s necessary to consider the broader historical tradition to determine whether similar or analogous restrictions existed at the Founding.

While the Founding-Era record is limited, it does not support Maryland’s ban on firearms while in transit. From the late 1600s through the Founding Era, ferries

Appendix A

transported individuals between “major port cities.” Joshua Hochman, Note, *The Second Amendment on Board: Public & Private Historical Traditions of Firearm Regulation*, 133 Yale L.J. 1676, 1685 & n.40 (2024); see Free Public Library of Jersey City, *From Canoe to Tunnel: A Sketch of the History of Transportation between Jersey City and New York, 1661-1909* 6 (3d ed. 1909) (discussing ferry service running several times a week from 1661 forward, with routes expanding over the next two centuries, and including a 1783 ferry service that “would take passengers from Communipaw to connect with the stage running to Newark and Philadelphia”); Jay Young, *Infrastructure: Mass Transit in 19th-and 20th-Century Urban America* 1-2 (2015) (discussing regular ferry service connecting urban centers in the early 1800s).

Stagecoaches and Stage wagons for hire also arose throughout the colonies in the early 18th century and continued until overtaken by the railroad over a century later. *E.g.*, Ron Vineyard, Stage Waggon and Coaches, Colonial Williamsburg Found. Library Rsch. Rept. Series - 00380 (Aug. 2002), available at <https://research.colonialwilliamsburg.org/DigitalLibrary/view/index.cfm?doc=ResearchReports%5CRR0380.xml> [<https://perma.cc/JMY9-VQGX>] (last visited Jan. 13, 2026); see George A. Thrupp, *The History of Coaches* 97-125 (1887) (discussing the prevalence of “public carriages” in the colonial era).

Yet Maryland has not come forward with any evidence that firearms were regulated—let alone prohibited by the Government—on any of these conveyances. Nor is there evidence of any national tradition from the Founding Era

Appendix A

of preventing individuals from carrying firearms while traveling from place to place, whatever their means of traveling. Quite the opposite: many colonies *required* travelers to arm themselves when traveling. *See, e.g.*, Kopel & Greenlee, *supra*, at 234 & nn.109-11 (compiling laws from 17th-century Virginia, Massachusetts Bay, Plymouth, Rhode Island, and Maryland); Clayton E. Cramer, *Colonial Firearm Regulation*, 16 J. Firearms & Pub. Pol. 1, 15-16 (2004). So while the Founding-era evidence is scant, it all skews firmly against Maryland being able to show a national tradition of prohibiting commuters or travelers from carrying firearms while assembled for that purpose. That immediately casts doubt on its constitutionality under *Bruen*.

Even accepting that forms of public mass transit were less numerous and transported fewer people than in the modern era still does not permit an end-run around what can be gleaned from the Founding Era's allowance of firearms in analogous contexts. We are, in fact, required under *Bruen* to consider the hows and whys of past regulations to determine the constitutionality of modern restrictions. When it comes to types of public mass transportation—and, indeed, many of the other challenged regulations—much of the majority opinion's focus ignores that people gathered together for all sorts of purposes throughout the Founding Era, yet there's no evidence of contemporaneous efforts to regulate the mere possession of firearms as a consequence of them doing so. Indeed, as *Bruen* recognized, “the historical record yields relatively few 18th-and 19th-century ‘sensitive places’ where weapons were altogether prohibited.” 597 U.S. at 30.

Appendix A

Relatedly, *Bruen* repudiated the notion that a place could be designated as “sensitive” based solely on concerns about people congregating there in close proximity to one another. *Id.* at 31. Just as there was “no historical basis for New York to effectively declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected generally by the New York City Police Department,” so too there is no historical basis for Maryland to declare all manner of places within its jurisdiction as “sensitive” simply because they are areas where a cross-section of the population gathers in crowded spaces and are generally protected by transit police. *Id.*⁹ In short, the mere congregation of individuals in a defined space is insufficient to support a place being deemed “sensitive” so as to justify a location-specific ban of this sort.

Nor are the “going armed” or “affray” laws adopted in many colonies and new states appropriate analogues to Maryland’s mass transit prohibition. Such regulations “barr[ed] people from *misusing* weapons to harm or menace others” through brandishing or discharge. *Rahimi*, 602 U.S. at 693. They did not prohibit mere public carriage in crowded spaces. *Id.* at 693-94; see Eugene Volokh, *The First and Second Amendments*,

9. While some may attempt to distinguish the island of Manhattan from a transit vehicle, we dismiss their similarities at our peril. Transit vehicles featured in Justice Kagan and Justice Alito’s questioning of counsel during oral argument in *Bruen*, demonstrating the connection between the State’s justification for the ban at issue there and its logical extension to other spheres. See Tr. of Oral Argument at 28, *Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) (No. 20-843); see also Hochman, *supra*, at 1678 (discussing these exchanges).

Appendix A

109 Columbia L. Rev. Sidebar 97, 101 (2009) (quoting Founding-era commentaries describing such “going armed” laws as “covering ‘a man arming himself with dangerous and unusual weapons, in such a manner, as will naturally diffuse a terrour among the people’” (cleaned up)). Accordingly, these laws are not helpful historical analogues for resolving this case, which challenges the ability to carry for the classic Second Amendment protected activity of self-defense in delineated mass transit spaces purely because of their designation as “sensitive.”¹⁰ Moreover, other laws—not challenged here—address when an individual who “disrupts the public order” or “poses a clear threat of physical violence to another” may be disarmed consistent with the Second Amendment. *Rahimi*, 602 U.S. at 695-98. But those concerns are not in play in this case. And regardless, they’re not a relevant analogue for deciding whether the State may disarm individuals simply because some quantity of other people are in the same location.

Maryland’s position—incorporated into the majority opinion—also ignores the core purpose behind the Second Amendment—the right of public carry for self-defense.

10. Related exemplars from England like the Statute of Northampton of 1328 are distinguishable on the same grounds. *See Rahimi*, 602 U.S. at 693-98 (discussing same). Indeed, “the most famous application of Northampton at common law *rejected* the idea that merely bearing arms in [populated] places constituted unlawful behavior. *Sir John Knight’s Case*, 90 Eng. Rep. 330 (K.B. 1686).” *Koons*, 156 F.4th at 288 (Porter, J., concurring in part and dissenting in part). In short, “Northampton-inspired going-armed laws were about dangerous and threatening conduct, not general prohibitions on public carry in sensitive places.” *Id.*

Appendix A

People regularly exercise their Second Amendment right to protect themselves when they are out in society, and they do so with documented success. *E.g.*, Don B. Kates & Alice Marie Beard, *Murder, Self-Defense, and the Right to Arms*, 45 Conn. L. Rev. 1685, 1693-94 (2013) (“Overwhelmingly when victims draw guns, criminals flee. Criminals flee armed citizens because they want helpless victims, not gunfights with armed ones. . . . A statistician for the U.S. Justice Department’s National Crime Victimization Study estimates that when defending against rape, robbery, or assault, guns help 65% of the time and make things worse about 9% of the time. . . . Criminological studies conclude that “[r]esistance with a gun appears to be [the] most effective [response to criminal attack] in preventing serious injury [and] preventing property loss.”); James M. Manley, *Defining the Second Amendment Right to Carry: Objective Limits on a Fundamental Right*, 14 Thomas M. Cooley J. Practical & Clinical Law 81, 99 (2012) (“Statistical evidence of past crimes would provide little justification for carry restrictions, because those statistics would simply show that the need for self-defense is greater in crime-ridden areas.”).

The ability to exercise this right is no less necessary just because the space in question transports large numbers of people. According to the Congressional Research Service, “[c]rime on public transportation systems has been generally worse since the beginning of the COVID-19 pandemic. According to [Department of Transportation] data, in the five years from 2020 through 2024, homicides in transit systems were more than double on average than in the five years before the pandemic,

Appendix A

2015 through 2019. Assaults increased on average by about 80%.” William J. Mallett, Cong. Rsch. Serv., R48644, *Surface Transportation Reauthorization: Public Transportation* 16 & n.78 (2025), available at https://www.congress.gov/crs_external_products/R/PDF/R48644/R48644.2.pdf [<https://perma.cc/L7TT-Y8C5>]. Without the ability to arm themselves, travelers in the modern era, no less than those at the Founding, find themselves particularly defenseless and vulnerable.

A further weakness in the justification for the mass transit vehicle and infrastructure firearm prohibition: Maryland—and the majority opinion—rely on the policies of *private* companies restricting firearms carriage in transit conveyances, arguing that because public transportation did not generally exist until the 1900s, such private companies were “providing essentially a public service” in the 19th century. Maj. Op. 16 (quoting *Wolford v. Lopez*, 116 F.4th 959, 1001 (9th Cir. 2024), *cert. granted on other grounds*, --- S. Ct. ---, 222 L. Ed. 2d 1241, 2025 WL 2808808 (Mem.) (Oct. 3, 2025)). But private companies are free to impose whatever restrictions they wish regarding firearms carriage without transgressing the Second Amendment. Accordingly, any historical record as to their policies is irrelevant to the question before us, which is whether there’s support for the conclusion that *governments*—consistent with the Second Amendment—prohibited persons from carrying firearms in this sphere.¹¹ *Cf. Ortega v. Grisham*, 148 F.4th

11. Hochman, *supra*, at 1696-97. Even if one were to accept the premise that what private companies did is somehow relevant to the *Bruen* inquiry, I find persuasive the Ninth Circuit’s discussion

Appendix A

1134, 1150 n.8 (10th Cir. 2025) (distinguishing private-market limitations on firearms possession because only “[g]overnment-erected barriers to possession . . . are covered by the Second Amendment’s text” (emphasis added)).

It’s also necessary to address the majority opinion’s flawed alternative ground for affirming this provision: reliance on the proprietary property doctrine. Paramount to rejecting that approach is that the Supreme Court has *never* suggested that the necessary historical analysis becomes inapplicable when the government acts in its proprietary rather than sovereign capacity. The Court certainly could have done so as a basis for explaining why some of the so-called “sensitive places” exist as exceptions to the general right to carry identified in *Heller*. But it did not. And when it fashioned *Bruen*’s historical framework, it discussed the sensitive-places exception solely within that construct.

in *Wolford* that any such private rules tended to focus on how and where firearms were carried and did not impose the sort of sweeping prohibition across local and statewide transit for both commuting and traveling that the Maryland provision imposes. *See* 116 F.4th at 1001 (“[M]ost of the companies appeared to prohibit only carriage without pre-boarding inspection, carriage in the passenger cars (the firearms had to be checked as luggage), carriage of *loaded* firearms, or carriage of ‘dangerous’ weapons, such as rifles with bayonets attached. Moreover, several States enacted a ‘traveler’s exception,’ whereby persons traveling longer distances could carry their firearms on board.” (citing)). Thus, even when consulted, these private rules created in the 19th century as railroads were built do not provide an adequate historical analogue because *how* they regulated firearms fundamentally differs from Maryland’s sweeping prohibition.

Appendix A

The Supreme Court’s unqualified adoption of a historical approach in *Bruen* is sufficient reason to negate any legitimacy of the majority’s alternative explanation for finding the mass transit prohibitions constitutional. But the majority’s other justifications are also inapt. Reasoning from First Amendment principles isn’t particularly persuasive. Plenty of principles apply in one context—say, the First Amendment—but are not then carried over to interpret an entirely different constitutional right—say, the Second Amendment. Nor is the Ninth Circuit’s decision to adopt a proprietary property doctrine relevant. *See Wolford*, 116 F.4th at 970-71. As noted, our sister circuits have adopted contrary views on this issue, so it’s ultimately a matter of determining which is most consistent with *Bruen*. As the *Koons* panel majority had recognized, “the prospect of enabling the government, in its proprietary capacity, to prohibit the possession or carry of firearms on property it owns would work great damage to individuals’ Second Amendment rights[.] . . . [P]ermitting the government to end-run the Second Amendment when it acts as a proprietor brings with it the prospect of ‘eviscerat[ing] the general right to publicly carry arms for self-defense’ that *Bruen* articulated.” *Koons*, 156 F.4th at 250 (quoting *Bruen*, 597 U.S. at 31).¹²

12. This is not to say that Government ownership is irrelevant to the Second Amendment inquiry, but rather that it is relevant only *within Bruen’s* historical analysis. On this point, the Seventh Circuit aligned with the now-vacated panel majority in *Koons*. In their views, endorsing the government’s proprietary actor framework would “effectively withdraw[] firearm restrictions on government property from the *Bruen* framework” when the approach called for by *Bruen* would be to consider it “at *Bruen’s* second step as a guidepost for

Appendix A

In sum, because Maryland has not met its burden of showing a long-standing historical tradition of governments regulating modes of mass transit for similar purposes and in a similar method in the Founding Era of the Republic, I would hold that the Maryland mass transit prohibitions—to the extent they cover something other than a government building—violate the Second Amendment.

C. Public Demonstrations

Under Maryland law, individuals cannot possess a firearm “at a demonstration in a public place or in a vehicle that is within 1,000 feet of a demonstration in a public place” after they have been “advised by a law enforcement officer that a demonstration is occurring” at the scene and have “been ordered by the law enforcement officer to leave the area of the demonstration until the person disposes of the firearm.” Md. Code Ann., Crim. Law § 4-208(b)(2). State law further defines both “demonstration” and “public place.” *Id.* § 4-208(a)(2), (6).

locating the public transit restriction within our nation’s tradition.” *Schoenthal v. Raoul*, 150 F.4th at 918; accord *Koons*, 156 F.4th at 250 n.104 (“*Bruen* accommodates questions of state versus private property ownership within its principles-based test by asking whether excluding weapons from a particular locale comports with ‘the Nation’s historical tradition of firearm regulation,’ meaning we must consider whether a regulation in each location is analogous to laws protecting sovereign functions and officials.” (citation omitted)). What I—and they—decline to do, but which the majority opinion permits, “is [to] treat simple governmental ownership of property as a shield against Second Amendment scrutiny.” *Koons*, 156 F.4th at 250 n.104; see *Schoenthal*, 150 F.4th at 918 & n.26.

Appendix A

While I agree with the majority that Plaintiffs have standing to challenge this provision and therefore join that part of the majority opinion (Maj. Op. 23-24.), I disagree on the merits and would instead affirm the district court’s grant of injunctive relief to Plaintiffs.

Maryland has not come forward with evidence that—at the Founding—States enacted measures prohibiting firearms at public demonstrations. On the contrary, the historical record reflects quite the opposite. As the district court observed, “[j]ust before the ratification of the Second Amendment, ‘six out of the thirteen original colonies *required* their citizens to go armed when attending . . . public assemblies.’” *Kipke v. Moore*, 695 F. Supp. 3d 638, 662 (D. Md. 2023) (emphasis added) (quoting *Koons v. Platkin*, 673 F. Supp.3d 515, 629 (D.N.J. 2023), *aff’d in part, rev’d in part*, *Koons*, 156 F.4th at 210). Specifically, in the 150 years before the Second Amendment’s enactment, American colonies up and down the Atlantic enacted laws requiring men to bring firearms with them to church and other public gatherings. *E.g.*, Kopel & Greenlee, *supra*, at 233 & n.108 (documenting 17th-century laws from Virginia, Rhode Island, Georgia, Connecticut, Massachusetts Bay, Maryland, and South Carolina); Cramer, *supra*, at 12-15. For example, a 1643 Connecticut law cited the possibility of attacks as the basis for each household to “‘bring a musket, pystoll or some peece, with powder and shott to e[a]ch meeting.’” Cramer, *supra*, at 12 & n.50. And a 1642 Maryland law forbade able-bodied men from “go[ing] to church or Chappell . . . without [a] fixed gunn and 1 Charge at least of powder and Shott.” *Id.* at 13 & n.55 (citation omitted). Given that the Second Amendment codified a

Appendix A

preexisting right, such colonial laws illuminate that our Founders would *never* have commonly understood that right to permit the government to *prohibit* carrying firearms at public demonstrations.

These specific colonial-era laws also reinforce the broader historical record from the Founding Era. Americans owned firearms and they carried those arms with them when they left home. *See, e.g.*, Alexis De Tocqueville, *Journey to America* 266 (J.P. Mayer ed., George Lawrence trans., Faber & Faber Ltd. 1959) (describing from his famous travels in the new country, a typical cabin in Kentucky or Tennessee as containing “a fairly clean bed, some chairs, a good gun, often some books and almost always a newspaper”); Robert H. Churchill, *Once More Unto the Breach, Dear Friends*, 25 L. & Hist. Rev. 205, 212 (observing, with citations, that “[t]he available evidence of gun ownership in colonial probate inventories” supports the author’s conclusion that colonists at the brink of the Revolution “were accustomed to keeping arms”). To return to St. George Tucker’s appraisal, “[i]n many parts of the United States, a man no more thinks, of going out of his house on any occasion, without his rifle or musket in his hand, than a European fine gentleman without his sword by his side.” Kopel & Greenlee, *supra*, at 234 n.110 (citation omitted). Put bluntly, “Americans certainly did not think that bringing guns to town was a problem’—it ‘was normal.’” 156 F.4th at 304-05 (Porter, J., concurring in part and dissenting in part) (quoting Kopel & Greenlee, *supra*, at 233-34 & n.110).

Appendix A

The majority opinion dismisses such Founding-Era evidence based on the misguided notion that laws governing riotous assembly permit the regulation of armed assemblies. Maj. Op. 25-26. But that’s a red herring—*Bruen* instructs courts to look to the Founding Era to determine whether a modern-day restriction is grounded in the Nation’s tradition of restricting firearm carriage. As already discussed, the affray laws did not address the sort of widespread prohibitions on presence and possession of firearms contemplated by Maryland’s modern prohibition. When it comes to public demonstrations and firearms, the Founding-Era record reveals: (1) no nationwide consensus of prohibiting the mere presence firearms at public gatherings, and (2) numerous examples of firearms being *required* at public gatherings. It’s the combined effect of these two components of the historical record that compels the conclusion the Second Amendment does *not* permit governments to prohibit mere possession of firearms at any public demonstration.

Additional considerations bolster this conclusion. As observed elsewhere, Founding-Era required-carry laws “establish[] an expectation that the person next to you in the crowd is armed, thus undermining the majority’s assumption that an armed person in the assembly threatens the public good.” *Koons*, 156 F.4th at 304 (Porter, J., concurring in part and dissenting in part). Put another way, the existence of these Founding-Era examples illuminates the falsity of the position that locations where the public gathers en masse carry a national tradition of being inherently “sensitive” such that they fall within a class of permissible firearms restrictions.

Appendix A

The majority’s prefatory observation about the interplay of the First and Second Amendment further obfuscates the analysis. No one disputes that the First Amendment protects “the right of the people *peaceably* assemble,” or that—consistent with the Second Amendment—a state can prohibit firearms from being used in a manner that disrupts the peace. But Maryland’s law prohibits the mere presence of firearms during public demonstration under circumstances unrelated to maintaining the peace. By presuming that the mere presence of firearms somehow threatens peaceful public assembly, Maryland’s law subjugates the Second Amendment right to public carriage for lawful purposes to the First Amendment right to assemble. It also ignores that restricting open carry may itself have First Amendment implications. *See, e.g.*, Timothy Zick, *Arming Public Protests*, 104 Iowa L. Rev. 223, 241-53 (2018). That’s precisely what the Supreme Court has cautioned against by reminding courts and legislatures that the Second Amendment is “not a second-class right.” *Bruen*, 597 U.S. at 70 (citation omitted).

Given the absence of Founding-Era regulations to support Maryland’s broad prohibition of firearms at and near public demonstrations, the majority opinion instead cites a host of inapplicable laws as supposed analogues. None meet *Bruen*’s exacting standards. As previously discussed, “affray” and other prohibitions on riotous or unlawful assembly targeted the manner in which arms were carried, not their mere presence or possession. The critical question for these jurisdictions was not whether an assembly was armed, but whether it constituted an

Appendix A

“affray,” i.e., a disturbance of the peace. *E.g.*, *Koons*, 156 F.4th at 304 (Porter, J., concurring in part and dissenting in part). And while a handful of states and territories dating from 1869 to 1890 enacted broader assembly-oriented provisions, as explained above, the Supreme Court deems such examples much too sparse—and from a period much too late—to substantiate proof of a nationwide understanding at the time of the Founding. *See Bruen*, 597 U.S. at 66-67 (“[L]ate-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence” and “the bare existence of [a handful of] localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry.”).

For these reasons, I agree with the district court that Maryland failed to meet its burden at *Bruen* step two as to Maryland’s public demonstration firearms restriction, Md. Code, Crim. Law § 4-208(b)(2), and would hold the provision unconstitutional.

D. State Parks and Forests

With certain exceptions not relevant here, Maryland prohibits individuals from possessing firearms in its parks, Md. Code Regs. 08.07.06.04(B); possessing or using firearms in its forests, Md. Code Regs. 08.07.01.04(B); and possessing or using firearms in the Chesapeake Forest Lands, Md. Code Regs. 08.01.07.14(B).¹³ The prohibitions

13. The Chesapeake Forest Lands is a defined number of acres spanning six counties along the Eastern Shore of Maryland. Md. Code Regs. 08.01.07.02.

Appendix A

contain exceptions authorizing certain target shooting, hunting, or possession while crossing state land to hunt on private property. *See* Md. Code Regs. 08.07.06.04(C)-(D), 08.07.01.04(C)-(E), 08.01.07.14(C)-(E).

1. State Parks

In considering the park restriction, the majority opinion adopts an approach taken by several sister circuits, bypassing any effort to locate a historical analogue in the Founding Era before attempting to justify the restriction. Maj. Op. 27-30. Instead, it declares “modern-style parks” in urban settings an innovation of the mid-19th-century that permits courts to look strictly to mid-to-late-19th-century firearms prohibitions as a basis for finding a sufficient historical record of firearms regulations in such spaces to justify Maryland’s broad prohibition. *Id.*

As addressed elsewhere in this opinion, I believe that the majority opinion’s approach to this historical inquiry flouts *Heller* and *Bruen*, which direct our focus to the Founding-Era understanding. Although *Bruen* acknowledged that modern-day problems may require a more “nuanced” approach when seeking a historical analogue, 597 U.S. at 27, the majority misapplies that directive in the context of Maryland’s restriction on firearms in parks. When a problem existed at the Founding, a lack of regulation at that time strongly suggests the modern prohibition is unconstitutional. *E.g.*, *id.* at 26 (“[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence

Appendix A

that the challenged regulation is inconsistent with the Second Amendment.”).

The majority opinion first errs by misrepresenting the historical record to suggest that any problems associated with open-ai red recreational spaces is a context known only to post-Reconstruction America. Not so. Examples of Founding-Era urban and rural public spaces abound; and all without any firearm prohibitions. While “small cities and towns of the new American Republic did not have public parks[,]” that was because “[t]hey did not need them; their inhabitants had only to walk a short distance to reach nature.” Witold Rybczynski, *Parks and Landscape*, in 1 *Encyclopedia of the New American Nation: The Emergence of the United States, 1754-1829* 154 (Paul Finkelman ed., 2006); Anne Beamish, *Before Parks: Public Landscapes in Seventeenth-and Eighteenth Century Boston, New York, & Philadelphia*, 40 *Landscape J.* 1, 3 (2021) (“Before the nineteenth century, the demand for large open green space was low because most towns were relatively compact, density was low, homes had their own gardens and orchards, and residents had easy access to the countryside.”); *The Gardens of Colonial Williamsburg*, Colonial Williamsburg, at 7, <https://www.colonialwilliamsburg.org/discover/resource-hub/timelines/gardens-of-cw/> [<https://perma.cc/9MF7-EK5N>] (last visited Jan. 13, 2026) (“Never far from wild landscapes, the colonists apparently did not feel the need to recreate them in their gardens.”). “Nevertheless, there were park-like urban spaces [in the Founding Era]. Almost every New England village had a turfed green at its center, used for markets and

Appendix A

other public gatherings. When villages grew into towns, these greens were often enlarged, as in the case of the Boston Common.” Rybczynski, *supra*, at 154; Beamish, *supra*, at 2 (“Before parks, seventeenth-and eighteenth-century Boston, New York, and Philadelphia had public urban landscapes with many characteristics of parks[.]”)¹⁴

14. Beamish, *supra*, at 3 Boston Common serves as a particularly apt analogue. See A. Beamish, 40 Landscape J. at 3-7 (discussing the Boston Common). Owned by the city, this “tract of land [has been] . . . used as a place of public resort for the recreation of the people” since “time immemorial.” *Steele v. City of Boston*, 128 Mass. 583, 583 (Mass. 1880); see (“[T]he treeless 45-acre [Boston] Common was set aside as public open space in 1634[.]”). It was “traversed by divers footpaths, leading in different directions,” *Steele*, 128 Mass. at 583, and individuals at the Founding engaged in a wide range of activities there, from walking and congregating to grazing cattle and drilling for the militia, Carl Bridenbaugh, *Cities in the Wilderness: The First Century of Urban Life in America 1625-1742* 325 & n.61 (Capricorn Books ed., 1964). An 18th-century English traveler to Boston described the space as a place where “[e]very afternoon, after drinking tea, . . . the gentlemen and ladies walk . . . , and from thence adjourn to one another’s houses to spend the evening. . . . [It] is a fine green common . . . with two rows of young trees planted opposite to each other, with a fine footway between, in imitation of St. James Park; and part of the bay . . . forms a beautiful canal, in view of the walk.” *Id.* (citation omitted). Put simply, the notion that Boston Common does not serve as an appropriate analogue for *Bruen* purposes because of the plethora of purposes of which it served is counterfactual and nonsensical.

And Boston was not unique among American cities to have designated cross-purpose and recreational green spaces. New York City’s Common Council established Bowling Green Park in 1733 as “an early public-private partnership” designated for “the Recreation & Delight of the Inhabitants of [the] City.” *The Earliest New York City Parks*, N.Y. City Dep’t of Parks & Recreation, <https://>

Appendix A

Also prevalent in the Founding Era were public grass-laden squares around which were built “important civic buildings such as churches and courthouses.” Rybczynski, *supra*, at 154; National Gallery of Art, *Square, History of Early American Landscape Design*, <https://heald.nga.gov/mediawiki/index.php/Square> [<https://perma.cc/BHC3-PPML>] (last visited Jan. 13, 2026) (describing the development of the common “square” in American cities, with historical examples listed, and heralding the “opportunity [they] afforded for recreation, light, fresh air, and a mixing of the citizenry[, which] propelled these landscapes into instruments of social reform”). As but a few notable examples, New Haven, Connecticut; Philadelphia, Pennsylvania; Annapolis, Maryland; Williamsburg, Virginia; Charleston, South Carolina; and Savannah, Georgia, all included such Founding-Era public green spaces. Rybczynski, *supra*, at 154; *see also* Doreceta E. Taylor, *Conceptualizing Urban Parks, in The Environment and the People in American Cities*,

www.nycgovparks.org/about/history/earliest-parks [<https://perma.cc/25VW-8FUY>] (last visited Jan. 13, 2026); Bridenbaugh, *supra*, at 325 (“In 1733 New York joined the other northern towns in setting aside a tract of land for its first public park.”). And in 1797, the City acquired its first “triangle of land”—Duane Park—“on the condition that it be fenced and landscaped ‘as promotive of health and recreation.’” *The Earliest New York City Parks*, *supra*; *see also* Beamish, *supra* at 7-10 (discussing New York’s earliest parks).

Additional examples throughout early American cities abound, *see* Beamish, *supra* at 10-15, all with no indication that firearms were regulated therein, *see Welford v. Lopez*, 125 F.4th 1230, 1242 (9th Cir. 2025) (VanDyke, J., dissenting from the denial of rehearing en banc), *cert. granted*, S. Ct. , 222 L. Ed. 2d 1241, 2025 WL 2808808 (Oct. 3, 2025).

Appendix A

1600s-1900s 226-27 (2009) (providing examples to support the proposition that, in the United States, “gardens, squares, small parks, and commons were beginning to appear in the seventeenth century as forms of urban open space”); *id.* at 230 (“Private and semiprivate open space became more common among elites during the eighteenth century; their interest in open space was fueled in part by their growing interest in gentility and refinement. . . . Participation in outdoor recreational activities, especially by men, was one way to demonstrate refinement.”); *see also* *The Gardens of Colonial Williamsburg*, *supra*, at 9-12 (describing the city’s public gardens in the colonial era). Maps from the era further confirm the existence of open, green spaces within cities dedicated to public gathering throughout the colonial era into the early 18th century, as well as the easy access to larger undeveloped land. *E.g.*, Beamish, *supra*, at 3 (“Eighteenth-century maps [of Boston] all show that most residents could be outside of town and in nature within a 15-minute walk.”); Michael J. Lombardi, *In Search of the Frenchman’s Map*, Colonial Williamsburg, <https://research.colonialwilliamsburg.org/Foundation/journal/Autumn07/map.cfm> [<https://perma.cc/XH4A-2KBK>] (last visited Jan. 13, 2026) (linking to copies of the map, which depicts the Palace Green and other commons within Williamsburg, Virginia); *The Earliest New York City Parks*, *supra* (observing that an array of now-extant parks existed, including one that “appeared on Manhattan maps as early as 1797”). And to this day, cities such as Charleston, South Carolina, boast about their oldest public parks in modern accounts of those spaces. *E.g.*, Lynda Edwards, “Charleston’s oldest park restored for grand opening,” *The Post & Courier* (July 30, 2024),

Appendix A

https://www.postandcourier.com/news/hampstead-mall-charleston-park-restoration/article_bfbd70d8-3fb3-11ef-8d10-97688892c475.html [<https://perma.cc/56GG-RV3B>] (last visited Jan. 13, 2026) (“Created in 1769, Charleston’s oldest public park is older than America.”).

While these outdoor green spaces may lack the “modern” urban park landscaping envisioned by Frederick William Olmsted and others, their functions and existence are no less relevant to the historical inquiry *Bruen* requires. As Judge Porter recognized in his separate opinion in *Koons*, “[i]n principle, there is no difference between Colonial-era parkgoers fishing, watching cockfighting, or playing whist; Victorian-era park-goers playing tennis, riding horse-drawn carriages, or doing whatever one does to foster solidarity across social classes; and modern park-goers playing pickleball, hiking, or riding hoverboards. Each is engaged in a type of recreation or leisure in a public location that sometimes doubles as a place of public assembly.” 156 F.4th at 307 (Porter, J., concurring in part and dissenting in part). The majority opinion suffers from the same problem as the Third Circuit panel majority—“refus[ing] to consider places (and the human activity within those places) at the same level of generality that it uses to evaluate historical firearm regulations in those places.” *Id.* Doing so drives an artificial wedge between the historical spaces resembling purpose and kind to modern parks because the record from those Founding-Era spaces firmly demonstrates that firearms were not prohibited in them. *Id.*

As just noted, when it comes to the historical record, it’s simply untrue that community-use green spaces did not

Appendix A

develop until the mid-19th-century, as numerous examples from the Founding Era exist. There's no indication that firearms were prohibited in such public places and, in fact, the presence of militia training in some of those spaces supports the principle that firearms were authorized there. For this reason, I reject the notion that we have no basis for ascertaining if the Founders understood the Second Amendment to permit governments to restrict firearms on green spaces devoted to public recreation. To the contrary—we have a robust historical record demonstrating that such places existed and that restrictions of the kind or scope of that contained in the challenged Maryland law were not in force. That in itself serves as strong proof of no National tradition restricting firearms in common green spaces or public parks, meaning that “the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26.

The majority opinion compounds its errors by allowing a handful of latter-day restrictions on firearms in city parks to serve as the foundation for satisfying *Bruen*'s exacting step-two inquiry. Five municipal ordinances do not a national tradition make. *Cf. Bruen*, 597 U.S. at 46. Holding otherwise “eviscerate[s]” *Bruen*'s step-two directive and, more importantly, allows outlier laws to dictate the scope of the Second Amendment's “general right to publicly carry arms for self-defense.” *Id.* at 31; *see also id.* at 67 (observing, in the context of a handful of territorial restrictions, that “the bare existence of these localized restrictions cannot overcome the overwhelming evidence of an otherwise enduring American tradition permitting public carry” and observing that “the

Appendix A

miniscule . . . populations that would have lived under them” bolstered that conclusion).

Still more problems with the majority opinion’s approach exist, as it ultimately undertakes a factual bait-and-switch. Its too-late and too-sparse “proof” that firearms were kept out of parks reflects—at most—the existence of some regulations when it comes to urban parks. From that, the majority then extrapolates grounds to support a tradition of restricting firearms that justifies a restriction in *all* of Maryland’s state parks; a conclusion wholly at odds with the *Bruen* analysis and rebutted by the Founding-Era record.

But a few examples of what parks Maryland’s law encompasses reveal the folly of the majority’s position. The Maryland park system’s “four sub-designations” include “[n]atural resources management areas,” which “are generally State parks that feature an undeveloped, agrarian landscape of woodlands, fields and agriculture” “managed for the primary benefit of wildlife habitat, sustainable farming and passive, nature-based recreation[.]” Md. Code Regs. 08.07.06.02(B)(1). Another sub-division is “[r]ail trails,” which are parks featuring “the conversion of a former railroad right-of-way to a recreational trail open to hiking, biking and equestrian uses.” Md. Code Regs. 08.07.06.02(B)(4). Among the fifty-three generally designated state parks, Maryland has identified such spaces as:

- Assateague State Park, Md. Code Regs. 08.07.06.02(E)(1), an “oceanfront park” that is located on “a barrier island” with

Appendix A

“two miles of ocean beaches,” “secluded coves” and “marsh areas,” with “a variety of wildlife, including deer, waterfowl and feral horses,” *Assateague State Park*, Maryland Department of Natural Resources: Maryland Park Service, <https://dnr.maryland.gov/publiclands/Pages/eastern/assateague.aspx> [<https://perma.cc/7VVG-CGNX>] (last visited Jan. 13, 2026);

- Deep Creek Lake State Park, Md. Code Regs. 08.07.06.02(E)(10), a 1,800-acre park offering “swimming beaches, 20 miles of hiking/biking trails, 112 site campground[s], and [a] 6,000 square foot Discovery Center,” *Deep Creek Lake State Park*, Maryland Department of Natural Resources: Maryland Park Service, <https://dnr.maryland.gov/publiclands/Pages/western/deepcreek.aspx> [<https://perma.cc/25ZQ-ARVE>] (last visited Jan. 13, 2026);
- North Point State Park, Md. Code Regs. 08.07.06.02(E)(31), a “1,310 acre park” “located in Baltimore County” that has picnic grounds, battlefield and hiking trails, and fishing piers, *North Point State Park*, Maryland Department of Natural Resources: Maryland Park Service, <https://dnr.maryland.gov/publiclands/Pages/central/northpoint.aspx> [<https://perma.cc/6PXD-27NM>] (last visited Jan. 13, 2026);

Appendix A

- Seneca Creek State Park, Md. Code Regs. 08.07.06.02(E)(42), a park “comprised of 6,300 acres” extending across “14 scenic miles of Seneca Creek,” which includes lakes, “forests and fields,” *Seneca Creek State Park*, Maryland Department of Natural Resources: Maryland Park Service, <https://dnr.maryland.gov/publiclands/Pages/central/seneca.aspx> [<https://perma.cc/P8T8-RZD3>] (last visited Jan. 13, 2026);
- South Mountain State Park, Md. Code Regs. 08.07.06.02(E)(44), a “40-mile long multi-use state park weaving along the South Mountain ridge” that offers “geologic, natural, cultural, and historic experiences” for campers and hikers, *South Mountain State Park*, Maryland Department of Natural Resources: Maryland Park Service, <https://dnr.maryland.gov/publiclands/pages/western/southmountain.aspx> [<https://perma.cc/7XSV-VUV6>] (last visited Jan. 13, 2026);
- Wills Mountain State Park, Md. Code Regs. 08.07.06.02(E)(51), which “spans over 500 acres and provides visitors with opportunities for hiking along scenic trails that lead up to the mountain summit,” *Wills Mountain State Park*, Maryland State Parks, https://stateparks.com/wills_mountain_state_park_in_maryland.html

Appendix A

[<https://perma.cc/H6ZS-6UZ6>] (last visited Jan. 13, 2026).

These representative samples illustrate what a more thorough review of the remaining covered state parks confirms: they are larger, verdant spaces devoted to a range of recreational activities, bearing little resemblance to smaller “urban parks” or the municipal regulations in city parks that began to emerge in the late 19th century. Put differently, even setting aside all the other problems with relying on the ersatz historical “analogues” the majority opinion uses, the fact that they targeted a substantively different problem in a materially different setting independently eliminates their value in assessing the constitutionality of Maryland’s state-park firearms restriction.¹⁵

15. The Second Amendment protects a right regardless of the need to exercise it, but it is nonetheless worth observing that self-defense may be particularly important to Marylanders. According to the FBI, in 2024, Maryland ranked fifteenth among the states for violent crime. *What Is the Crime Rate in Maryland?*, USAFacts, <https://usafacts.org/answers/what-is-the-crime-rate-in-the-us/state/maryland/> [<https://perma.cc/6APM-F7ME>] (last visited Jan. 13, 2026). And from September 2020 to 2025, just shy of 2,000 violent offenses (aggravated assault, homicide, rape, and robbery) were reported in Maryland fields, woods, parks, or playgrounds. *Crime Data Explorer*, Fed. Bureau of Investigation, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> [<https://perma.cc/B7WQ-S8GY>] (last visited Jan. 13, 2026); see also Ralph B. Taylor, Cory P. Haberman, & Elizabeth R. Groff, *Urban Park Crime: Neighborhood Context and Park Features*, 64 J. Crim. Just. 13, 13 (2019) (recognizing the link between urban parks and “social problems such as crime and disorder” and exploring whether certain features of such parks “explain why some parks have more crime than

Appendix A

At bottom, the relevant historical record confirms that in the Founding Era, governments were not broadly restricting firearms on public lands, urban green spaces, and other locations that could serve as legitimate historical analogues to Maryland's state park system. An "analogue" based on fresh mulch under a jungle gym in a 21st-century park has no legitimate value in assessing Second Amendment rights. Nor has Maryland come forward with other evidence of Founding-Era regulations containing a similar "how" and "why" that would support a restriction of this nature. Thus, the State has not met its burden, and I would reverse the district court's judgment on this claim. Plaintiffs were entitled to an injunction barring enforcement of the State parks firearms law.

2. Forests

With respect to Maryland's restrictions in forests and the Chesapeake Forest Lands, the majority opinion's explanation is even more sparse and unpersuasive. It mostly relies on the same reasoning it gave for upholding the parks restriction, and so is equally flawed for all the reasons already provided. The signers of the Constitution and proponents of the Bill of Rights would surely consider prohibitions on carrying firearms on such expansive and uninhabited public lands ludicrous.

The majority opinion acknowledges, as it must, the existence of "a robust historical tradition of protecting

others"). These statistics demonstrate that the Maryland statutes impact the ability to engage in self-defense in places where the public may well find themselves needing to exercise this "core" right.

Appendix A

hunting rights in rural lands,” but it then says that because the State’s forest-oriented restrictions permit hunting, they “do[] not run afoul of, or impede upon, one’s Second Amendment rights.” Maj. Op. 30. That the State has carved out an exception that adheres to the public’s Second Amendment rights—here, hunting rights—says nothing about whether its main act of prohibiting firearms in forests is otherwise consistent with the Second Amendment. As *Heller* recognized, “the inherent right of self-defense has been central to the Second Amendment right” since its enactment. 554 U.S. at 628. *Bruen* confirmed that this right to carry for self-defense includes the right to “carry a handgun for self-defense outside the home.” 597 U.S. at 108. Because the “core” of the Second Amendment is self-defense, that Maryland’s prohibition carves out possession for hunting says little about its constitutionality under Supreme Court case law.

Because Maryland’s forest-related firearms restrictions do not comport with the Nation’s history of firearm regulation, I would hold them to be unconstitutional.

E. Places of Amusement

Plaintiffs challenge several provisions prohibiting firearms at what the majority opinion labels “places of amusement.” With exceptions not challenged here, Maryland prohibits wearing, carrying, and transporting firearms in stadiums (including a special provision prohibiting firearms at Camden Yards), museums, amusement parks, racetracks, casinos, and video lottery facilities. Md. Code, Crim. Law § 4-111(a)(8)(ii)-(vi); Code of Md. Regs. §§ 14.25.02.06, 36.03.10.48.

Appendix A

As it did with parks, the majority opinion deems it unnecessary to look to the Founding-Era record about firearms possession or regulation in analogous contexts because such places “did not exist in modern form in 1791.” Maj. Op. 31. But that is patently untrue. “Places of amusement”—and the attendant concerns driving the possibility of regulating firearms in such spaces—most certainly did exist in the Founding Era and were by no means rare. For example, horse and boat racing were popular, as was cockfighting, hunting, and games such as an early form of golf. *Id.* at 120, 435.¹⁶ Live theatre performances never ceased to entertain, and “the first structure in America built exclusively to be used for theatrical performances” predates the Revolutionary

16. Horse racing is but one example of both sporting and gambling documented in North America well before the Nation’s founding, and flourishing in that nascent United States. Lara Otis, *Washington’s Lost Racetracks: Horse Racing from the 1760s to the 1930s*, 24 Wash. Hist. 136, 137 (2012) (“Eighteenth-and nineteenth-century Americans had relatively few options for entertainment or legalized gambling, and racetracks provided both.”). The first documented race in North America took place in 1665 in present-day Long Island, New York. John Austin Stevens, *Horse-Racing in Colonial New York*, 28 Frank Leslie’s Popular Monthly 385, 385 (Oct. 1889). By 1734, America’s first jockey club had formed in Charleston, South Carolina. John Eisenberg, *Off to the Races*, Smithsonian Mag. (Aug. 2004). Several racecourses existed throughout Virginia, Maryland, and Washington, D.C., for the same amusements such activities provide today. *E.g.*, Otis, *supra*, at 139-52; The Maryland Jockey Club of Baltimore City 7 (C. Edward Sparrow ed., 1924) (“The history of racing in Maryland goes back to Colonial times, and George Washington mentions in his Diary several visits to the Annapolis races, where he states he was a ‘consistent and persistent loser.’”). And all with no documented government firearms regulation.

Appendix A

War: Charleston, South Carolina's Dock Street Theatre opened with a performance of *The Recruiting Officer* in February 1736. "America's First Theatre," Charleston Stage, <https://charlestonstage.com/about-us/dock-street-theatre> [<https://perma.cc/R8G5-HZ6L>] (last visited Jan. 13, 2026). In the subsequent decades more "crowded houses" arose throughout the nation for local and touring productions. Bridenbaugh, *supra*, at 436, 441; *see generally* Heather S. Nathans, *Early American Theatre from the Revolution to Thomas Jefferson Into the Hands of the People* (2003); Susanne K. Sherman, *Comedies Useful: Southern Theatre History, 1775-1812* (1998). Taverns—which are discussed later in the context of establishments that sell alcohol—flourished as a focal point for relaxation and entertainment alongside business pursuits, and later led to the creation of private clubs. Bridenbaugh, *supra*, at 434-36.

While some states and localities prohibited gambling establishments for different periods of time before the Nation's founding, they were commonplace in other parts of the new Nation. *Cf.* Ed Crews, "Gambling: Apple-Pie American and Older than the Mayflower," *Colonial Williamsburg*, at 6-7 (Autumn 2008), <https://research.colonialwilliamsburg.org/Foundation/journal/Autumn08/gamble.cfm> [<https://perma.cc/5NRD-RCSV>] (last visited Jan. 13, 2026) (tracing the English gaming tradition across the Atlantic, as American "colonial gaming gained a character all its own" and "gaming was a centerpiece of colonial life," which was enjoyed by "[e]verybody . . . men, women, rich, poor, gentry, and slave" who "bet on all sorts of things" at home, at formal racetracks, in

Appendix A

“impromptu contests on public roads,” and at taverns); George G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 UNLV Gaming Rsch. & Rev. J. 65, 66-67 (1996); Jay Precht, *Legalized Gambling*, 64 Parishes (Nov. 15, 2011), available at <https://64parishes.org/entry/legalized-gambling> [<https://perma.cc/WA5Q-JB57>] (last visited Jan. 13, 2026) (“In 1803, when Louisiana became a US territory, New Orleans had more places to gamble than New York, Philadelphia, Boston, and Baltimore combined.”). Where gambling was authorized, there’s no evidence of accompanying firearms regulations within their walls.

Museums too began peppering the United States shortly after the Revolutionary War and ratification of the Bill of Rights.¹⁷ Yet again, Founding-Era failure to

17. For example, the first art gallery in the country opened in Philadelphia in 1784, the Charleston Museum in South Carolina opening to the public in 1824, and the Boston Athenæum opening its first art exhibition 1827. *E.g.*, A Companion to Museum Studies tbl. 7.1 (Sharon Macdonald ed., 2006); *see also The Founding of America’s First Museum*, The Charleston Museum, <https://www.charlestonmuseum.org/news-events/the-founding-of-americas-first-museum/> [<https://perma.cc/565R-MGF5>] (last visited Jan. 13, 2026); Karie Diethorn, *Peale’s Philadelphia Museum*, in *The Encyclopedia of Greater Philadelphia* (2015), <https://philadelphiaencyclopedia.org/essays/peales-philadelphia-museum/> [<https://perma.cc/L8F4-P75Z>] (last visited Jan. 13, 2026); John Edward Simmons, *History of Museums*, in 4 *Encyclopedia of Libr. & Info. Scis.* 1812, 1818 (2017), <https://www.researchgate.net/publication/266240152> [<https://perma.cc/L3F9-DYD7>]; *History*, Boston Athenæum, <https://bostonathenaeum.org/about/> [<https://perma.cc/2Z5D-KPVB>] (last visited Jan. 13, 2026). The Philadelphia gallery “was among the first in a burgeoning number of museums and historical societies that sprang up during the first fifty years of the Republic, a period

Appendix A

regulate in comparable situations and spaces is meaningful and compelling evidence that a modern prohibition is unconstitutional under *Bruen*.

All this to say, the historical record shows that, at the time of the Founding, governments did not enact sweeping firearms restrictions whenever and wherever people were assembled for amusement. As already discussed, the Founding-Era firearms regulations pertaining to church gatherings regularly *required* carriage rather than banning it. Apart from that, the State has not come forward with any evidence that—at the Founding—states enacted wider prohibitions on firearms carriage based on the mere possibility that people may be gathered together for a good time or the possibility (or even likelihood) that children would be present.

in which Americans sought to construct and reconstruct memories of their new nation.” *Museums and Historical Societies*, in 2 Encyclopedia of the New American Nation, *supra*, at 403. When Charles Wilson Peale opened his museum in Philadelphia in 1786, he envisioned it as a place “‘to instruct and amuse’ all classes of society, high and low, using his exhibits to [depict] a narrative of the new nation as uniquely virtuous, powerful, and expansive,” and the popularity of the museum led more to “proliferate . . . throughout the states.” *Id.* While the first museums were private in nature, one notable exception is itself exceptional, as the federal government “inadvertently accepted collecting and displaying as [its] responsibility in the course of implementing the 1835 bequest of French-born Englishman and scientist, James Smithson ‘to found in Washington, under the name of the Smithsonian Institution, an Establishment for the increase and diffusion of knowledge.’” Jeffrey Abt, *The Origins of the Public Museum*, in A Companion to Museum Studies, *supra*, at 130 (citation omitted). And, yet again, Founding Era firearms regulations are nowhere to be found in such spaces.

Appendix A

Given this robust historical record, it does not matter whether such places existed “in [their] modern form.” Maj. Op. 31. What matters is that these challenged provisions do not “implicat[e] *unprecedented* societal concerns or *dramatic* technological changes” that “require a more nuanced approach.” *Bruen*, 597 U.S. at 27 (emphases added). Instead, Maryland’s laws address something that existed at the Founding and well before—what to do when crowds gather for fun, whether it be sporting, learning, gambling, or the like. That’s a straightforward *Bruen* step-two inquiry permitting courts only to draw appropriate analogies to regulations at the Founding, but nothing more flexible than that.

Ignoring the impact of that historical record and properly focused timeframe, the majority opinion turns to a handful of laws enacted between 1853 and 1903 to support the general notion that some states and territories prohibited firearms at ballrooms, social gatherings, or public exhibitions. Maj. Op. 32. Yet again, that’s too little and too late to demonstrate the sort of historical tradition *Bruen* requires. Judge Porter once again ably describes the absurdity of the notion that the Founding generation was unfamiliar with large crowds gathering for entertainment or that we can discern nothing about the Second Amendment’s scope from contemporaneous failure to enact such bans as the one before us. To the contrary,

[that] generation was familiar with, or could at least imagine, famous historical venues like the Roman Colosseum (capacity 50,000-80,000), the Circus Maximus (capacity 150,000), and

Appendix A

contemporaneous venues like London's Hyde Park (350 acres) or Paris's Place de la Concorde (19 acres). Closer to home, Boston's South Meeting House accommodated about 5,000 and hosted that many on the day of the Boston Tea Party. In 1739, Americans heard reports that George Whitefield had preached to audiences of [20,000 to 60,000] in London[, and when he] toured America in 1740, he preached to crowds [between 3,000 and 25,000 throughout the colonies].

Koons, 156 F.4th at 311 (Porter, J., concurring in part and dissenting in part) (footnotes omitted). All this to say, “while colonial and early Americans had not yet built fancy NFL stadiums, that is both anachronistic and irrelevant: they could ‘imagine’ large crowds and entertainment venues because they knew classical history, consumed international news, and personally attended enormous entertainment spectacles.” *Id.* at 312. Critically, they “presented the same types of concerns and dangers in any large public gathering, which might have justified widespread disarmament. But there is no evidence of disarmament in such places.” *Id.*

Eschewing *Bruen*'s clear instruction, the majority opinion instead distinguishes modern museums and places of entertainment as “crowded” spaces “frequented by children,” deeming these features sufficient to deem them “sensitive.” *Maj. Op.* 32. At the risk of belaboring the obvious, both crowds and children existed in the Founding Era. If either were sufficient to create a Founding era

Appendix A

understanding for broadly restricting the presence of firearms consistent with the Second Amendment, surely there would be some contemporaneous evidence to support that conclusion. No such record exists.

Because Maryland has failed to come forward with comparable bans on firearms at public gatherings dedicated to forms of amusement from the Founding Era, it has failed to carry its burden at step two under *Bruen*. I would hold these prohibitions unconstitutional.

F. Locations that Sell Alcohol

With exceptions not at issue here, Maryland prohibits individuals from wearing, carrying, or transporting firearms in “a location licensed to sell or dispense alcohol . . . for on-site consumption.” Md. Code, Crim. Law § 4-111(a)(8)(i), (e). Because the historical record from the Founding Era demonstrates no tradition of prohibiting firearms simply based on the sale and consumption of alcohol at that location, this provision does not survive *Bruen*’s step-two inquiry.

At the outset, the State cannot point to these establishments as being in any way analogous to the “sensitive places” already identified by the Supreme Court. Premises that sell alcohol do not serve a uniquely vulnerable population; they serve the public at large.

Digging further, this provision targets a “problem” that existed at the Founding Era and it does so by imposing a much broader restriction than any historical

Appendix A

precedent, placing its “how” directly at odds with the Nation’s tradition in this field. As has been well documented elsewhere, alcohol consumption is nothing new. The Founders were intimately familiar with its use *and* its potential abuse. *E.g.*, *Koons*, 156 F.4th at 295-96 & nn.69-73, 309-11 nn.101-02 (Porter, J., concurring in part and dissenting in part). Taverns, where alcohol was sold, were “a staple in the social, political, and travel lives of colonial citizens from very early in this country’s existence,” “foster[ing] activity from morning until night.” Steven Struzinski, *The Tavern in Colonial America*, 1 *The Gettysburg Hist. J.* 29, 29, 31 (2002); *see also* Bridenbaugh, *supra*, at 107 (“The tavern was probably the most important social institution in the little seaports [of the United States]. . . . Here townsfolk came daily to eat and drink, gossip and traffic, to hear the latest news or to post notices on the walls where all might see and read.”); *see also id.* at 107-16 (discussing the centrality of the tavern to daily life); Social Life: Rural Life: Places and Occasions of Sociability, in 3 *Encyclopedia of the New American Nation*, *supra*, at 209 (“Taverns were perhaps the most widespread rural institutions of all, the centers of an almost exclusively male sociability. They brought men together for heavy drinking, smoking, and alcohol-fueled talk—and often gambling and fighting.”). Despite this familiarity and the widespread presence of firearms at that time, neither the colonies nor the newly formed states enacted statutes broadly targeting the combined presence of firearms and alcohol.

Lacking any similar restrictions from the Founding Era, the majority instead cites a few tangential restrictions

Appendix A

from that period, limited to alcohol sales at special places or to specific groups: several states prohibited the sale of alcohol to militiamen while at drill. Maj. Op. 25. But such laws restricted *no one's* right to carry, nor did they address the combined effect of alcohol and firearms writ large. And other Founding-Era restrictions on the use of firearms *while intoxicated* similarly targeted a different type of conduct altogether—the reckless and dangerous act of discharging a deadly weapon while drunk—not the mere possession of arms at a premises where alcohol is sold.¹⁸ These laws cannot serve as viable evidence of a national tradition of restricting firearms in the manner that Maryland has done here. As the district court rightly observed, this Maryland provision “do[es] not impose a ‘comparable burden on the right of armed self-defense.’” *Kipke*, 695 F. Supp. 3d at 656 (quoting *Bruen*, 597 U.S. at 29). Thus, the “why” and “how” of these handful of Founding-Era restrictions cannot serve as proper historical analogues for Maryland’s across-the-

18. The other circuit courts to uphold restrictions on firearms at premises that sell alcohol have also principally relied on militia-specific regulations from the Founding Era, further demonstrating the inability of states across the country to marshal evidence that the public understood the scope of the Second Amendment to encompass widespread restrictions on the right to carry in combination with alcohol sales. *Wolford*, 116 F.4th at 985-86; *see Koons*, 156 F.4th at 261; Grasping for further Founding-era support, the Third Circuit panel majority went so far as to cite a statement of a single signer of the Declaration of Independent, Dr. Benjamin Rush, as a basis for extrapolating “the Founders’ disposition towards alcohol and drunkenness.” *Koons*, 156 F.4th at 261-62. It does not require much analysis to rebut the notion that this is not the sort of evidence of a “widespread” “nationwide” tradition that *Bruen* deemed necessary to satisfy the Government’s burden at step two of the inquiry.

Appendix A

board prohibition on firearms by anyone based on on-site alcohol consumption. Instead, like the broad prohibition at issue in *Koons*, Maryland’s restriction “applies to everyone, including teetotalers and unintoxicated patrons [at] any place where alcohol is sold. The underlying Second Amendment principle cannot simply be ‘No guns wherever alcohol is present.’ Such a principle is so broad, indiscriminating, and unlimited that it extinguishes the right.” 156 F.4th at 310 (Porter, J., concurring in part and dissenting in part).

The rest of the majority opinion’s “proof” of a historical tradition fails for the same reasons already fleshed out. A handful of city and state statutes dating well into the late 19th-century cannot serve as confirmation of a Founding-Era understanding that did not exist and come much too late in time to independently establish a “national tradition” concerning the scope of the Second Amendment.

For these reasons, I agree with the district court that this restriction is unconstitutional and would affirm its order enjoining its enforcement. While private establishments selling alcohol are free to prohibit firearms on their premises, the State cannot compel them to do so consistent with the Second Amendment.

III.

The Supreme Court articulated a narrow exception to allow governments to restrict individuals’ Second Amendment rights in “sensitive places.” Maryland’s laws would convert that exception into a broad license

Appendix A

to prohibit firearms in locations where people gather for almost any purpose so long as those purposes are separately listed to give the appearance of limited scope. I would uphold the restrictions placed on school grounds, government buildings, and healthcare facilities because those are consistent with the Supreme Court’s articulated “sensitive places” doctrine. But because there’s no historical evidence to support banning firearms in the other challenged locations, I would hold that they are unconstitutional and enjoin their enforcement.

Although the “sensitive places” doctrine has not yet been fully defined, the Supreme Court has made clear that it is a limited exception to the core right of public carriage, an exception grounded in the Nation’s history and tradition from the time of Founding. It is not a smokescreen for inclined legislatures or courts to conjure some metaphysical connection so that a handful of localized laws can serve as “analogues” for sweeping regulation of the core Second Amendment right. The Supreme Court should not hesitate to act to clarify this doctrine and prevent its misapplication when that occurs.

For these reasons, I respectfully concur in part and dissent in part.

**APPENDIX B — MEMORANDUM OPINION
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND,
FILED AUGUST 2, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1293,
Member Case: GLR-23-1295

SUSANNAH WARNER KIPKE, *et al.*,

Plaintiffs,

v.

WES MOORE, *et al.*,

Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court on: (1) Plaintiffs Susannah Warner Kipke and Maryland State Rifle and Pistol Association, Inc.'s ("MSRPA") (collectively, "Kipke Plaintiffs") Motion for Summary Judgment (ECF No. 13); (2) Consol Plaintiffs Katherine Novotny, Sue Burke, Esther Rossberg, Maryland Shall Issue, Inc., Second Amendment Foundation, and Firearms Policy Coalition's (collectively, "Novotny Plaintiffs") Motion for Summary Judgment (ECF No. 18); (3) Roland L. Butler, Jr. and Wes Moore's Cross Motion for Summary Judgment (ECF No.

Appendix B

21); and (4) Ivan J. Bates, Butler, Alison M. Healey, Joshua Kurtz, Moore, Scott D. Shellenberger, Paul J. Wiedefeld's (collectively, "State Defendants") Cross Motion for Summary Judgment (ECF No. 23). The Motions are fully briefed, and no hearing is necessary. *See* Local Rule 105.6 (D.Md. 2023). For the reasons outlined below, the Court will grant the Motions in part and deny them in part.

I. BACKGROUND**A. The Gun Safety Act of 2023 and Other Maryland Firearm Restrictions**

The Court provided a complete description of the facts and law at issue in this case in its September 29, 2023 Memorandum Opinion, (ECF No. 31), which it incorporates here by reference. The Court will not repeat that description in its entirety and will instead provide a brief summary.

This action concerns Plaintiffs' challenges to the constitutionality of the Gun Safety Act of 2023 (the "Act"), formerly known as Senate Bill 1, as well as several other Maryland firearm regulations. *See* Md. Code Ann. (2023), Crim. Law ["CR"] §§ 4-111, 6-411. The Act took effect in part on October 1, 2023, and it identifies three categories of statutorily-defined locations where individuals are prohibited from carrying: (1) an "area for children and vulnerable individuals," (2) a "government or public infrastructure area," and (3) a "special purpose area." *Id.* §§ 4-111(c)-(e). These three categories include bans on carrying firearms in the following locations: schools

Appendix B

and school grounds; healthcare facilities; government buildings; stadiums; museums; amusement parks; racetracks; casinos; and locations selling alcohol for onsite consumption (bars and restaurants). *Id.* § 4-111(a). Certain exceptions apply, such as for active or retired law enforcement officers, private property owners with authorized security, and individuals who transport a firearm inside a motor vehicle, as long as they either have a public carry permit or lock the firearm in a container. *Id.* § 6-411(b).

The Act also prohibits individuals from entering buildings on private property while carrying a firearm without first obtaining permission to do so (the “private building consent rule”). *Id.* § 6-411. The manner in which permission may be expressed or obtained depends on whether the building at issue is a dwelling. The Act provides that an individual carrying a firearm cannot enter a dwelling without the owner’s permission. *Id.* § 6-411(c). With regard to all other private property, an individual carrying a firearm may not enter or trespass on such property unless the owner or the owner’s agent (1) “has posted a clear and conspicuous sign indicating that it is permissible to” carry a firearm on the property, or (2) “has given the person express permission” to carry a firearm on the property. *Id.* § 6-411(d).

Separate from the Act, Maryland also has firearm restrictions in the following locations:

- In State parks, State forests, and Chesapeake Forest Lands. COMAR 08.07.06.04 (State

Appendix B

parks), 08.07.01.04 (State forests), and 08.01.07.14 (Chesapeake Forest Lands).

- On public transit owned or controlled by the Maryland Mass Transit Administration or operated by a private company under contract to the Administration. Md. Code Ann., Transp. § 7-705(b) (6).
- At welcome centers, rest areas, scenic overlooks, roadside picnic areas, and other public use areas within interstate and State highway rights-of-way. COMAR 11.04.07.01, 11.04.07.12.
- On the grounds of public school property. CR § 4-102(b).
- On property of state public buildings, improvements, grounds, and multiservice centers under the jurisdiction of the Department of General Services. COMAR 04.05.01.01, 04.05.01.03.
- In the Camden Yards Sports Complex. COMAR 14.25.01.01(B)(14), 14.25.02.06.
- In a casino. COMAR 36.03.10.48.
- At a demonstration in a public place (or in a vehicle that is within 1,000 feet of a demonstration in a public place) after being informed by a law enforcement officer that a demonstration is occurring and being ordered to leave the area until the individual disposes of the firearm. CR § 4-208(b)(2).

*Appendix B***B. Procedural History**

On May 16, 2023, two lawsuits were filed challenging the Act and the other related firearm regulations set forth above. Kipke Plaintiffs filed the first lawsuit, (*Kipke et al. v. Moore et al.*, (“*Kipke*”), No. GLR-23-1293, ECF No. 1), and Novotny Plaintiffs brought the second, (*Novotny et al. v. Moore et al.*, (“*Novotny*”), No. GLR-23-1295, ECF No. 1).¹

Kipke Plaintiffs make the following claims under 42 U.S.C. § 1983 to challenge the constitutionality of the Act and other Maryland firearm regulations: (1) Second and Fourteenth Amendments violations due to restrictions on carrying firearms as applied to: State parks; State highway rest areas; mass transit facilities; public school property; the grounds of preschools or prekindergarten facilities; museums; the Camden Yards Sports Complex; stadiums; healthcare facilities; government buildings; locations selling alcohol; amusement parks, racetracks, and casinos; private buildings; and demonstrations in public places (Count I); (2) a First and Fourteenth Amendment violation due to the private building consent rule (Count II); (3) a Second and Fourteenth Amendment Due Process Clause violation due to Maryland’s permit process and an applicant’s need to satisfy “subjective criteria” (Count III); and (4) a Fourteenth Amendment Equal Protection Clause violation for the State’s alleged discriminatory treatment of Kipke Plaintiffs in comparison to retired

1. Record citations refer to the *Kipke* docket unless otherwise indicated.

Appendix B

law enforcement officers (Count IV). (Compl. ¶¶ 47-68, ECF No. 1).

Novotny Plaintiffs make a similar, but more narrow challenge of Maryland firearm restrictions—their Complaint contains several of the same claims as Count I of the *Kipke* Complaint. They allege that Maryland cannot restrict firearms in the following locations: healthcare facilities; locations selling alcohol; museums; and private property without the owner’s consent (Count I); mass transit facilities (Count II); and State parks, State forests, and State Chesapeake forest lands (Count III). (*Novotny*, Compl. ¶¶ 45-57, ECF No. 1).

Because of the complete overlap between Novotny Plaintiffs’ claims and Count I of the *Kipke* Complaint, the Court consolidated the two cases on July 13, 2023. (ECF No. 15). Prior to consolidation, Novotny Plaintiffs filed a Motion for Preliminary Injunction, (*Novotny*, ECF No. 24), seeking to enjoin enforcement of the firearm restrictions listed in their Complaint. (*Novotny*, Mot. Prelim. Inj. at 1, ECF No. 24).² They also filed a Motion for Summary Judgment seeking a permanent injunction on July 20, 2023. (ECF No. 18). State Defendants filed a Cross Motion for Summary Judgment and Opposition to Novotny Plaintiffs’ Motion for Summary Judgment on August 3, 2023. (ECF No. 23). On August 11, 2023, Novotny Plaintiffs filed a Reply in Support of their Motion for Summary Judgment and an Opposition to State

2. Citations to page numbers refer to the pagination assigned by the Court’s Case Management/Electronic Case Files (“CM/ECF”) system.

Appendix B

Defendants' Motion for Summary Judgment. (ECF No. 26).

In the *Kipke* case, State Defendants filed an Answer on June 30, 2023. (ECF No. 11). Kipke Plaintiffs filed a Motion for Preliminary Injunction, (ECF No. 12), and a Motion for Summary Judgment, (ECF No. 13), on July 3, 2023. On July 28, 2023, State Defendants filed a Cross Motion for Summary Judgment and Opposition to Kipke Plaintiffs' Motion for Preliminary Injunction. (ECF No. 21). On August 11, 2023, Kipke Plaintiffs filed a Reply in Support of their Motion for Summary Judgment, Response in Opposition to State Defendants' Cross Motion for Summary Judgment, and Reply in Support of their Motion for Preliminary Injunction. (ECF No. 29). State Defendants filed a Reply in Support of their Cross Motion for Summary Judgment on September 8, 2023. (ECF No. 30).

On September 29, 2023, the Court issued its Memorandum Opinion and Order granting the Motions for Preliminary Injunction in part and denying them in part. (Sept. 29, 2023 Order at 1, ECF No. 32). Specifically, the Court granted the Motions for Preliminary Injunction as to Maryland's laws restricting the carrying of firearms in: (1) locations selling alcohol for onsite consumption; (2) private property without the owner's consent; and (3) within 1,000 feet of a public demonstration. (*Id.*; Oct. 2, 2023 Order at 1, ECF No. 35 (citing CR § 4-111(a)(2)(8)(i), § 4-208, § 6-411(d))). The Motions for Preliminary Injunction were otherwise denied, and the Court also denied the Motion to Dismiss, (*Novotny*, ECF No. 36),

Appendix B

and the Motions for Summary Judgment, (ECF Nos. 13, 18, 21, 23) without prejudice. (Sept. 29, 2023 Order at 2).

On October 12, 2023, State Defendants filed an Answer to the Novotny Plaintiffs' Complaint. (ECF No. 36). The parties then informed the Court that they did not plan to conduct discovery, and they requested that the Court renew the Motions for Summary Judgment for consideration without further briefing. (Status Report at 1-2, ECF No. 37). The Court renewed those Motions on November 17, 2023. (ECF No. 38). Since then, the parties have filed several Notices of Supplemental Authority and related Responses, which the Court considers in its analysis below. (ECF Nos. 39-48, 51-56).

II. DISCUSSION

A. Standard of Review

In reviewing a motion for summary judgment, the Court views the facts in a light most favorable to the nonmovant, drawing all justifiable inferences in that party's favor. *Ricci v. DeStefano*, 557 U.S. 557, 586, 129 S. Ct. 2658, 174 L. Ed. 2d 490 (2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)). Summary judgment is proper when the movant demonstrates, through "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits

Appendix B

or declarations, stipulations . . . admissions, interrogatory answers, or other materials,” that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a), (c) (1)(A). Significantly, a party must be able to present the materials it cites in “a form that would be admissible in evidence,” Fed.R.Civ.P. 56(c)(2), and supporting affidavits and declarations “must be made on personal knowledge” and “set out facts that would be admissible in evidence,” Fed.R.Civ.P. 56(c)(4).

Once a motion for summary judgment is properly made and supported, the burden shifts to the nonmovant to identify evidence showing there is genuine dispute of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). The nonmovant cannot create a genuine dispute of material fact “through mere speculation or the building of one inference upon another.” *Othentec Ltd. v. Phelan*, 526 F.3d 135, 141 (4th Cir. 2008) (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)).

A “material fact” is one that might affect the outcome of a party’s case. *Anderson*, 477 U.S. at 248; *see also JKC Holding Co. v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001) (citing *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001)). Whether a fact is considered to be “material” is determined by the substantive law, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 248; *accord Hooven-Lewis*, 249 F.3d at 265. A “genuine”

Appendix B

dispute concerning a “material” fact arises when the evidence is sufficient to allow a reasonable jury to return a verdict in the nonmoving party’s favor. *Anderson*, 477 U.S. at 248. If the nonmovant has failed to make a sufficient showing on an essential element of his case where he has the burden of proof, “there can be ‘no genuine [dispute] as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (quoting *Anderson*, 477 U.S. at 247).

B. Analysis**1. Claims challenging State firearm regulations in specific locations**

Kipke Plaintiffs move for Summary Judgment on Counts I and II of their Complaint. (Kipke Pls.’ Mem. Supp. Mot. Summ. J. [“Kipke Pls.’ Mot.”] at 17-37, ECF No. 13-1). They ask the Court to permanently enjoin enforcement of the Act and other State regulations that ban the carrying of firearms in: bars and restaurants; public parks; public transportation and mass transit facilities; stadiums, racetracks, amusement parks, and casinos; museums; near public demonstrations; healthcare facilities; school grounds, government buildings; and private property without the owner’s consent. (*Id.* at 22-34). They make this argument under the Second Amendment, and they also argue that the private building consent rule must be enjoined for violating the First Amendment. (*Id.* at 34).

Appendix B

Similarly, Novotny Plaintiffs move for summary judgment on all three Counts in their Complaint. They ask for a declaratory judgment and permanent injunction on the carry bans in: healthcare facilities; museums; bars and restaurants; mass transit facilities; State parks; and in private buildings without the owners' consent. (Novotny Pls.' Mot. Summ. J. and Briefing Schedule ["Novotny Pls.' Mot."] at 1-2, ECF No. 18). In their Cross Motions, State Defendants respond that they are entitled to summary judgment on those same claims. (Defs.' Consolidated Mem. L. Supp. Mot. Summ. J. ["Defs.' Consolidated Cross Mot."] at 6, ECF No. 21-1; Defs.' Mot. Summ. J. at 3, ECF No. 23).

The Court previously considered these same issues on the Motions for Preliminary Injunction. (*See generally* Sept. 9, 2023 Mem. Op. ["Mem. Op."], ECF No. 31). Although those Motions required a different standard of review than the summary judgment standard set forth above, there has been no discovery in this case, and the facts are unchanged and undisputed. (*See* Status Report at 1 (explaining that no party wished to conduct discovery); Novotny Pls.' Mot. at 1 ("The constitutionality of these provisions is a pure question of law . . . no discovery is necessary")). Further, the Court conducted a thorough review of the entire record in making its September 29, 2023 decision. Accordingly, for the same reasons stated in the Memorandum Opinion where the Court determined whether Plaintiffs were likely to succeed on the merits of their claims, the Court now finds that there is no genuine dispute of material fact as to whether the regulations identified above violate the Second Amendment. The Court will grant in part and deny in part the Motions

Appendix B

for Summary Judgment in accordance with its prior Memorandum Opinion and Order, and the Court will permanently enjoin Maryland's laws restricting the carrying of firearms in locations selling alcohol for onsite consumption, private buildings without the owner's consent, and within 1,000 feet of a public demonstration. The Court will enter judgment for Plaintiffs as to those claims. Plaintiffs' Motions for Summary Judgment will otherwise be denied, and judgment will be entered for State Defendants.

The parties have filed several Notices of Supplementary Authority since the Court issued its Memorandum Opinion and Order, but none of them change the Court's decision or require the Court to revisit its analysis. For example, Plaintiffs cite *Brown v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 1:22-CV-80, 704 F. Supp. 3d 687, 2023 U.S. Dist. LEXIS 214615, 2023 WL 8361745, at *10 (N.D.W.Va. Dec. 1, 2023); *Springer v. Grisham*, No. 1:23-CV-00781 KWR/LF, 704 F. Supp. 3d 1206, 2023 U.S. Dist. LEXIS 217447, 2023 WL 8436312, at *7-8 (D.N.M. Dec. 5, 2023) (appeal docketed); and *Lara v. Comm'r Pa. State Police*, 91 F.4th 122, 133 (3d Cir. 2024) for the proposition that courts must look to only to founding-era laws to determine whether a modern regulation is consistent with the country's history of firearm regulation under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). (Novotny Pls.' Dec. 5, 2023 Notice Suppl. Authority at 1-2, ECF No. 41; Novotny Pls.' Dec. 8, 2023 Notice Suppl. Authority at 1-2, ECF No. 44; Novotny Pls.' Jan. 24, 2024 Notice Suppl. Authority at 1-2, ECF No. 51; Kipke Pls.'

Appendix B

Apr. 10, 2024 Notice Suppl. Authority at 1, ECF No. 52). These decisions do not bind this Court, and the Court is unconvinced by their conclusions for the reasons set forth in the Memorandum Opinion. (*See* Mem. Op. at 14 (citing *Bruen*, 597 U.S. at 37-38 and explaining that the Supreme Court expressly declined to determine whether courts should “primarily rely” on founding-era laws, or laws around the time of the ratification of the Fourteenth Amendment)).

Plaintiffs also cite *Maryland Shall Issue, Inc. v. Moore*, 86 F.4th 1038, 1047-49 (4th Cir. 2023), *reh’ en banc granted*, No. 21-2017 (L), 2024 U.S. App. LEXIS 766, 2024 WL 124290 (4th Cir. Jan. 11, 2024), and *United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889, 1896, 219 L. Ed. 2d 351 (2024). (Novotny Pls.’ Nov. 21, 2023 Notice Suppl. Authority at 1, ECF No. 39; Kipke Pls.’ Nov. 28, 2023 Notice Suppl. Authority at 1, ECF No. 40; Kipke Pls.’ June 24, 2024 Notice Suppl. Authority at 1, ECF No. 53). As to *Maryland Shall Issue*, it is not a final decision because the Fourth Circuit granted the petition for rehearing en banc. *Md. Shall Issue, Inc. v. Moore*, No. 21-2017 (L), 2024 U.S. App. LEXIS 766, 2024 WL 124290, at *1 (4th Cir. Jan. 11, 2024). Further, *Maryland Shall Issue* did not address the issue of whether the Courts may look beyond the founding era for historical evidence, and therefore that case is unhelpful to Plaintiffs.

Plaintiffs’ arguments fare no better with *Rahimi*, which is inapposite to the instant case. In *Rahimi*, the Supreme Court upheld the constitutionality of 18 U.S.C. § 922(g)(8), which prohibits individuals subject to a

Appendix B

domestic violence restraining order from possessing a firearm. 144 S.Ct. at 1896-97. The Supreme Court held that such an individual may be temporarily disarmed consistent with the Second Amendment because historic surety and going-armed laws traditionally limited the right to bear arms for individuals that pose a clear threat of physical violence to others. *Id.* at 1901 (citing *Bruen*, 597 U.S. at 30). Plaintiffs argue that *Rahimi* supports their claim because the Supreme Court stated that “[u]nlike the regulation struck down in *Bruen*, [which required carry permit applicants to demonstrate proper cause and a special need for self-protection,] Section 922(g)(8) does not broadly restrict arms use by the public generally.” *Id.* Plaintiffs, therefore, appear to contend that the regulations at issue here are similar to the impermissibly broad regulatory scheme in *Bruen*, and thus that that these regulations must be enjoined. (See Kipke Pls.’ June 24, 2024 Notice Suppl. Authority at 1). The Court finds that the instant case is factually distinct from both *Rahimi* and *Bruen* because the challenged laws here relate to carrying in specific locations, not to permitting and who may carry a firearm. Further, many of the regulations at issue here may be upheld under *Bruen* either as analogous sensitive places or because they are consistent with historical regulations, as set forth in the Memorandum Opinion. (See Mem. Op. at 16-39).

Accordingly, the Court will grant Plaintiffs’ Motions for Summary Judgment in part as to (1) locations selling alcohol for onsite consumption, CR § 4-111(a)(2)(8)(i); (2) private property without the owner’s consent, *id.* § 6-411(d); and (3) within 1,000 feet of a public demonstration, *id.*

Appendix B

§ 4-208. These laws will be permanently enjoined. Because the Court will permanently enjoin the private building consent rule on Second Amendment Grounds, it need not determine whether that law also violates the First Amendment, as Kipke Plaintiffs claim in Count II of their Complaint. Plaintiffs' Motions for Summary Judgment will otherwise be denied.

2. Fourteenth Amendment Claims

In Counts III and IV of the *Kipke* Complaint, Kipke Plaintiffs allege a Second and Fourteenth Amendment Due Process Clause violation due to Maryland's permit process and an applicant's need to satisfy "subjective criteria," and a Fourteenth Amendment Equal Protection Clause violation for the State's alleged discriminatory treatment of Kipke Plaintiffs in comparison to retired law enforcement officers. (Compl. ¶¶ 57-68). In State Defendants' Cross Motion for Summary Judgment, they argue that the Court should grant judgment in their favor on those claims. (Defs.' Consolidated Cross Mot. at 94-105). In their Opposition to Defendants' Motion, Kipke Plaintiffs did not address Counts III or IV, nor did they respond in any way to State Defendants' arguments. (*See generally* Opp'n Cross Mot. Summ. J., ECF No. 29). Consequently, Kipke Plaintiffs have abandoned their Fourteenth Amendment claims, and because the Court finds State Defendants' arguments to be meritorious, summary judgment will be entered for State Defendants on Counts III and IV of the *Kipke* Complaint. *See Ferdinand-Davenport v. Children's Guild*, 742 F.Supp.2d 772, 777 (D.Md. 2010) (plaintiff abandoned her claim

Appendix B

when she failed to respond to the defendant's argument in dispositive motion).

III. CONCLUSION

For the foregoing reasons, the Court will grant the Motions for Summary Judgment in part and deny them in part. (ECF Nos. 13, 18, 21, 23). Plaintiffs' Motions, (ECF Nos. 13, 18), will be granted as to the claims regarding the private building consent rule and carrying near public demonstrations or in locations selling alcohol for onsite-consumption, and the Motions will be denied in all other respects. State Defendants' Cross Motions for Summary Judgment, (ECF Nos. 21, 23), will be granted as to the Kipke Plaintiffs' Fourteenth Amendment claims (Counts III and IV of the *Kipke* Complaint), as well as the claims regarding: State Parks; mass transit facilities; schools and school grounds; museums; stadiums; healthcare facilities; government buildings; amusement parks; racetracks; and casinos. The Cross Motions for Summary Judgment will otherwise be denied. A separate Order follows.

Entered this 2nd day of August, 2024.

/s/ George L. Russell, III
George L. Russell, III
United States District Judge

123a

**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF MARYLAND, FILED AUGUST 2, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1293,
Member Case: GLR-23-1295

SUSANNAH WARNER KIPKE, *et al.*,

Plaintiffs,

v.

WES MOORE, *et al.*,

Defendants.

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 2nd day of August, 2024 by the United States District Court for the District of Maryland, hereby:

ORDERED that Plaintiffs' Motions for Summary Judgment (ECF Nos. 13, 18) are GRANTED IN PART and DENIED IN PART;

IT IS FURTHER ORDERED that Plaintiffs' Motions for Summary Judgment are GRANTED as to the claims regarding Maryland's laws restricting the

Appendix C

carrying of firearms in: (1) locations selling alcohol for onsite-consumption, Md. Code Ann., (2023), Crim. Law § 4-111(a)(2)(8)(i); (2) private buildings or property without the owner's consent, Crim. Law § 6-411(d); and (3) within 1,000 feet of a public demonstration, Md. Code Ann., (2016), Crim. Law § 4-208;

IT IS FURTHER ORDERED that the Court DECLARES that these three provisions violate the Second Amendment;

IT IS FURTHER ORDERED that State Defendants are ENJOINED from enforcing these laws, and any regulations, policies, and practices implementing the enjoined provisions, as to persons who have a valid wear-and-carry permit issued by the Maryland State Police;

IT IS FURTHER ORDERED that judgment is ENTERED in favor of Plaintiffs on these three claims;

IT IS FURTHER ORDERED that Plaintiffs' Motions for Summary Judgment are DENIED in all other respects;

IT IS FURTHER ORDERED that State Defendants' Cross Motions for Summary Judgment (ECF Nos. 21, 23) are GRANTED IN PART and DENIED IN PART;

IT IS FURTHER ORDERED that State Defendants' Motions for Summary Judgment are GRANTED as to the claims regarding firearm carry restrictions in: (1) museums; (2) healthcare facilities; (3) State parks, State forests, and Chesapeake Forest Lands; (4) mass transit

Appendix C

facilities; (5) schools and school grounds; (6) government buildings; and (7) stadiums, racetracks, amusement parks, and casinos. State Defendants' Motions for Summary Judgment are also GRANTED as to the Fourteenth Amendment Due Process and Equal Protection Claims (Counts III and IV of the *Kipke* Complaint);

IT IS FURTHER ORDERED that judgment is ENTERED in favor of State Defendants on those claims;

IT IS FURTHER ORDERED that State Defendants' Motions for Summary Judgment are otherwise DENIED;

IT IS FURTHER ORDERED that the Clerk shall CLOSE these consolidated cases.

/s/ George L. Russell, III
George L. Russell, III
United States District Judge

**APPENDIX D — MEMORANDUM OPINION
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND,
FILED SEPTEMBER 29, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1293,
Member Case: GLR-23-1295

SUSANNAH WARNER KIPKE, *et al.*,

Plaintiffs,

v.

WES MOORE, *et al.*,

Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court on: (1) Consol Plaintiffs Katherine Novotny, Sue Burke, Esther Rossberg, Maryland Shall Issue, Inc., Second Amendment Foundation, and Firearms Policy Coalition’s (collectively, “Novotny Plaintiffs”) Motion for Preliminary Injunction (*Novotny et al. v. Moore et al.*, (“*Novotny*”), No. GLR-23-1295, ECF No. 24); (2) Plaintiffs Susannah Warner Kipke and Maryland State Rifle and Pistol Association, Inc.’s (“MSRPA”) (collectively, “Kipke Plaintiffs”) Motion for Preliminary Injunction (*Kipke et al. v. Moore et al.*, (“*Kipke*”), No. GLR-23-1293, ECF No. 12); (3) Kipke

Appendix D

Plaintiffs’ Motion for Summary Judgment (Kipke, ECF No. 13); Novotny Plaintiffs’ Motion for Summary Judgment (*Kipke*, ECF No. 18); (4) Defendants Ivan J. Bates, Roland L. Butler, Jr., Alison M. Healey, Joshua Kurtz, Wesley Moore, Scott D. Shellenberger, and Paul J. Wiedefeld’s (collectively, “State Defendants”)¹ Motion to Dismiss (*Novotny*, ECF No. 36); and (5) State Defendants’ Cross Motions for Summary Judgment (*Kipke*, ECF Nos. 21, 23). The Motions are fully briefed, and no hearing is necessary. *See* Local Rule 105.6 (D.Md. 2023). For the reasons outlined below, the Court will grant the Motions for Preliminary Injunction in part and deny them in part. The Court will further deny the Motion to Dismiss and the Motions for Summary Judgment without prejudice.

I. BACKGROUND**A. Senate Bill 1 and Other Maryland Firearm Restrictions**

This action concerns Plaintiffs’ challenges to the constitutionality of the recently-enacted Gun Safety Act of 2023, also known as Senate Bill 1 (“SB 1”), as well as

1. Novotny Plaintiffs and Kipke Plaintiffs do not name exact same individual Defendants—Novotny Plaintiffs name the aforementioned individuals and Kipke Plaintiffs name just Moore and Butler. Regardless, the Defendant is effectively the State itself in both suits, and thus the Court will refer to Defendants collectively as “State Defendants.” *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989) (holding that a suit against a state official in his official capacity is a suit against the official’s office, not the individual).

Appendix D

several other Maryland firearm regulations. Defendant Wes Moore, Governor of the State of Maryland, signed SB 1 into law on May 16, 2023, and it goes into effect on October 1, 2023. 2023 Md. Laws ch. 680 (to be codified at Md. Code Ann. (2023), Crim. Law [“CR”] §§ 4-111(c)-(e), 6-411). The State legislature enacted SB 1 after the Supreme Court’s June 23, 2022 decision in *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 213 L. Ed. 2d 387 (2022). As discussed more fully below, the Supreme Court in *Bruen* held that “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Id.* at 2122. It also struck down New York’s gun permitting scheme as unconstitutional because it required an applicant to show “proper cause” for carrying a handgun publicly. *Id.* at 2156. New York’s “proper cause” standard was similar to Maryland’s prior “good and substantial reason” permitting standard, so *Bruen* called into question that aspect of the State’s permitting scheme. (*See Novotny*, Defs.’ Mem. L. Supp. Mot. Dismiss Opp’n Pls.’ Mot. Prelim. Inj. [“Opp’n Novotny Mot.”] at 8, ECF No. 36-1).² Indeed, the Appellate Court of Maryland later concluded that Maryland’s “good and substantial reason” standard was unconstitutional. *In re Rounds*, 255 Md. App. 205, 279 A.3d 1048, 1052 (Md. Ct.Spec.App. 2022).

In the 2023 legislative session, Maryland’s General Assembly enacted laws to change the State firearm

2. Citations to page numbers refer to the pagination assigned by the Court’s Case Management/Electronic Case Files (“CM/ECF”) system.

Appendix D

permitting process, *see* 2023 Md. Laws ch. 651 (to be codified at Md. Code. Ann. (2023), Pub. Safety § 5-133(b) (3)), and SB 1, which places restrictions on areas in which guns may be carried, even with a permit. First, SB 1 identifies three categories of statutorily-defined locations where individuals are prohibited from carrying: (1) an “area for children and vulnerable individuals,” (2) a “government or public infrastructure area,” and (3) a “special purpose area.” 2023 Md. Laws ch. 680 (to be codified at CR §§ 4-111(c)-(e)). Certain exceptions apply, such as for active or retired law enforcement, private property owners with authorized security, and individuals who transport a firearm inside a motor vehicle, as long as they either have a public carry permit or lock the firearm in a container. 2023 Md. Laws ch. 680 (to be codified at CR § 6-411(b)).

An “area for children and vulnerable individuals” relates generally to daycare facilities, private schools, and medical facilities. It is statutorily defined as: (1) “a preschool or prekindergarten facility or the grounds of the facility,” (2) “a private primary or secondary school or the grounds of the school,” and (3) “a health care facility,” which is defined to include hospitals, ambulatory surgical centers, and facilities that are “organized primarily to help in the rehabilitation of disabled individuals.” 2023 Md. Laws ch. 680 (to be codified at CR § 4-111(a)(2)).

A “government or public infrastructure area” generally relates to government buildings, buildings on college and university campuses, polling places, and power plants. It is statutorily defined as:

Appendix D

(i) a building or any part of a building owned or leased by a unit of State or local government; (ii) a building of a public or private institution of higher education, as defined in § 10-101 of the Education Article; (iii) a location that is currently being used as a polling place in accordance with [the Election Law Article]; (iv) an electric plant or electric storage facility . . .; (v) a gas plant . . .; or (vi) a nuclear power plant facility.

2023 Md. Laws ch. 680 (to be codified at CR § 4-111(a)(4)).

A “special purpose area” relates generally to certain places where the public gathers for entertainment, educational, or other collective social pursuits. It is statutorily defined as “(i) a location licensed to sell or dispense alcohol or cannabis for on-site consumption; (ii) a stadium; (iii) a museum; (iv) an amusement park; (v) a racetrack; or (vi) a video lottery facility [casino] . . . ” 2023 Md. Laws ch. 680 (to be codified at CR § 4-111(a)(8)).

Finally, SB 1 prohibits individuals from entering buildings on private property while carrying a firearm without first obtaining permission to do so (the “private building consent rule”). 2023 Md. Laws ch. 680 (to be codified at CR § 6-411). The manner in which permission may be expressed or obtained depends on whether the building at issue is a dwelling. SB 1 provides that an individual carrying a firearm “may not enter or trespass in the dwelling of another unless the owner or the owner’s agent has given express permission, either to the person

Appendix D

or to the public generally, to wear, carry, or transport a firearm inside the dwelling.” 2023 Md. Laws ch. 680 (to be codified at CR § 6-411(c)).

With regard to all other private property, an individual carrying a firearm may not enter or trespass on such property unless the owner or the owner’s agent (1) “has posted a clear and conspicuous sign indicating that it is permissible to” carry a firearm on the property, or (2) “has given the person express permission” to carry a firearm on the property. 2023 Md. Laws ch. 680 (to be codified at CR § 6-411(d)).

Separate from SB 1, Maryland also has firearm restrictions in the following locations:

- In State parks, State forests, and Chesapeake Forest Lands. COMAR 08.07.06.04 (State parks), 08.07.01.04 (State forests), and 08.01.07.14 (Chesapeake Forest Lands).
- On public transit owned or controlled by the Maryland Mass Transit Administration or operated by a private company under contract to the Administration. Md. Code Ann., Transp. § 7-705(b) (6).
- At welcome centers, rest areas, scenic overlooks, roadside picnic areas, and other public use areas within interstate and State highway rights-of-way. COMAR 11.04.07.01, 11.04.07.12.

Appendix D

- On the grounds of public school property. CR § 4-102(b).
- On property of state public buildings, improvements, grounds, and multiservice centers under the jurisdiction of the Department of General Services. COMAR 04.05.01.01, 04.05.01.03.
- In the Camden Yards Sports Complex. COMAR 14.25.01.01(B)(14), 14.25.02.06.
- In a casino. COMAR 36.03.10.48.
- At a demonstration in a public place (or in a vehicle that is within 1,000 feet of a demonstration in a public place) after being informed by a law enforcement officer that a demonstration is occurring and being ordered to leave the area until the individual disposes of the firearm. CR § 4-208(b)(2).

B. The Parties & Procedural History

On May 16, 2023, two lawsuits were filed challenging SB 1 and the other related firearm regulations set forth above. Kipke Plaintiffs filed the first lawsuit. (*Kipke*, ECF No. 1). Kipke is a Maryland resident, and she owns and operates Mrs. Kipke's Secure Gun Storage. (*Kipke*, Compl. ¶ 9, ECF No. 1). Kipke also has a carry permit, and she wishes to carry a handgun outside her home for self-defense. (*Id.* ¶ 10). The MSRPA is an association dedicated to defending the Second Amendment rights of law-abiding Maryland residents. (*Id.* ¶ 14). It alleges that

Appendix D

SB 1 and other State regulations compromise its “central mission” and the rights of its members. (*Id.* ¶¶ 15-16). Kipke Plaintiffs allege Kipke and at least one member of the MSRPA «could and would, but for reasonable fear of prosecution . . . exercise their right to carry a handgun for self-defense” in the locations prohibited by SB 1 and Maryland law. (*Id.* ¶¶ 12, 17). Additionally, Kipke Plaintiffs would like to allow individuals to possess firearms on their property without posting signage or giving express permission. (*Id.* ¶¶ 13, 18).

Novotny Plaintiffs brought the second lawsuit. (*Novotny*, ECF No. 1). Novotny, Burke, and Rossberg are Maryland residents with carry permits who wish to carry handguns in locations prohibited by SB 1 and Maryland law. (*Novotny*, Compl. ¶¶ 22-26, ECF No. 1). Maryland Shall Issue and Firearms Policy Coalition are nonprofit organizations, and the Second Amendment Foundation is a nonprofit educational foundation. (*Id.* ¶¶ 27-31). They are dedicated to the advancement of gun ownership rights. (*Id.* ¶¶ 27-31). Like the Kipke Plaintiffs, the Novotny Plaintiffs claim that SB 1 and Maryland law infringe on their Second Amendment rights and prevent them from carrying firearms in certain locations. (*See id.* ¶¶ 22-31).

Kipke Plaintiffs make the following claims under 42 U.S.C. § 1983 to challenge the constitutionality of SB 1 and other Maryland firearm regulations: (1) Second and Fourteenth Amendments violations due to restrictions on carrying firearms in State parks, State forests, State highway rest areas, mass transit facilities, public school property, the grounds of preschools or

Appendix D

prekindergarten facilities, museums, the Camden Yards Sports Complex, stadiums, healthcare facilities, government buildings, locations selling alcohol, amusement parks, racetracks, casinos, the private building consent rule, and demonstrations in public places (Count I); a First and Fourteenth Amendment violation due to the private building consent rule (Count II); a Second and Fourteenth Amendment Due Process Clause violation due to Maryland's permit process and an applicants' need to satisfy "subjective criteria" (Count III); and a Fourteenth Amendment Equal Protection Clause violation for the State's alleged discriminatory treatment of Kipke Plaintiffs in comparison to retired law enforcement officers (Count IV). (*Kipke*, Compl. ¶¶ 47-68).

Novotny Plaintiffs' make a similar, but more narrow challenge of Maryland firearm restrictions—their Complaint contains several of the same claims as Count I of the *Kipke* Complaint. They allege that Maryland cannot restrict firearms in the following locations: healthcare facilities, locations selling alcohol, museums, and private property without the owner's consent (Count I); mass transit facilities (Count II); and State parks, State forests, and State Chesapeake forest lands (Count III). (*Novotny*, Compl. ¶¶ 45-57).

Because of the complete overlap between Novotny Plaintiffs' claims and Count I of the *Kipke* Complaint, the Court consolidated the two cases on July 13, 2023. (*Kipke*, ECF No. 15). Prior to consolidation, Novotny Plaintiffs filed a Motion for Preliminary Injunction. (*Novotny*, ECF No. 24). They seek to enjoin enforcement of the

Appendix D

firearm restrictions listed in their Complaint. (*Novotny*, Mot. Prelim. Inj. at 1, ECF No. 24). State Defendants filed a Motion to Dismiss and Opposition to Preliminary Injunction on June 28, 2023. (*Novotny*, ECF No. 36). Novotny Plaintiffs filed a Reply to State Defendants' Opposition and an Opposition to State Defendants' Motion to Dismiss on July 12, 2023. (*Novotny*, ECF No. 38). State Defendants filed a Reply in Support of their Motion to Dismiss on August 2, 2023. (*Kipke*, ECF No. 22).

In the meantime, on July 20, 2023, Novotny Plaintiffs filed a Motion for Summary Judgment. (*Kipke*, ECF No. 18). State Defendants filed a Cross Motion for Summary Judgment and Opposition to Novotny Plaintiffs' Motion for Summary Judgment on August 3, 2023. (*Kipke*, ECF No. 23). On August 11, 2023, Novotny Plaintiffs filed a Reply in Support of their Motion for Summary Judgment and an Opposition to State Defendants' Motion for Summary Judgment. (ECF No. 26).

In the Kipke case, State Defendants filed an Answer on June 30, 2023. (*Kipke*, ECF No. 11). Kipke Plaintiffs filed a Motion for Preliminary Injunction (*Kipke*, ECF No. 12) and a Motion for Summary Judgment (*Kipke*, ECF No. 13) on July 3, 2023. On July 28, 2023, State Defendants filed a Cross Motion for Summary Judgment and Opposition to Kipke Plaintiffs' Motion for Preliminary Injunction. (*Kipke*, ECF No. 21). On August 11, 2023, Kipke Plaintiffs filed a Reply in Support of their Motion for Summary Judgment, Response in Opposition to State Defendants' Cross Motion for Summary Judgment, and Reply in Support of their Motion for Preliminary

Appendix D

Injunction. (ECF No. 29). State Defendants filed a Reply in support of their Cross Motion for Summary Judgment on September 8, 2023.³ (ECF No. 30).

II. DISCUSSION

A. Standard of Review

“A preliminary injunction is an ‘extraordinary and drastic remedy.’” *See Munaf v. Geren*, 553 U.S. 674, 689-90, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) (quoting 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2948, at 129 (2d ed. 1995)). A party seeking a preliminary injunction or temporary restraining order must establish the following elements: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the party’s favor; and (4) that the injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); *see also Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346-47 (4th Cir. 2009). A moving party must satisfy each requirement as articulated. *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013). Because a preliminary injunction is “an extraordinary remedy,” it “may only be awarded

3. Both State Defendants and Novotny Plaintiffs request that the Court hold a hearing and consolidate the Motions for Preliminary Injunction with a trial on the merits under Rule 65. (*See* Pls.’ Reply Mem. Supp. Mot. Prelim. Inj. [“Novotny Pls.’ Reply”] at 10, ECF No. 38). As stated above, the Court finds that no hearing is necessary, and it will not consider the dispositive motions at this time.

Appendix D

upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.

B. Analysis**1. Controlling considerations under *Bruen***

In *Bruen*, the Supreme Court held that “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” 142 S.Ct. at 2122. Consistent with its prior decision in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 2126. If the plaintiff’s conduct is presumptively protected, “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130. The Court held that the examination of a firearm law’s constitutionality would end with this historical analysis, thereby rejecting the two-step test that courts previously applied. *Id.* at 2127. Under that two-step test, courts would first perform the historical inquiry, followed by a means-end analysis under strict or intermediate scrutiny to assess whether the government’s interest justified the restriction. *Id.* at 2127-29.

The historical analysis required by *Bruen* considers whether there is “‘historical precedent’ from before, during, and even after the founding” that “evinces a

Appendix D

comparable tradition of regulation.” *Id.* at 2131-32 (quoting *Heller*, 554 U.S. at 631). The Supreme Court recognized that certain cases would present “straightforward” applications of historical analysis, and that other “modern regulations that were unimaginable at the founding” would require a more “nuanced approach.” *See id.* “When confronting such present-day firearm regulations, this historical inquiry that courts must conduct will often involve reasoning by analogy.” *Id.* at 2132. The Supreme Court provided two primary metrics to determine whether a modern regulation is “relevantly similar” to a historical regulation: “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2132-33. “[C]entral” to this inquiry is “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)). “[A]nalogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.” *Id.* at 2133. Although “courts should not ‘uphold every modern law that remotely resembles a historical analogue,’ . . . analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin.” *Id.* (quoting *Drummond v. Robinson*, 9 F.4th 217, 226 (3d Cir. 2021)). “So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.*

The Supreme Court then explained that courts may analogize regulations of firearms in certain locations to

Appendix D

“‘longstanding’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.’” *Id.* (quoting *Heller*, 554 U.S. at 626). The Court declined to “comprehensively define ‘sensitive places,’” but it also listed legislative assemblies, polling places, and courthouses as belonging to that category. *Id.* The Supreme Court further stated that it is “settled” that carrying could be prohibited consistent with the Second Amendment in those locations. *Id.*

Novotny Plaintiffs argue that the Supreme Court only named legislative assemblies, polling places, and courthouses as examples of sensitive places. (*Novotny*, Mem. Supp. Pls.’ Mot Prelim. Inj. [“Novotny Pls.’ Mot.”] at 21-22, ECF No. 24-1). They further argue that these sensitive places are defined by “the presence of comprehensive, state-provided security that rendered the need for armed self-defense unnecessary.” (*Novotny Pls.’* Reply at 8). Thus, according to Novotny Plaintiffs, “[t]o draw a valid analogy to ‘those historical regulations,’ . . . the State must show that any new purportedly sensitive place where it seeks to restrict firearm-carry shares that characteristic.” (*Id.* (quoting *Bruen*, 142 S.Ct. at 2133)).

Novotny Plaintiffs’ strained reading of the sensitive-places doctrine is unsupported by *Bruen* or any other authority. They claim that the Supreme Court did not include schools or government buildings among the enumerated sensitive places, but the Court expressly adopted *Heller*’s prior identification of those locations as sensitive places. *See Bruen*, 142 S.Ct. at 2133.⁴ Although the

4. There is no indication that *Bruen* disturbed any of the Court’s conclusions in *Heller*. *See Bruen*, 142 S.Ct. at 2122 (“We too agree,

Appendix D

Supreme Court in *Bruen* refused to find that the entirety of Manhattan was a sensitive place simply because it was crowded and protected by police, *id.* at 2134, the Court did not comprehensively define sensitive places, *id.* at 2133. The Supreme Court merely listed schools, government buildings, legislative assemblies, polling places, and courthouses as “settled” examples, and invited courts to “use analogies to those historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.” *Id.* (emphasis in original). Accordingly, because *Bruen* conclusively named schools among the other examples of sensitive places, Novotny Plaintiffs’ argument that sensitive places are limited to buildings with comprehensive, state-provided security is baseless.

After explaining that Courts could analogize to historical sensitive places, the Supreme Court provided guidance regarding the relevant time period for historical sources:

Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them.*” *Heller*, 554 U.S. at

and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.”); *id.* at 2157 (“Nor have we disturbed anything that we said in *Heller* or *McDonald v. Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), about restrictions that may be imposed on the possession or carrying of guns.”) (Alito, J., concurring).

Appendix D

634-635, 128 S.Ct. 2783 (emphasis added). The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years.

Id. at 2136. The Supreme Court left open the question of whether “courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope.” *Id.* at 2138 (“We need not address this issue today because, as we explain below, the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.”). In *Maryland Shall Issue, Inc. v. Montgomery County*, this Court concluded that “historical sources from the time period of the ratification of the Fourteenth Amendment are equally if not more probative of the scope of the Second Amendment’s right to bear arms as applied to the states by the Fourteenth Amendment.” No. TDC-21-1736, 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260, at *8 (D.Md. July 6, 2023), appeal docketed, No. 23-1719 (4th Cir. July 10, 2023) (citing *Bruen*, 142 S.Ct. at 2138).

Plaintiffs argue that this Court erred in considering historical regulations around the ratification of the Fourteenth Amendment. (Novotny Pls.’ Reply at 17; *Kipke*, Reply Supp. Pls.’ Mot. Prelim. Inj. [“Kipke Pls.’ Reply”] at 37, ECF No. 29). Novotny Plaintiffs argue that the Fourth Circuit has held that 1791, the year the Second Amendment was ratified, is “the critical year

Appendix D

for determining the amendment’s historical meaning.” (Novotny Pls.’ Reply at 17 (quoting *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 419 (4th Cir.), *as amended* (July 15, 2021), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021), *cert. denied sub nom.*, *Marshall v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 142 S. Ct. 1447, 212 L. Ed. 2d 540 (2022))). Novotny Plaintiffs recognize that *Hirschfeld* was vacated and can thus serve only as persuasive authority, not binding precedent. (*Id.* at 17 n.1). Further, the Supreme Court expressly declined to find that historical evidence from the ratification of the Second Amendment could not be considered. *Bruen*, 142 S.Ct. at 2138. Accordingly, the Court agrees with the logic in *Maryland Shall Issue* and will thus consider historical evidence from ratification of the Fourteenth Amendment in 1868.

2. Likelihood of Success on the Merits

The first requirement of a motion for preliminary injunction is that the moving party demonstrate a likelihood of success on the merits. *Winter*, 555 U.S. at 20. To show a likelihood of success on the merits in the context of the constitutionality of firearm regulations, plaintiffs must show that their conduct is covered by the plain text of the Second Amendment. *See Bruen*, 142 S.Ct. at 2126. If plaintiffs succeed, the government must then demonstrate that the regulations are consistent with “the Nation’s historical tradition of firearm regulation.” *Id.* at 2130.

Appendix D

As a preliminary matter, the Court notes that there is no dispute that Plaintiffs' conduct is covered by the plain text of the Second Amendment. The Second Amendment protects the individual's right to carry a gun for self-defense outside the home, *id.* at 2122, and Plaintiffs wish to exercise that right in locations where Maryland law prohibits firearms. Accordingly, the Court turns to whether State Defendants can establish that the challenged provisions are consistent with historical regulation.

The Court will analyze each restriction separately. It will start with the restrictions challenged by all Plaintiffs, which are the carry restrictions in: museums; health care facilities; State parks, State forests, and Chesapeake Forest Lands; mass transit facilities; locations selling alcohol; and private property. (Novotny Pls.' Mot at 8; *Kipke*, Pls.' Mem. Supp. Mot. Prelim Inj. ["Kipke Pls.' Mot."] at 10-12, ECF No. 12-1). It will then move to the remaining restrictions challenged by the Kipke Plaintiffs, which are: school grounds; government buildings; stadiums, amusement parks, casinos, and racetracks; public demonstrations; and State highway rest areas.⁵ (*Kipke* Pls.' Mot. at 10-12).

5. After State Defendants explained that Maryland law only prohibits displaying a firearm at a highway rest area, not carrying a concealed handgun, Kipke Plaintiffs withdrew their challenge to COMAR 11.04.07.12. (Opp'n Kipke Pls.' Mot. Prelim. Inj. ["Opp'n Kipke Mot."] at 60-61, ECF No. 21-1; *Kipke* Pls.' Reply. at 34). Accordingly, the Court will not determine whether to preliminarily enjoin enforcement of Maryland's firearm restrictions in State highway rest areas.

*Appendix D***a. Firearm Carry Restrictions Challenged
By All Plaintiffs****i. Museums**

Plaintiffs first challenge SB 1's prohibition on carrying firearms at museums. They argue that firearm violence and museums existed at the time of the founding, but that guns were not banned in museums. (*See* Novotny Pls.' Mot. at 26-27, 34-35; Kipke Pls.' Mot. at 28-29). Thus, according to Plaintiffs, SB 1 cannot be consistent with historical regulations. (*Id.*). State Defendants respond that museums are analogous to schools, and therefore they are sensitive places "outside of the purview of the Second Amendment." (Opp'n Novotny Mot. at 37). State Defendants also argue that the restrictions in museums are supported by historical regulations related to "place[s] where persons are assembled for educational, literary, or scientific purposes." (*Id.* at 37-38).

Plaintiffs' challenge on this point is unlikely to succeed. First, as set forth above, *Bruen* affirmed that schools are sensitive places, and museums are like schools because they serve an educational purpose and are often geared towards children. (*See e.g.*, Decl. Anita Kassof ¶¶ 4-7, ECF No. 36-8 (noting that the Baltimore Museum of Industry's ["BMI"] exhibits are designed for children and stating that the museum hosts over 200 children at a time); (Mark J. Potter Decl. ¶ 6, ECF No. 36-9 (explaining that the Maryland Science Center hosts as many as 2,000 children at once). Further, because Maryland's restrictions on firearms in museums can be justified by

Appendix D

the protection of children as a vulnerable population, regulations banning firearms in museums are similar to those in schools.

Second, SB 1's prohibition on carrying in museums is supported by a representative number of historical statutes that demonstrate a historical tradition of firearm regulation in places of gathering for education, literary, or scientific purposes. (*See* Gen. L. Tx., ch. 46 § 1 (1870), ECF No. 36-17); Gen. L. Mo., Crim. § 1 (1874), ECF No. 36-18); Sess. L. Az. § 3 (1889), ECF No. 36-19); Ok. Stat. Crim., ch. 25 §§ 7-10 (1890), ECF No. 36-20; Mt. Gen. L, ch. 35 § 3 (1903), ECF No. 36-22). These historical provisions imposed a similar burden to SB 1 on the right to bear arms, and they are comparably justified by the need to prevent disruption of educational, literary, or scientific purposes.⁶ *See Md. Shall Issue, Inc.*, 2023 U.S. Dist.

6. The Court acknowledges that *Bruen* identified several jurisdictions, including Arizona, New Mexico, Idaho, and Oklahoma, as comprising of less than 1% of the United States' population in 1890, 142 S.Ct. at 2154, and that the Supreme Court cautioned against using outlier jurisdictions or statutes as representative historical analogues, *id.* at 2133. Nevertheless, *Bruen* did not designate Texas as an outlier jurisdiction—it merely found that two firearm bans not at issue here were unusually broad compared to other State regulations at the time. *Id.* at 2153.

In the instant case, although State Defendants do cite some statutes from outlier jurisdictions, they also cite Texas and Missouri statutes prohibiting firearms where persons are assembled for education, literary, or scientific purposes. (*See* Opp'n Novotny Mot. at 37-38 (citing Gen. L. Tx., ch. 46 § 1; Gen. L. MO, Crim. § 1)). Further, the instant case can be distinguished from *Bruen* because

Appendix D

LEXIS 117902, 2023 WL 4373260, at *12 (denying motion for preliminary injunction as to carrying restrictions in libraries because libraries are “places for gathering for literary or educational purposes”). Accordingly, the Court finds that, at this stage in the litigation, Plaintiffs have failed to demonstrate a clear likelihood of success on the merits as to their challenge to SB 1’s museum restriction.

ii. Health Care Facilities

Similarly, Plaintiffs have not demonstrated a clear likelihood of success regarding SB 1’s prohibition on carrying firearms at health care facilities because health care facilities are sensitive places, and their regulation is similar to historical analogues that prohibited firearms in places where people assembled for scientific purposes. Plaintiffs argue that State Defendants cannot point to similar historical regulations, and there is “no doubt the medical profession existed in 18th and 19th century America, and so too did firearm violence.” (*See* Novotny Pls.’ Mot. at 28 (internal citation removed)); Kipke Pls.’ Mot at 30-31). Plaintiffs’ argument is unconvincing because health care facilities, like schools, serve a vulnerable population, and their regulation is justified by the protection of that population.

Further, as discussed above, there are representative historical statutes aimed at protecting places for

the State Defendants here have successfully analogized museums to schools as sensitive places. *See Bruen*, 142 S.Ct. at 2134 (rejecting the State of New York’s argument that the island of Manhattan is a sensitive place).

Appendix D

educational, literary, or scientific purposes, and health care facilities clearly advance a scientific purpose. While these statutes do not expressly prohibit firearms in health care facilities, *Bruen* does not require historical statutes to be a “twin” or “dead ringer” for the modern regulation. 142 S.Ct. at 2133. Additionally, as this Court explained in *Maryland Shall Issue*, “hospitals did not exist in their modern form at the time of the ratification of the Second or Fourteenth Amendments,” 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260, at *14, and thus a more nuanced analysis involving other historical analogues is appropriate. Consequently, the Court concludes that Plaintiffs are unlikely to succeed as to their challenge of SB 1’s prohibition on carrying guns in health care facilities.

**iii. State Parks, State Forests, and
Chesapeake Forest Lands**

Plaintiffs next argue that SB 1’s ban of firearms in State parks, forests, and Chesapeake Forest Lands violates their Second Amendment rights. They contend that the ban covers “thousands of acres of land” without justification, and that there are no comparable historical regulations, despite the existence of public parks at the founding. (Novotny Pls.’ Mot. at 31-32; Kipke Pls.’ Mot. at 23-25). State Defendants make three arguments in response: (1) parks are State property, and thus the state, as the proprietor, may restrict firearms, (2) parks are sensitive places, and (3) SB 1’s restriction on firearms in parks is consistent with historical firearm regulation. (Opp’n Novotny Mot. at 44-48). The Court will address each of these arguments.

Appendix D

As to the State-as-proprietor argument, State Defendants correctly point out private property owners are unrestricted by the Second Amendment, and they may choose to prohibit firearms. *See Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2072, 210 L. Ed. 2d 369 (2021) (explaining that the right to exclude is “one of the most essential sticks in the bundle of rights that are commonly characterized as property”). Further, it is also clear that when the State acts as a market participant and proprietor by operating a business, it typically has the same rights as a private proprietor to manage its internal affairs. *See Reeves, Inc. v. Stake*, 447 U.S. 429, 445-46, 100 S. Ct. 2271, 65 L. Ed. 2d 244 (1980) (holding that a State-operated cement plant was not subject to the Commerce Clause). However, States acting in their proprietary capacities do not necessarily enjoy “absolute freedom” from constitutional constraints. *See United States v. Kokinda*, 497 U.S. 720, 725-26, 110 S. Ct. 3115, 111 L. Ed. 2d 571 (1990) (“The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business[.]”). Indeed, *Bruen* did not opine on a State’s right as a property owner to exclude firearms, so *Bruen*’s historical test for determining whether gun restrictions are constitutional did not take this issue into account. Consequently, the Court concludes that even if the State regulates firearms in its proprietary capacity, State Defendants must still show that the laws are consistent with historical regulation, or they must successfully analogize the restricted location to an established sensitive place. *See Bruen*, 142 S.Ct. at 2132 (describing required historical analysis).

Appendix D

Here, State Defendants have neither shown that Maryland acts as a proprietor in regulating firearms in its parks, nor that parks are sensitive places. State Defendants have, however, provided a sufficient historical record to show that SB 1's park restrictions are consistent with historical regulations.

First, although the State owns the property in its parks, parks are not businesses, and State Defendants have not established Maryland acts as a market participant by owning parks open to the public. *See Reeves*, 447 U.S. at 445-46 (discussing South Dakota's participation in the free market as the operator of a cement plant). State Defendants have also failed to show that parks are sensitive places. As Plaintiffs point out, Maryland's parks cover thousands of miles, and while children surely visit these parks for education or recreation, State Defendants do not allege that the parks are primarily geared towards children or any other vulnerable population. Additionally, the Court notes that *Bruen* named just a few examples of sensitive places, and the Court is not convinced that parks are sufficiently analogous to schools, government buildings, legislative assemblies, polling places, or courthouses.

Nevertheless, State Defendants have shown that SB 1's restriction on firearms in parks is consistent with historical firearm regulation. Very few public parks existed at the time the Second Amendment was ratified, and those that did exist were typically located in cities. (*See* Saul Cornell Decl. ¶¶ 54-56, ECF No. 36-3). Plaintiffs thus argue that because these parks existed and were not

Appendix D

regulated, there is no historical tradition of regulation in parks. Their argument misses the mark for several reasons. First, Plaintiffs point to just a handful of parks in existence at the time of the founding such as Boston Common and New York's City Hall Park. (Novotny Pls.' Mot. at 31-32; Kipke Pls.' Mot. at 23-24). The Court cannot infer that parks were historically not regulated from so few places. Further, not only were there few parks at that time, but these parks did not resemble the modern, expansive State and federal park system that the United States has today. Boston Common, for example, "was used primarily as a pasture, a place of execution, and site for the militia to muster and drill." (Cornell Decl. ¶ 54). Notably, it was not completely unregulated, and militia were prohibited from "coming to muster with a loaded firearm." (*Id.*).

The historical record further shows that as States and cities created more parks, they also imposed firearm regulations. Around the time the Fourteenth Amendment was ratified, several jurisdictions prohibited firearms in public parks, including: New York City (Mins. Proceedings Brd. Comm'rs (1858) at 3-5, ECF No. 36-37); Philadelphia (Gen. L. Pa., § 21, (1868), ECF No. 36-39); Chicago (L. Chicago, ch. 31 § 6 (1873), ECF No. 36-41); St. Louis (St. Louis Ordinance, Art. 11 § 3 (1881), ECF No. 36-46); and Boston (Park Ordinances, Brd. Comm'rs § 3 (1886), ECF No. 36-49). *See Md. Shall Issue*, 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260 at *11 (discussing historical regulations in public parks); (Cornell Decl. at ¶ 56) (same). Novotny Plaintiffs argue that these are urban parks, so there is no precedent for a ban of all state parks. (Novotny

Appendix D

Pls.’ Reply at 39-40). However, rural, more isolated state parks were not established in significant numbers until after the ratification of the Fourteenth Amendment, and thus the Court will not infer a lack of regulation from the absence of laws governing rural state parks at that time. (*See* Cornell Decl. ¶ 57.). Lastly, the Court finds that SB 1’s public park ban imposes the same burden on the right to armed self-defense as these historical statutes, and the laws are comparably justified by the need for public safety.⁷ Accordingly, the Court finds that Plaintiffs are unlikely to succeed in their challenge of SB 1’s prohibition on firearms in parks.

iv. Mass Transit Facilities

Plaintiffs challenge Maryland’s ban of firearms in mass transit facilities and in vehicles owned by the State. They argue that firearm violence existed at the founding, as did transportation, and that transportation was not regulated. (Novotny Pls.’s Mot. at 29-30; Kipke Pls.’ Mot. at 25-27). State Defendants respond that the State acts in its proprietary capacity in providing transportation, and therefore the State is free to restrict firearms. (Opp’n Novotny Mot. at 35-36). State Defendants further argue

7. The need to advance public safety may be less apparent in rural, isolated areas. The Court also acknowledges that when it denied the motion for preliminary injunction in *Maryland Shall Issue* as to the ban on firearms in Montgomery County parks, the Court specifically noted that Montgomery County was densely populated. 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260, at *11. Nevertheless, even isolated parks can draw large crowds, and the public safety justification remains the same.

Appendix D

that mass transit facilities are sensitive places. (*Id.* at 36-37). The Court agrees with State Defendants.

While there is no doubt that transportation existed at the time of the founding, almost all transportation was provided by private companies. (Decl. Dr. Brennan Rivas ¶ 13, ECF No. 36-5). Plaintiffs point to only one public ferry in South Carolina that was established as early as 1725. (Novotny Pls.’s Mot. at 29; Kipke Pls.’ Mot. at 25). As explained above in the Court’s analysis of the small number of public parks in existence in the eighteenth century, the Court cannot infer a lack of regulation from the absence of public transportation regulations at that time. Rather, because State-operated transit barely existed at the founding, the Court must take a more nuanced approach to the historical analysis. *See Bruen*, 142 S.Ct. at 2132 (requiring a “nuanced approach” where modern concerns were not contemplated at the founding).

This approach indicates that mass transit facilities are sensitive places because they are analogous to both schools and government buildings. Like schools, mass transit facilities are crowded spaces that serve vulnerable populations like children and disabled people. Additionally, some mass transit facilities, such as bus, train, or subway stations, could also be categorized as government buildings, which are established sensitive places. The Court also notes that in providing transportation services, Maryland is a market participant, and thus it may have the ability to exclude firearms on its property, just as a private entity engaged in transportation services could. *See Bldg. & Const. Trades Council of Metro. Dist. v. Associated*

Appendix D

Builders & Contractors of Mass./R. I., Inc., 507 U.S. 218, 231-32, 113 S. Ct. 1190, 122 L. Ed. 2d 565 (1993) (explaining that a State may “manage its own property when pursuing a purely proprietary interest . . . where analogous private conduct would be permitted”). As explained above, the Supreme Court has not provided guidance on the State’s powers as a proprietor or property owner in the context of the Second Amendment, and thus the Court relies on the identification of mass transit facilities as sensitive places in its determination that Plaintiffs are unlikely to succeed in their challenge of Maryland’s mass transit ban.

v. Locations Selling Alcohol

Plaintiffs also claim that SB 1’s ban on firearms in locations licensed to sell alcohol violates the Second Amendment. Plaintiffs argue that such locations, like bars and restaurants, as well as firearm violence, existed at the time of the founding, and that there is no corresponding historical tradition of firearm regulation. (Novotny Pls.’ Mot. at 25-26; Kipke Pls.’ Mot. at 22-23). State Defendants respond that locations selling alcohol are sensitive places because they are crowded and serve vulnerable people. (Opp’n Novotny Mot. at 38-39). Further, State Defendants claim that the firearm ban in these locations is consistent with historical regulations. (*Id.*). They cite an 1890 Oklahoma law banning firearms where liquor is sold, (Ok. Stat. Crim., ch. 25 § 7, ECF No. 36-20), and several laws prohibiting intoxicated people from carrying, (*see* Patrick J. Charles Decl. ¶ 26, ECF No. 36-4).

Appendix D

At bottom, the Court agrees with Plaintiffs and finds that they have shown a clear likelihood of success in their challenge of SB 1's firearm ban in locations selling alcohol. First, bars and restaurants are not analogous to any established sensitive place. While it is true that such businesses can attract crowds and there are risks associated with alcohol consumption, the Court is unconvinced that intoxicated people qualify as a vulnerable population, like children or hospitalized individuals. Additionally, while some crowded spaces are considered sensitive places, *Bruen* rejected the argument that Manhattan was sensitive "simply because it is crowded and protected generally by the New York City Police Department." 142 S.Ct. at 2134. Applying the same logic here, the Court finds that locations selling alcohol cannot be designated as sensitive places merely because they are crowded.

Additionally, the Court concludes that SB 1's restriction on locations selling alcohol is not consistent with historical regulations. The Supreme Court has already identified Oklahoma as a non-representative jurisdiction, *Bruen*, 142 S.Ct. at 2154, and thus the Court will not interpret the Oklahoma statute as evincing the nation's tradition of firearm regulation. As for the other statutes cited by State Defendants, they are not similar to SB 1's restriction on locations selling alcohol because they do not impose a "comparable burden on the right of armed self-defense." *See id.* at 2133. Those historical statutes prevented only intoxicated individuals from carrying firearms, while SB 1 bans all people present at locations selling alcohol from carrying. Novotny Plaintiffs have represented that they

Appendix D

“have no objection to prohibiting intoxicated people from carrying firearms.” (Novotny Pls.’ Reply at 35-36). Indeed, existing Maryland law already bans carrying a firearm while under the influence of alcohol or drugs. COMAR 29.03.02.02. But SB 1 does not mirror that more narrow prohibition, and because it broadly prevents anyone at a location selling alcohol from carrying, Plaintiffs are likely to succeed on the merits in their Second Amendment challenge related to those locations.

vi. Private Building Consent Rule**A. Standing**

As a threshold matter related to Plaintiffs’ challenge of SB 1’s private building consent rule, State Defendants argue that Plaintiffs lack standing. (Opp’n Novotny Mot. at 49). SB 1 prohibits carrying a firearm into private property unless the owner has posted clear and conspicuous signage or given express permission allowing individuals to carry a firearm into that building. 2023 Md. Laws ch. 680 (to be codified at CR § 6-411(c)). Plaintiffs allege that the private building consent rule injures them because were it not for the rule, they would carry firearms into private property where no signage or consent is provided, such as grocery stores, drug stores, and gas stations. (*See Novotny*, Compl. ¶ 22; *Kipke*, Compl. ¶ 40).

Article III of the United States Constitution limits the jurisdiction of federal courts to “cases” and “controversies,” so plaintiffs in federal civil actions must demonstrate standing to assert their claims. *Lujan v.*

Appendix D

Defs. of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The “irreducible constitutional minimum” requirements of standing consist of three elements: (1) the plaintiff must have suffered an “injury in fact”; (2) the injury must be fairly traceable to the actions of the defendant; and (3) it must be “likely” that the injury will be “redressed by a favorable decision.” *Id.* at 560-61 (citations omitted). An injury in fact must be “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (quoting *Lujan*, 504 U.S. at 560). A plaintiff can satisfy the injury-in-fact requirement by alleging “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)).

State Defendants argue that Plaintiffs cannot establish any of the three elements. First, they contend that Plaintiffs have not suffered an injury in fact because their claim is “based on the premise that there exists some private building (that plaintiffs wish to enter armed) for which the owner both (1) consents to individuals entering their building armed, and (2) for whatever reason will decline to express that consent through a sign (or other express permission).” (Opp’n Novotny Mot. at 49-50). Plaintiffs respond that they have suffered an injury in fact because:

Appendix D

[They] currently do carry firearms into private buildings open to the public where no sign either expresses or denies consent to that act, but will be forced to cease doing so when [SB 1] takes effect . . . Moreover, the need to ensure consent before engaging in constitutionally protected conduct is itself a burden on that conduct and thus an injury in fact.

(Novotny Pls.’ Reply. at 41-42; *see also* Kipke Pls.’ Reply at 47-48).

The Court agrees with Plaintiffs and finds that they have suffered an injury in fact. The Second Amendment “presumptively guarantees” citizens the right to carry arms “in public for self defense.” *Bruen*, 597 U.S. 1, 142 S.Ct. 2111, 2135, 213 L. Ed. 2d 387 (2022). Plaintiffs have alleged that they carry firearms in privately-owned buildings that are open to the public and that do not contain signage granting consent to carry. Thus, they have expressed an intention to engage in a course of conduct affected with their Second Amendment rights, and SB 1 creates a credible threat of prosecution. *See Susan B. Anthony List*, 573 U.S. at 159.

Second, State Defendants argue that Plaintiffs have failed to establish traceability because any alleged injury to Plaintiffs’ Second Amendment rights would be caused by the discretion of third-party property owners, not the State. (Opp’n Novotny Mot. at 50). Plaintiffs acknowledge that private property owners are not bound by the Second Amendment, so they have a right to prohibit firearms. (*See*

Appendix D

Novotny Pls.’ Reply at 44; Kipke Pls.’ Reply at 49); *Cedar Point Nursery*, 141 S.Ct. at 2072. But the right to exclude does not equate to a break in the chain of constitutional causation that would create a lack of traceability to the State. To the contrary, Plaintiffs have alleged that they currently carry firearms in buildings open to the public, and that they will not be able to do so because of SB 1. The ability of private property owners to remedy Plaintiffs’ injury is irrelevant, and the case law cited by State Defendants is inapposite. For example, State Defendants rely on *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 44, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976), where the Supreme Court held that indigent patients lacked standing to challenge an IRS ruling that extended charitable tax exemptions to nonprofit hospitals that did not provide hospitalization services to patients who could not pay. *Id.* The Supreme Court found that the alleged harm—reduced access to hospital services—was not traceable to the IRS’s ruling because it was “purely speculative” whether the denials of medical service could be traced to the IRS’s “encouragement” to limit services, or if the denials instead resulted from independent hospital policy decisions. *Id.* at 42-43. This differs greatly from the instant case, where Plaintiffs are prevented from carrying in certain privately owned buildings because of SB 1.⁸

8. The Court also notes that while a private property owners’ right to exclude is unquestioned, SB 1 does not merely codify this longstanding right. The right to exclude presumes that individuals may carry a gun unless the property owner prohibits it—SB 1’s private building consent rule does the opposite, because it presumptively bans firearms unless the property owner expressly consents.

Appendix D

Lastly, the Court finds that Plaintiffs have established redressability for similar reasons. State Defendants argue that private property owners can exclude firearms, so the injury—not being able to carry a firearm into private buildings—would not be redressed by enjoining SB 1. (Opp’n Novotny Mot. at 52). State Defendants mischaracterize Plaintiffs’ injury—it is not merely the inability to carry in privately-owned buildings. Rather, their injury is the threat of prosecution for carrying firearms in places that, under prevailing law, they have previously had the presumptive right to do so absent express prohibition by the property owner. Accordingly, enjoining SB 1 would redress Plaintiffs’ injury.

B. Historical Analysis

The Court now moves to whether SB 1’s private building consent rule is consistent with historical firearm regulation.⁹ State Defendants cite a 1715 Maryland colonial law that imposed criminal penalties against anyone “of evil fame, or a vagrant, or dissolute liver, that shall shoot, kill or hunt, or be seen to carry a gun, upon any person’s land, whereon there shall be a seated plantation, without

9. State Defendants also argue that the Second Amendment does not cover Plaintiffs’ conduct in carrying firearms in privately-owned buildings. (Opp’n Novotny Mot. at 48-49). For the reasons set forth *infra* in the Court’s discussion of standing, the Court disagrees. Again, private property owners can freely exclude firearms, but absent their prohibition, Plaintiffs have a presumptive right to carry in buildings open to the public. Accordingly, Plaintiffs’ conduct related to carrying in privately owned buildings is covered by the Second Amendment.

Appendix D

the owner's leave, having been once before warned." (Md. Acts., ch. 26 § 7 (1715), ECF No. 36-24). This statute appears to be aimed at limiting hunting and the carrying rights of criminals, not the general population, and thus it cannot serve as evidence of a historical tradition of prohibiting people from carrying on private property.

Next, State Defendants cite other eighteenth century laws from Pennsylvania, New Jersey, New York, and Massachusetts, but these statutes are similarly aimed at prohibiting hunting on another's land. (*See* Pa. Stat., ch. 246 § 3 (1721), ECF No. 36-25; Nj. Acts, ch. 305 § 4 (1722), ECF No. 36-26; Ny. L., ch. 1233 § 1 (1763), ECF No. 36-27; Acts. Colony Nj., § 1 (1771), ECF No. 36-28; Acts. L. Ma., ch. 28 (1789), ECF No. 36-29). Under the *Bruen* framework, these laws are not representative of SB 1's private building consent rule because they are not similarly justified. *See Antonyuk v. Hochul*, 639 F.Supp.3d 232, 340-42 (N.D.N.Y. 2022) (identifying the laws from Pennsylvania, New Jersey, and New York as "anti-poaching laws,' aimed at preventing hunters . . . from taking game off of other people's lands").

State Defendants then cite the laws from the ratification of the Second Amendment, including statutes from Louisiana and Texas. (Acts. La., § 1 (1865), ECF No. 36-30; L. Tx., 11 Crim. Code ch. 6508(a) (1867), ECF No. 36-31). Louisiana and Texas created these laws as part of their discriminatory "Black Codes," which sought to deprive African Americans of their rights. *See McDonald*, 561 U.S. at 847 (Thomas, J., concurring in part and concurring in the judgment) (describing this history).

Appendix D

The Supreme Court has cautioned against relying on such laws, and this Court will not infer a historical tradition of regulation consistent with the private building consent rule from these statutes. *See Bruen*, 142 S.Ct. at 2149 (concluding that two discriminatory statutes were “surely too slender a reed on which to hang a historical tradition of restricting the right to public carry”). Further, laws primarily aimed at only one group of people do not have the same impact on the right to bear arms as the private building consent rule, which broadly bans carrying without consent in private buildings for all citizens. Nor are these laws comparably justified because their intent was to discriminate, rather than to advance public safety.

Lastly, State Defendants reference an 1893 Oregon law, which may have been aimed at hunting and is thus dissimilar to SB 1’s private building consent rule. (Gen. L. Or., ch. 79 §§ 1-3, (1893), ECF No. 36-32 (prohibiting armed persons from entering another’s property without permission and with a dog)). Even if this statute was not aimed at preventing poaching, the Court concludes that this single law does not evince a historical tradition of prohibiting firearms on private property absent the owner’s consent. *See Bruen*, 142 S.Ct. at 2133 (warning against “endorsing outliers that our ancestors would never have accepted.”). Accordingly, the Court finds that Plaintiffs are clearly likely to succeed in their challenge of SB 1’s private building consent rule.¹⁰

10. Kipke Plaintiffs also argue that the private building consent rule violates the First Amendment and must be enjoined for that reason. (Kipke Pls.’ Mot. at 35). Because the Court has already found that Plaintiffs are likely to succeed in their claim for a violation of the

*Appendix D***b. Firearm Carry Provisions Challenged by Kipke Plaintiffs**

Having determined whether Novotny and Kipke Plaintiffs' mutual claims are likely to succeed, the Court now turns to the additional claims brought by the Kipke Plaintiffs. Kipke Plaintiffs challenge firearm restrictions in the following locations: school grounds; government buildings; stadiums, racetracks, amusement parks, and casinos; and within 1,000 feet of a public demonstration. (Kipke Pls.' Mot. at 10-12).

i. School Grounds

First, Kipke Plaintiffs do not challenge Maryland's ban on carrying firearms inside School buildings, but they argue that the restrictions prohibiting carrying on school grounds are unconstitutional. (*Id.* at 31-32). Specifically, they claim that historical regulations on firearms in schools did not mention the grounds, and therefore firearms cannot be restricted there. (*Id.*).

The Court is not convinced. It is settled law that schools are sensitive places. *Heller*, 554 U.S. at 626 ("nothing in [this] opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings[.]"); *McDonald*, 561 U.S. at 786 (repeating "assurances" that schools

Second Amendment, and will further grant the Plaintiffs' Motions as to that claim as explained below, the Court need not address the First Amendment argument.

Appendix D

and government buildings are sensitive places); *Bruen*, 142 S.Ct. at 2133 (identifying schools and government buildings as sensitive places). Kipke Plaintiffs fail to acknowledge that school grounds are plainly analogous to school buildings, and therefore the grounds may also be designated as sensitive places. *See Bruen*, 142 S.Ct. at 2134 (explaining that schools are sensitive places, and “courts can use analogies to those historical regulations of sensitive places to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.”) (cleaned up). Like schools themselves, school grounds serve children through places like drop-off and pick-up areas, playgrounds, and recreational areas. Thus, the bans in schools and school grounds are comparably justified by vulnerable populations and public safety, and the burden on the right to self-defense is the same. Accordingly, the Kipke Plaintiffs are not likely to succeed in their challenge of Maryland’s ban on carrying on school grounds.

ii. Government Buildings

Similarly, Kipke Plaintiffs are unlikely to succeed on the merits regarding their challenge of Maryland’s ban on carrying firearms in government buildings. Government buildings are indisputably sensitive places. *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786; *Bruen*, 142 S.Ct. at 2133. While it is true that *Bruen* identifies legislative assemblies, polling places, and courthouses as additional examples of sensitive places, 142 S.Ct. at 2133, nothing in that opinion, nor in *Heller* or *McDonald*, indicates that only these types of government buildings are sensitive

Appendix D

places. On the contrary, *Heller* and *McDonald* refer only to “government buildings” generally, and Bruen expressly adopts “Heller’s discussion of ‘longstanding’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.’” *Id.* at 2133 (quoting *Heller*, 554 U.S. at 626). Consequently, the Court concludes that Kipke Plaintiffs have not demonstrated a clear likelihood of success on the merits as to their challenge of Maryland’s ban on carrying in government buildings.

iii. Stadiums, Racetracks, Amusement Parks, and Casinos

Next, Kipke Plaintiffs challenge firearm regulations in stadiums (including Camden Yards), racetracks, amusement parks, and casinos. This Court has previously upheld regulations in similar places, such as recreational facilities and multipurpose exhibition facilities, because there is a historical tradition of restricting carrying in these locations. *Md. Shall Issue*, 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260, at *12 (citing same statutes as State Defendants in the instant case); (see Opp’n Kipke Pls.’ Mot. at 48). Kipke Plaintiffs contend that *Maryland Shall Issue* was wrongly decided because the statutes cited by the State are not analogous to modern regulations on entertainment venues, and the Court mistakenly relied on historical sources from the ratification of the Fourteenth Amendment. (Kipke Pls.’ Reply at 37).

The Court disagrees. Kipke Plaintiffs have not explained how the Court allegedly erred in its reasoning

Appendix D

by analogy in *Maryland Shall Issue*, so they have not met their burden as movants to establish a clear likelihood of success on the merits. Additionally, as set forth above, *Bruen* did not confine historical analysis to the time period of the ratification of the Second Amendment. *Bruen*, 142 S.Ct. at 2136 (“Constitutional rights are enshrined with the scope they were understood to have when the people adopted them. The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years.”) (cleaned up). In fact, the Supreme Court declined to opine on “whether courts should primarily rely” on historical evidence from the ratification of the Second or Fourteenth Amendments. *Id.* at 2138. Accordingly, this Court will follow *Maryland Shall Issue* in considering historical sources from the nineteenth century. Consistent with that decision, the Court concludes that the regulations restricting firearms in stadiums, racetracks, amusement parks, and casinos are analogous to historical statutes banning them in gathering places for entertainment, and thus Kipke Plaintiffs have failed to show a likelihood of success as to that claim.

iv. Public Demonstrations

Lastly, Maryland law bans carrying a firearm within 1,000 feet of public demonstration after “(i) the person has been advised by a law enforcement officer that a demonstration is occurring at the public place; and (ii) the person has been ordered by the law enforcement officer to leave the area of the demonstration until the person

Appendix D

disposes of the firearm.” CR § 4-208(b)(2). As a threshold matter, State Defendants argue that Kipke Plaintiffs do not have standing to challenge this provision. State Defendants contend that there is no injury in fact because Kipke Plaintiffs’ alleged injury is speculative and based on “a highly attenuated chain of possibilities.” (Opp’n Kipke Mot. at 69-70).

The Court disagrees. Kipke alleges that if not for her fear of persecution, she would carry a handgun at a public demonstration and remain there after a law enforcement officer ordered her to leave. (Supp. Kipke Decl. ¶ 2, ECF No. 29-1). Thus, she has adequately alleged “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute.” *Susan B. Anthony List*, 573 U.S. at 159 (quoting *Babbitt* 442 U.S. at 298). Further, she has also alleged a credible threat of persecution. Although State Defendants suggest that no individual has ever been prosecuted under the statute, (Opp’n Kipke Mot. at 71 n.47), they have also failed to disavow prosecution, and Kipke’s desired conduct is barred by the statute’s plain language. *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018) (“Threat of prosecution is especially credible when defendants have not ‘disavowed enforcement’ if plaintiffs engage in similar conduct in the future”) (quoting *Susan B. Anthony List*, 573 U.S. at 163). The Court therefore concludes that Kipke Plaintiffs have standing.¹¹

11. When there are multiple plaintiffs, the Court need only determine that there is at least one plaintiff with standing for a particular claim in order to consider the claim. *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439, 137 S. Ct. 1645, 198 L. Ed. 2d

Appendix D

As to the merits of the public demonstration claim, Kipke Plaintiffs have also demonstrated a clear likelihood of success. Just before the ratification of the Second Amendment, “six out of the thirteen original colonies required their citizens to go armed when attending . . . public assemblies.” *Koons v. Platkin*, No. CV 22-7463 (RMB/AMD), 2023 U.S. Dist. LEXIS 85235, 2023 WL 3478604, at *73 (D.N.J. May 16, 2023) (citing *Heller*, 554 U.S. at 601) (observing that “[m]any colonial statutes required individual arms bearing for public-safety reasons”). State Defendants cite to several nineteenth-century statutes that prohibited firearms at public assemblies. (See Opp’n Kipke Pls.’ Mot. at 71). *Bruen* nevertheless makes it clear that “late-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence.” 142 S.Ct. at 2154.

The Court notes that it is obligated to question the constitutionality of Maryland’s restriction on carrying at public demonstrations because of *Bruen*’s narrow historical framework. If the Court were permitted to apply intermediate or even strict scrutiny to public demonstration restriction, the law would almost certainly pass constitutional muster, because it does not categorically ban all firearms at public demonstrations. Rather, it prohibits guns only in a narrow set of circumstances designed to promote public safety while preserving the right to bear arms. Even so, the Supreme Court has

64 (2017). Therefore, because Kipke has standing, the Court may consider Kipke Plaintiffs’ claim.

Appendix D

rejected this means-ends analysis, and this Court must conclude Kipke Plaintiffs are likely to succeed in their challenge of the public demonstration restriction.

3. Irreparable Harm

The Court now turns to the second element of a preliminary injunction claim: the likelihood of suffering irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20. The deprivation of a constitutional right “unquestionably constitutes irreparable injury.” *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)). Thus, in the context of an alleged constitutional violation, the likelihood of irreparable harm necessarily depends on the likelihood of success on the merits of the claim. *See id.* (“Without his alleged constitutional injury, [plaintiff] has failed to show that he will suffer irreparable harm.”). Accordingly, because Plaintiffs have shown a likelihood of success on the merits as to their challenges of the firearm restrictions in private property, locations selling alcohol, and within 1,000 feet of public demonstrations, they have also established irreparable harm as to those claims only.

4. Balance of the Equities and the Public Interest

Lastly, the Court will consider the balance of the equities and the public interest together because these factors merge when the State is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). State Defendants argue that the

Appendix D

challenged firearm restrictions advance public safety and that the State is entitled to enforce its duly enacted laws. (Opp’n Kipke Mot. at 88-90). Plaintiffs respond that preserving Second Amendment rights is in the public interest and that *Bruen* rejected the State’s public interest arguments. (Kipke Pls.’ Reply at 45; *see also* Novotny Pls.’ Mot. at 49).

Plaintiffs are correct that the public has a strong interest in upholding constitutional rights and the State is not harmed by an injunction preventing it from enforcing unconstitutional laws. *See Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011). Therefore, because Plaintiffs have shown a likelihood of success in their challenge to the private building consent rule and the regulations on public demonstrations and locations selling alcohol, the balance of the equities and the public interest tip in Plaintiffs’ favor as to those claims, and the Court will enjoin enforcement of those provisions.

Regarding Plaintiffs’ remaining claims, the Court finds that the balance of the equities and the public interest weighs against a preliminary injunction. As the Court explained in *Maryland Shall Issue*, *Bruen* prevents courts from considering the public interest, including safety concerns, only “[when] assessing whether a firearm restriction is unconstitutional under the Second Amendment.” *Md. Shall Issue*, 2023 U.S. Dist. LEXIS 117902, 2023 WL 4373260, at *16 (citing *Bruen*, 142 S.Ct. at 2129-30). *Bruen* did not consider whether a preliminary injunction should be granted, and thus it did not apply the test established in *Winter*, 555 U.S. at 20, which requires

Appendix D

this Court to consider the public interest in determining whether to temporarily enjoin enforcement of a law. *Id.*

Accordingly, the Court will consider State Defendants' public interest arguments, and it finds them persuasive. The devastating effects of firearm violence on Marylanders and United States citizens are self-evident. Enjoining enforcement of the Maryland firearm restrictions that either protect sensitive places or are consistent with historical regulations would undermine the public's interest in preventing gun violence. Plaintiffs' Motions will therefore be denied as to their remaining claims.

5. Dispositive Motions

Having decided to grant partial injunctive relief, the Court will deny State Defendants' Motion to Dismiss and the Motions for Summary Judgment without prejudice. (*Novotny*, ECF No. 36; *Kipke*, ECF Nos. 13, 18, 21, 23). The parties may, if they wish, refile dispositive motions after having the opportunity to supplement them and participate in discovery prior to a trial on the merits.

III. CONCLUSION

For the foregoing reasons, the Court will grant Plaintiffs' Motions for Preliminary Injunction (*Novotny*, ECF No. 24; *Kipke*, ECF No. 12) in part and deny them in part. The Motions will be granted as to the claims regarding the private building consent rule and the regulations on locations selling alcohol and public demonstrations, and the Motions will be denied in all

171a

Appendix D

other respects. The Motion to Dismiss (*Novotny*, ECF No. 36) and the Motions for Summary Judgment (*Kipke*, ECF Nos. 13, 18, 21, 23) will be denied without prejudice. A separate Order follows.

Entered this 29th day of September, 2023.

/s/ George L. Russell, III
George L. Russell, III
United States District Judge

**APPENDIX E — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF MARYLAND, FILED SEPTEMBER 29, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. GLR-23-1293,
Member Case: GLR-23-1295

SUSANNAH WARNER KIPKE, *et al.*,

Plaintiffs,

v.

WES MOORE, *et al.*,

Defendants.

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 29th day of September, 2023 by the United States District Court For The District Of Maryland, hereby:

ORDERED that Plaintiffs' Motions for Preliminary Injunction (*Kipke et al. v. Moore et al.*, (“*Kipke*”), No. GLR-23-1293, ECF No. 12); *Novotny et al. v. Moore et al.*, (“*Novotny*”), No. GLR-23-1295, ECF No. 24) are GRANTED IN PART and DENIED IN PART;

Appendix E

IT IS FURTHER ORDERED that the Motions for Preliminary Injunction are GRANTED as to the claims to enjoin enforcement of Maryland's laws restricting the carrying of firearms in: (1) locations selling alcohol, to be codified as Md. Code Ann., (2023), Crim. Law § 4-111(a)(2)(8)(i) ; (2) private buildings or property without the owner's consent, to be codified at Md. Code Ann., (2023), Crim. Law § 6-411; and within 1,000 feet of a public demonstration, Md. Code Ann., (2016), Crim. Law § 4-208.

IT IS FURTHER ORDERED that State Defendants are ENJOINED from enforcing these laws;

IT IS FURTHER ORDERED that the Motions for Preliminary Injunction are DENIED in all other respects;

IT IS FURTHER ORDERED that State Defendants' Motion to Dismiss (*Novotny*, ECF No. 36) is DENIED without prejudice;

IT IS FURTHER ORDERED that the Motions for Summary Judgment (*Kipke*, ECF Nos. 13, 18, 21, 23). are DENIED without prejudice;

IT IS FURTHER ORDERED that the parties shall FILE a joint status report within 14 days of this Order to inform the Court:

1. Whether any party plans to seek an interlocutory appeal and/or to file answers to the Complaints;

Appendix E

2. Whether the parties wish to participate in discovery, and if so, the parties shall submit a proposed scheduling order and new motions' deadline;
3. Whether the parties object to having the case transferred to a U.S. Magistrate Judge for all further proceedings;
4. Whether the parties would like would like to participate in a settlement conference;
5. Of any other matter they wish to bring to the Court's attention.

/s/ George L. Russell, III
George L. Russell, III
United States District Judge

175a

**APPENDIX F — RELEVANT STATUTORY
PROVISIONS**

U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

176a

Appendix F

U.S. Const. amend. XIV, § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

177a

Appendix F

MD Code, Criminal Law, § 4-111

§ 4-111. Wearing, carrying, or transporting firearms;
areas for children or vulnerable individuals;
government or public infrastructure areas; special
purpose areas

(a)(1) In this section the following words have the meanings indicated.

(2) “Area for children and vulnerable individuals” means:

(i) a preschool or prekindergarten facility or the grounds of the facility;

(ii) a private primary or secondary school or the grounds of the school; or

(iii) a health care facility, as defined in § 15-10B-01(g) (1), (2), (3), and (4) of the Insurance Article.

(3) “Firearm” has the meaning stated in § 4-104 of this subtitle.

(4) “Government or public infrastructure area” means:

(i) a building or any part of a building owned or leased by a unit of State or local government;

Appendix F

(ii) a building of a public or private institution of higher education, as defined in § 10-101 of the Education Article;

(iii) a location that is currently being used as a polling place in accordance with Title 10 of the Election Law Article or for canvassing ballots in accordance with Title 11 of the Election Law Article;

(iv) an electric plant or electric storage facility, as defined in § 1-101 of the Public Utilities Article;

(v) a gas plant, as defined in § 1-101 of the Public Utilities Article; or

(vi) a nuclear power plant facility.

(5) “Law enforcement official” has the meaning stated in § 4-201 of this title.

(6) “Police officer” has the meaning stated in § 3-201 of the Public Safety Article.

(7) “ROTC” means Reserve Officer Training Corps.

(8) “Service member” has the meaning stated in § 9-901 of the State Government Article.

(9) “Special purpose area” means:

(i) a location licensed to sell or dispense alcohol or cannabis for on-site consumption;

179a

Appendix F

(ii) a stadium;

(iii) a museum;

(iv) an amusement park;

(v) a racetrack; or

(vi) a video lottery facility, as defined in § 9-1A-01 of the State Government Article.

(b) This section does not apply to:

(1) a law enforcement official or a police officer;

(2) an on-duty employee of a law enforcement agency authorized by the agency to possess firearms on duty or whose duty assignment involves the possession of firearms;

(3) a service member on duty or traveling to or from duty;

(4) a member of an ROTC program while participating in an activity for an ROTC program;

(5) a correctional officer or warden of a correctional facility in the State;

(6) a railroad police officer appointed under Title 3, Subtitle 4 of the Public Safety Article;

(7) an employee of an armored car company, if the person is acting within the scope of employment and has a valid

Appendix F

permit to wear, carry, or transport a handgun issued under Title 5, Subtitle 3 of the Public Safety Article;

(8) subject to subsection (i) of this section, a person who has retired as a law enforcement official in good standing from a law enforcement agency of the United States, the State or another state, or a local unit in the State or another state, who possesses a firearm, if:

(i) 1. the person is carrying the person's badge or credential in compliance with the requirements of the badge or credential;

2. the firearm carried or possessed by the person is concealed from view under or within an article of the person's clothing; and

3. the person is authorized to carry a handgun under the laws of the State or the United States; or

(ii) 1. the person possesses a valid permit to wear, carry, or transport a handgun issued under Title 5, Subtitle 3 of the Public Safety Article; and

2. the firearm carried or possessed by the person is concealed from view under or within an article of the person's clothing;

(9) for a location that is not owned by, leased by, or otherwise under the control of the State or a political subdivision of the State:

181a

Appendix F

- (i) the owner or lessee of the location; or
- (ii) a person who is authorized by the owner or lessee of the location to wear, carry, or transport a firearm at the location for the purpose of:
 - 1. employment as a security guard licensed under Title 19 of the Business Occupations and Professions Article; or
 - 2. protecting any individual or property at the location with an express agreement between the parties, remuneration, or compensation;
- (10) a location being used with the permission of the person or governmental unit that owns, leases, or controls the location for:
 - (i) an organized shooting activity for educational purposes;
 - (ii) a historical demonstration using a firearm; or
 - (iii) hunting or target shooting; or
- (11) a firearm that is carried or transported in a motor vehicle if the firearm is:
 - (i) locked in a container; or
 - (ii) a handgun worn, carried, or transported in compliance with any limitations imposed under § 5-307

Appendix F

of the Public Safety Article, by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article.

(c) A person may not wear, carry, or transport a firearm in an area for children or vulnerable individuals.

(d)(1) A person may not wear, carry, or transport a firearm in a government or public infrastructure area.

(2) A government or public infrastructure area specified under subsection (a)(4)(i) of this section must display a clear and conspicuous sign at the main entrance of the building or the part of a building that is owned or leased by the unit of State or local government indicating that it is not permissible to wear, carry, or transport a firearm in the building or that part of the building.

(e) A person may not wear, carry, or transport a firearm in a special purpose area.

(f) A person who willfully violates subsection (c), (d)(1), or (e) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

(g)(1) A conviction under this section may not merge with a conviction for any other crime based on the act establishing the violation of this section.

183a

Appendix F

(2) A sentence imposed under this section may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

(h) For purposes of this section, a requirement to keep a handgun concealed is not violated by:

(1) the momentary and inadvertent exposure of a handgun; or

(2) the momentary and inadvertent exposure of the imprint or outline of a handgun.

(i) Nothing in this section limits the power of an administrative head of a Maryland court to punish for contempt or to adopt rules or orders regulating, allowing, restricting, or prohibiting the possession of weapons in any building housing the court or any of its proceedings, or on any grounds appurtenant to the building.

Appendix F

MD Code, Criminal Law, § 4-203

§ 4-203. Wearing, carrying, or transporting handgun

(a)(1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;

(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;

(iii) violate item (i) or (ii) of this paragraph while on public school property in the State;

(iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person; or

(v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

Appendix F

(b) This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full-time assistant or deputy sheriff of the State; or

(vi) a temporary or part-time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from

Appendix F

the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

Appendix F

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment;

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

(c)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

(2) If the person has not previously been convicted under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

Appendix F

(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 5 years or a fine of not less than \$250 and not exceeding \$2,500 or both; or

(ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days.

(3)(i) If the person has previously been convicted once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 1 year and not exceeding 10 years; or

2. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years.

(ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, the court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

2. If the person violates subsection (a)(1)(v) of this section, the court may not suspend any part of or impose less than the applicable mandatory minimum sentence provided under subparagraph (i) of this paragraph.

Appendix F

(iii) Except as provided in § 4-305 of the Correctional Services Article, if the person violates subsection (a)(1)(v) of this section, the person is not eligible for parole during the mandatory minimum sentence.

(iv) A mandatory minimum sentence under subparagraph (ii)2 of this paragraph may not be imposed unless the State's Attorney notifies the defendant in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

(4)(i) If the person has previously been convicted more than once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination of these crimes:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years; or

2. A. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years; or

- B. if the person violates subsection (a)(1)(iv) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years.

- (ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, the court may not impose less than

Appendix F

the applicable minimum sentence provided under subparagraph (i) of this paragraph.

2. If the person violates subsection (a)(1)(v) of this section, the court may not suspend any part of or impose less than the applicable mandatory minimum sentence provided under subparagraph (i) of this paragraph.

(iii) Except as provided in § 4-305 of the Correctional Services Article, if the person violates subsection (a)(1)(v) of this section, the person is not eligible for parole during the mandatory minimum sentence.

(iv) A mandatory minimum sentence under subparagraph (ii)2 of this paragraph may not be imposed unless the State's Attorney notifies the defendant in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

Appendix F

MD Code, Criminal Law, § 4-208

§ 4-208. Possession of firearm at public demonstration

(a)(1) In this section the following words have the meanings indicated.

(2)(i) “Demonstration” means one or more persons demonstrating, picketing, speechmaking, marching, holding a vigil, or engaging in any other similar conduct that involves the communication or expression of views or grievances and that has the effect, intent, or propensity to attract a crowd or onlookers.

(ii) “Demonstration” does not include the casual use of property by visitors or tourists that does not have the intent or propensity to attract a crowd or onlookers.

(3)(i) “Firearm” means a handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, or any other firearm, whether loaded or unloaded.

(ii) “Firearm” does not include an antique firearm.

(4) “Handgun” has the meaning stated in § 5-101 of the Public Safety Article.

(5) “Law enforcement officer” means:

Appendix F

(i) a member of a police force or other unit of the United States, the State, a county, municipal corporation, or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, the State, a county, municipal corporation, or other political subdivision;

(ii) a park police officer of the Maryland-National Capital Park and Planning Commission;

(iii) a member of the University System of Maryland Police Force; and

(iv) any military or militia personnel directed by constituted authority to keep law and order.

(6)(i) “Public place” means a place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose.

(ii) “Public place” is not limited to a place devoted solely to the uses of the public.

(iii) “Public place” includes:

1. the front or immediate area or parking lot of a store, restaurant, tavern, shopping center, or other place of business;

2. a public building, including its grounds and curtilage;

193a

Appendix F

3. a public parking lot;
4. a public street, sidewalk, or right-of-way;
5. a public park; and
6. other public grounds.

(b)(1) This subsection does not apply to a law enforcement officer.

(2) A person may not have a firearm in the person's possession or on or about the person at a demonstration in a public place or in a vehicle that is within 1,000 feet of a demonstration in a public place after:

(i) the person has been advised by a law enforcement officer that a demonstration is occurring at the public place; and

(ii) the person has been ordered by the law enforcement officer to leave the area of the demonstration until the person disposes of the firearm.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

Appendix F

MD Code, Public Safety, § 5-307
§ 5-307. Scope of permit

(a) A permit is valid for each handgun legally in the possession of the person to whom the permit is issued.

(b)(1) Subject to subsection (c) of this section, a permit issued under this subtitle shall restrict the wearing, carrying, and transporting of a handgun by the person to whom the permit is issued to wearing, carrying, or transporting a handgun concealed from view:

(i) under or within an article of the person's clothing; or

(ii) within an enclosed case.

(2) The requirement in paragraph (1) of this subsection to keep a handgun concealed is not violated by:

(i) the momentary and inadvertent exposure of a handgun; or

(ii) the momentary and inadvertent exposure of the imprint or outline of a handgun.

(c) A person is not subject to the requirement in subsection (b) of this section to keep a handgun concealed if the person is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(1) a person exempted under § 4-203(b)(1) of the Criminal

195a

Appendix F

Law Article;

(2) a security guard licensed under Title 19 of the Business Occupations Article acting within the scope of employment;

(3) a correctional officer or warden of a correctional facility in the State acting within the scope of employment;

(4) a railroad police officer appointed under Title 3, Subtitle 4 of this article acting within the scope of employment; or

(5) an employee of an armored car company acting within the scope of employment.

196a

Appendix F

MD Code, Transportation, § 7-705

§ 7-705. Actions prohibited in transit facilities or
vehicles

(a) It is unlawful for any person entering a transit facility or transit vehicle owned or controlled by the Administration for the purpose of obtaining transit service or a train owned or controlled by the Administration or operated by a railroad company under contract to the Administration to provide passenger railroad service to:

(1) Fail to pay the applicable fare charged by the Administration in the required manner; or

(2) Fail to:

(i) Pay the applicable fare;

(ii) Exhibit proof of payment; or

(iii) Provide truthful identification.

(b) It is unlawful for any person to engage in any of the following acts in any transit vehicle or transit facility, designed for the boarding of a transit vehicle, which is owned or controlled by the Administration or a train owned or controlled by the Administration or operated by a railroad company under contract to the Administration to provide passenger railroad service:

197a

Appendix F

- (1) Expectorate;
- (2) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (3) Consume food or drink, or carry any open food or beverage container;
- (4) Discard litter, except into receptacles designated for that purpose;
- (5) Play or operate any radio, cassette, cartridge, tape player, or similar electronic device or musical instruments, unless such device is connected to an earphone that limits the sound to the hearing of the individual user;
- (6) Carry or possess any explosives, acids, concealed weapons or other dangerous articles;
- (7) Carry or possess any live animals, except seeing-eye animals and hearing-ear animals properly harnessed and accompanied by a blind person or a deaf person, and small animals properly packaged;
- (8) Board any transit vehicle through the rear exit door, unless so directed by an employee or agent of the Maryland Transit Administration;
- (9) Urinate or defecate, except in restrooms;
- (10) Fail to move to the rear of any transit vehicle when requested to do so by the operator or a police officer;

Appendix F

(11) Fail to vacate a seat designated for the elderly or handicapped when requested to do so by the transit vehicle operator, train conductor, or a police officer; or

(12) Except by contract with the Administration, solicit the purchase of any goods or services.

(c) As used in this section, “elderly and handicapped person” means any person who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable to use transit facilities and transit services or railroad facilities and railroad services as effectively as a person who is not so affected.

(d) The provisions of subsection (b)(3), (5), (8), and (12) of this section do not apply to charter bus service rendered by the Administration. The provisions of subsection (b)(2) and (12) of this section do not apply to excursion train service rendered by the Administration or by a railroad company under contract to the Administration. The provisions of subsection (b)(3) of this section do not apply to any railroad service rendered by the Administration or by a railroad company under contract to the Administration.

(e) Except as provided in subsection (f) of this section, any person who violates any provision of this section is guilty of a misdemeanor and is subject to a fine of not more than \$500 for each offense.

(f)(1) It is unlawful for any person to obstruct, hinder, or interfere with:

199a

Appendix F

(i) The operation or operator of a transit vehicle or railroad passenger car; or

(ii) A person engaged in official duties as a station agent, conductor, or station attendant who is employed by:

1. The Administration;
2. An entity that provides transit service under contract with the Administration;
3. A local government agency or public transit authority;
4. A private entity that provides public transit service; or
5. An entity that provides transit service under a transportation compact under Title 10 of this article.

(2) Any person who violates this section is guilty of a misdemeanor and is subject to a fine of not more than \$1,000, imprisonment not exceeding 1 year, or both, for each offense.

(g) This section does not prohibit enforcement of any other State or local law or regulation that is consistent with the provisions of this section.

Appendix F

Md. Regs. 04.05.01.01 Definition and Application.

- A. “Property” means State public buildings, improvements, grounds, and multiservice centers under the jurisdiction of the Department of General Services.
- B. In addition to the regulations in this chapter, the following areas are also subject to COMAR 04.05.02 and the procedural rules of the Senate and House of Delegates:
 - (1) General Assembly buildings, improvements, and grounds;
 - (2) Senate and House of Delegates:
 - (a) Chambers,
 - (b) Lounges,
 - (c) Lobbies,
 - (d) Appurtenant areas,
 - (e) Committee rooms; and
 - (3) Joint Hearing Room.

201a

Appendix F

Md. Regs. 04.05.01.03 Prohibited Conduct.

A. An individual shall be subject to arrest if the individual:

- (1) Damages or defaces the property;
- (2) Creates loud, unusual noise, including profanity;
- (3) Disturbs employees performing their duties;
- (4) Prevents or disturbs the general public from obtaining services provided on the property; or
- (5) Obstructs:
 - (a) Entrances,
 - (b) Walks,
 - (c) Corridors,
 - (d) Elevators,
 - (e) Offices,
 - (f) Stairways, or
 - (g) Parking lots.

B. Except for official purposes and by authorized personnel, an individual on the property may not carry open or concealed firearms, explosives, incendiary devices, or dangerous or deadly weapons.

Appendix F

- C. Photographs, video, video tape, movie film, or audio recordings for commercial purposes may only be made on the property with the approval of the occupying agency head.
- D. The operation of gambling devices, conducting a pool or lottery, the selling or purchasing of “numbers” or lottery tickets and gambling or betting in any form on the property is prohibited, except for operations by the Maryland State Lottery Agency.
- E. Dogs and other animals may not be brought upon the property for other than official purposes, except seeing-eye dogs and animals used to guide or assist handicapped persons.
- F. Executive Order 01.01.1987.13 prohibits smoking and the carrying of lit tobacco products or substitutes in public access areas of the property. Smoking is allowed only in areas so designated with posted signs.
- G. Physical damage of the property is prohibited and includes:
 - (1) Defacing or marking of the property;
 - (2) Throwing articles of any kind at or from the property;
 - (3) Climbing upon any part of the property;
 - (4) Tampering with landscape and planting; or
 - (5) Willful damage, destruction, or removal of property.

203a

Appendix F

Md. Regs. 08.01.07.14 Weapons.

A. Definition.

(1) In this regulation, the following term has the meaning indicated.

(2) Term Defined. “Weapon” means:

(a) A device capable of propelling a projectile at high velocity by mechanical means, by explosion, or by expanding gas, including but not limited to a firearm, crossbow, or long bow;

(b) A dirk knife, bowie knife, switchblade (except a penknife without a switchblade), sand club, metal knuckles, razor, or nunchaku; or

(c) A device capable of:

(i) Inflicting death or bodily harm to an individual;

(ii) Maiming or killing wildlife; or

(iii) Destroying property.

B. Except as provided in Regulation .04 of this chapter and §§C and D of this regulation, possession or use of weapons or firearms by an individual other than a law enforcement officer is prohibited in Chesapeake Forest Lands.

Appendix F

- C. Target shooting is permitted only at designated shooting ranges. The regulations governing the use of these ranges shall be posted and strictly enforced.
- D. Except when legally hunting or legally target shooting, an individual may not discharge a firearm on land or waters owned or controlled by the Service.
- E. Firearms shall be unloaded, and arrows kept in a quiver or case, when in a Chesapeake Forest camping area in accordance with Regulation .07 of this chapter.

Appendix F

Md. Regs. 08.07.01.04 Weapons.

A. Definition. In this regulation, “weapon” means:

- (1) A device capable of propelling a projectile at high velocity by mechanical means, by explosion, or by expanding gas, including but not limited to a firearm, crossbow, or longbow;
- (2) A dirk knife, bowie knife, switchblade (except penknives without switchblades), sand club, metal knuckles, razor, or nunchaku; or
- (3) A device capable of:
 - (a) Inflicting death or bodily harm to an individual,
 - (b) Maiming or destroying wildlife, or
 - (c) Destroying property.

B. Except as provided in §§C and D of this regulation, possession or use of weapons or firearms by an individual other than a law enforcement officer is prohibited in all State forests.

C. Target shooting is permitted only at designated shooting ranges. The regulations governing the use of these ranges shall be posted and strictly observed.

D. Except when legally hunting or legally target shooting, an individual may not discharge a firearm on land or waters owned or controlled by the Service.

206a

Appendix F

- E. Firearms shall be unloaded, and arrows kept in a quiver or case, when in a State forest campsite.

Appendix F

Md. Regs. 08.07.06.04 Weapons.

A. Definition. In this regulation, “weapon” means:

- (1) A device capable of propelling a projectile at high velocity by mechanical means, by explosion, or by expanding gas, including, but not limited to a firearm, crossbow, or longbow;
- (2) A dirk knife, bowie knife, switchblade, sand club, metal knuckles, razor, or nunchaku; and
- (3) A device capable of:
 - (a) Inflicting death or bodily harm to an individual;
 - (b) Maiming or destroying wildlife; or
 - (c) Destroying property.

B. Except as provided in Regulation .03 of this chapter and in §§C and D of this regulation, an individual other than a law enforcement officer may not possess a weapon in a State park. The Service may approve an exception for an archery range, firearms range, or an exhibition.

C. During hunting season, a licensed hunter may carry firearms and bows and arrows across State parks in order to get to hunting areas or to other State or private property which is open to hunting. The firearms shall be carried unloaded and cased, or

Appendix F

carried unloaded with breech open or broken. Arrows shall be carried in a quiver or case.

- D. Target shooting is permitted at designated shooting ranges. The regulations governing the use of these ranges shall be posted and strictly observed.

209a

Appendix F

Md. Regs. 14.25.02.06 Weapons.

The possession, carrying, or transporting, either openly with the intent to injure a person in an unlawful manner, or concealed, or the use or discharge of, a weapon at an Authority facility is prohibited, including those weapons described in Criminal Law Article, §§4-101 and 4-201, Annotated Code of Maryland, except for official purposes and by authorized personnel. An individual carrying a weapon shall notify the Director of Security for the Authority before entering an Authority facility

Appendix F

Md. Regs. 36.03.10.48 Possession of a Weapon in a Facility.

A. Except as otherwise provided in this regulation, an individual may not possess in a facility:

- (1) A firearm as defined in Public Safety Article, §5-101, Annotated Code of Maryland;
- (2) An electronic control device as defined in Criminal Law Article, §4-109, Annotated Code of Maryland;
- (3) A dangerous weapon as defined in Criminal Law Article, §4-101, Annotated Code of Maryland; or
- (4) Any other device or object designed to be used to inflict pain or cause injury.

B. The prohibition in §A of this regulation:

- (1) Applies to all employees and contractors of the facility operator including security department employees; and
- (2) Does not apply to:
 - (a) An on-duty officer or agent of a local, State or federal law enforcement agency having proper jurisdiction over the facility when the officer or agent is acting in an official capacity;

211a

Appendix F

- (b) An individual who is employed by an armored car company or other entity that is under contract with the facility to transport cash or a cash equivalent; or
 - (c) An individual authorized by the Commission to possess a weapon or device identified in §A of this regulation.
- C. An individual requesting Commission authorization to possess a weapon identified in §A of this regulation in a facility shall submit to the Commission in writing a request documenting:
 - (1) A compelling need to possess a weapon in the facility;
 - (2) That the individual is lawfully in possession of the weapon under applicable federal and State law; and
 - (3) That the individual has received training in the possession and use of the weapon.