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 10 *Firearms*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 13 SACRAMENTO DIVISION

14  
 15 **WILLIAM WIESE, et al.,**  
 16 Plaintiffs,  
 17 v.  
 18 **ROB BONTA, et al.,**  
 19 Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**DECLARATION OF BRENNAN RIVAS  
 IN SUPPORT OF DEFENDANTS'  
 OPPOSITION TO MOTION FOR  
 SUMMARY JUDGMENT AND COUNTER-  
 MOTION FOR SUMMARY JUDGMENT**

Date: July 10, 2023  
 Time: 1:30 p.m.  
 Courtroom: 5, 14<sup>th</sup> Floor  
 Judge: Hon. William B. Shubb

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**DECLARATION OF BRENNAN RIVAS**

I, Brennan Rivas, declare under penalty of perjury that the following is true and correct:

1. I have been retained by the Office of the Attorney General of the California Department of Justice to provide expert opinion and testimony regarding historical regulations that prohibited the public carry and possession of certain weapons. I am being compensated at a rate of \$130 per hour.

2. I have evaluated the historical justifications and purposes of laws restricting the carrying of certain weapons, in addition to their scope in restricting the use of certain weapons associated with urgent societal problems of the time while simultaneously protecting the right to use other weapons for constitutionally protected, lawful purposes.

**BACKGROUND AND QUALIFICATIONS**

3. I have a Ph.D. in history from Texas Christian University, awarded in 2019. My expertise includes historical weapon regulations in the United States. I have several publications on this topic, including peer-reviewed articles in the *Southwestern Historical Quarterly*, and a chapter in an edited collection forthcoming by Oxford University Press; earlier this year, my article, "Enforcement of Public Carry Restrictions: Texas as a Case Study (June 2022), was published in the *UC Davis Law Review*.

4. I am currently completing a book manuscript, based upon my dissertation research, which traces the development and implementation of weapon and firearm policies in Texas across a century-long period.

1 5. I have provided expert witness testimony in *Miller v.*  
2 *Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.); *Duncan v. Bonta*,  
3 No. 17-1017-BEN-JLB (S.D. Cal.); *Angelo v. District of Columbia*,  
4 No. 1:22-cv-02256-RC (D. D.C.); *Christian v. Nigrelli*, No. 22-cv-  
5 00695 (JLS) (W.D. N.Y.); *Frey v. Nigrelli*, No. 21 Civ. 5334 (NSR)  
6 (S.D. N.Y.); *Brumbach v. Ferguson*, No. 1:22-cv-03093-MKD (E.D.  
7 Wash.); *Sullivan v. Ferguson*, No. 3:22-cv-5403 (W.D. Wash.);  
8 *Siegel v. Platkin*, No. 22-CV-7463 (RMB) (AMD) (D. N.J.); *NAGR v.*  
9 *Campbell*, No. 1:22-cv-11431-FDS (D. Mass.); *Oregon Firearms*  
10 *Federation, Inc. v. Kotek*, No. 2:22-cv-01815-IM (D. Ore.); *NSSF*  
11 *v. Jennings*, No. 22-cv-01499-RGA (D. Del.).

12 6. A true and correct copy of my current curriculum vitae  
13 is attached as **Exhibit A** to this declaration.

14 **OPINIONS**

15 7. My research, which represents some of the most in-depth  
16 work on nineteenth-century gun regulations, shows that there are  
17 historical firearm regulations similar to both California's  
18 restrictions on large-capacity magazines. During the nineteenth  
19 century, several states prohibited the sale, gift, transfer, or  
20 importation of certain types of weapons, including bowie knives,  
21 revolvers, and other pistols which people of the time associated  
22 with criminal activity.

23 8. Nineteenth-century firearm restrictions, including  
24 examples from Florida, Georgia, Tennessee, and Arkansas described  
25 in more detail in this declaration, demonstrate a robust  
26 governmental response to rising rates of violence, and  
27 particularly the wave of gun violence that swept the Nation  
28 following the Civil War. Importantly, these restrictions did not

1 flatly ban the carry or possession of all arms, and instead  
2 targeted only those weapons that posed significant risk to public  
3 safety at that time.

4 **I. BRIEF HISTORY OF THE COLT REVOLVER AND THE SPREAD OF HANDGUN VIOLENCE**  
5 **IN THE 19<sup>TH</sup> CENTURY**

6 9. The revolver design that came to dominate American  
7 markets during the mid- and late nineteenth century was patented  
8 by Samuel Colt in 1836. He was not the first inventor to produce  
9 a multi-shot pistol, but he was the first whose creation became  
10 technologically and socially significant. Even though Colt had a  
11 working revolver by the mid-1830s, it took decades for his  
12 invention to become commercially successful.

13 10. The Colt revolver diverged from pistols then widely  
14 available in two critical ways. First, it was breech-loading,  
15 meaning that ammunition did not need to be inserted through the  
16 end of the barrel (muzzle-loading). Second, it provided multiple  
17 shots without reloading; the standard design eventually settled  
18 at six rounds. The earliest revolvers (those manufactured prior  
19 to and during the Civil War) were of the "cap and ball" type,  
20 which required a delicate and time-consuming reloading process.  
21 By about the 1870s, technological developments in the design and  
22 functionality of ammunition meant that later models of Colt's  
23 could use individual cartridges; these could be inserted fairly  
24 quickly into the cylinder, which made the reloading process much  
25 more swift—a boon on the battlefield, but a new danger in other  
26 contexts.

27 11. Though Colt's revolver was a revolutionary device that  
28 represented a paradigmatic shift in firearm technology, his

1 company struggled to reach its potential. The expiration of  
2 Colt's patent in 1857 opened the door for other manufacturers to  
3 enter the market without having to endure the same decades-long  
4 startup cost. Meanwhile, the growing crisis over slavery and its  
5 looming prospect of war gave Colt what he had always wanted—  
6 substantial government patronage. Southern states ordered as  
7 many revolvers as they could in the lead-up to Fort Sumter, and  
8 Colt's Patent Fire Arms Manufacturing Company was more than  
9 willing to deliver. But the far more important contracts came  
10 from the United States military, whose orders for pistols like  
11 Colt's revolver skyrocketed during the course of the Civil War.<sup>1</sup>  
12 Wartime production by Colt, in addition to the new entrants into  
13 the market (like Smith & Wesson), created an unprecedented  
14 infrastructure to manufacture staggeringly large quantities of  
15 pistols. As production capacity increased and the U.S. military  
16 demobilized, more of these weapons became available to and  
17 affordable for American consumers; by the 1870s, the net result  
18 was more and cheaper pistols spread throughout the country<sup>2</sup>,

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20 <sup>1</sup> On the life of Samuel Colt and the history of his firearm  
21 manufacturing companies, see Jim Rasenberger, *Revolver: Sam Colt  
22 and the Six-Shooter that Changed America* (New York: Scribner,  
2020).

23 <sup>2</sup> Colt's Army revolvers cost about \$20 at the time of the  
24 Civil War, but subsequent entrants into the market sold small  
25 pocket pistols for as little as a couple of dollars. For  
26 example, see digitized Sears and Roebuck catalog (1898), pp. 365-  
27 367. Regardless of caliber, the pistols from Colt's ran about  
28 \$12 to \$13 in the catalog but retailed elsewhere for something  
closer to \$18 (see pp. 367). Meanwhile, the smaller caliber  
pocket pistols from other brands could be ordered for as little  
as \$1.40 (see pp. 365). For the 1898 Sears & Roebuck catalog  
online, see <https://bit.ly/3VeUhHo>.

1 introducing the United States to its first experience with  
2 rampant gun violence.

3 12. The Civil War Era (1850-1870), marked a sharp departure  
4 for the United States in terms of violence and homicide in  
5 comparison to other Western nations. Distrust in governing  
6 institutions and tremendous economic change wrought by  
7 industrialization primed Americans for homicidal violence to a  
8 degree that was unprecedented in American history. In northern  
9 cities, rising population levels accompanied urbanization, labor  
10 agitation, and poverty, which caused an increase in homicide and  
11 crime. Though military victory and a renewed faith in American  
12 government reduced homicide in northern states after the 1860s,  
13 the rates for the 1870s and 1880s in the north remained higher  
14 than those from the more peaceful era prior to the 1840s, and by  
15 the close of the 1890s northern homicide rates began ratcheting  
16 upward yet again.<sup>3</sup> Broader crime rates for the late nineteenth  
17 century are harder to pin down than those for homicide, but the  
18 development of urban, industrial life produced abundant  
19 opportunities for the criminally inclined. That city governments  
20 enacted new criminal ordinances and increased funding for police  
21 strongly suggests that urban residents perceived themselves to be

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22  
23 <sup>3</sup> On homicide in American history, particularly as broken  
24 down into northern and southern regions, see Randolph Roth,  
25 *American Homicide* (Cambridge: Belknap Press of Harvard University  
26 Press, 2009), 297-326, 386-388 (for trends in northern areas);  
27 185 (for data-supported charts showing trends in homicide for  
28 large cities across the entire nineteenth century); 184  
(complicating data from pp. 185 by showing that some rural  
northern areas experienced sharp rise in crime after 1865 and  
therefore emulated what took place in the American South during  
that time).

1 more vulnerable to victimization than they had been in the past.  
2 In the southern states, the revolutionary consequences of  
3 emancipation and Reconstruction created an atmosphere of distrust  
4 of government and one's neighbor, mutual hatred, and deeply  
5 ideological partisanship that resulted in tremendous, gut-  
6 wrenching violence suffered primarily by Black Americans and  
7 their political allies. The disruption of war, occupation, and  
8 frequent changes in state government and constitutional structure  
9 bred attitudes of vigilantism and disregard for the judicial  
10 process. Rates of violence and homicide remained quite high in  
11 the southern states across the nineteenth century.<sup>4</sup> The  
12 proliferation of deadly weapons, and especially easily  
13 concealable pistols, to a point of near ubiquity in American  
14 communities rendered the interpersonal conflicts that erupted as  
15 a result of urbanization, Reconstruction, economic hardship, and  
16 social dislocation all the more deadly.

17 **II. GOVERNMENTAL RESPONSES TO THE RISE IN HANDGUN VIOLENCE**

18 13. The response to this gun violence varied across the  
19 United States. The most popular approach was the enactment or  
20 strengthening of public carry laws. These statutes were enacted  
21 throughout the nineteenth century by entities ranging from states  
22 to municipalities and even institutions of learning.<sup>5</sup>  
23 Jurisdictions that did not already have such laws were likely to  
24 enact them, and those using the older mechanism of sureties to

25 \_\_\_\_\_  
26 <sup>4</sup> Roth, *American Homicide*, 411-434.

27 <sup>5</sup> Tenn. 1801 ch. 22 § 6; 1851 Pa. Laws 382, § 4 (pertaining  
28 to "willfully and maliciously" carrying deadly weapons in the  
borough of York); *Laws and Regulations of the College of William  
and Mary*, V.276 (1830).

1 keep the peace were likely to transition toward the  
2 implementation of criminal statutes mandating fines and/or jail  
3 time for violators.<sup>6</sup> These public carry regulations targeted  
4 concealable items like pistols, sword canes, and daggers that  
5 were used in the commission of crimes and generally referred to  
6 as deadly weapons. The closing third of the nineteenth century  
7 saw a flurry of this activity as states and municipalities tried  
8 new penalties, added new weapons to the lists of prohibited  
9 weapons, and generally attempted to eliminate small, easily  
10 concealable weapons from the public sphere.<sup>7</sup>

11 14. Another strategy employed by state governments to  
12 reduce gun violence and gun crime was to place certain  
13 requirements upon dealers in firearms. States and municipalities  
14 prohibited the sale of deadly weapons to persons under a certain  
15 age (generally twenty-one years)<sup>8</sup>, required occupation taxes<sup>9</sup>,  
16 criminalized the sale of specific kinds of weapons<sup>10</sup>, and some

17 \_\_\_\_\_  
18 <sup>6</sup> The Repository of Historical Gun Laws, a database  
19 maintained by the Duke Center for Firearms Law, reflects that  
20 American state and local governments enacted statutes and  
21 ordinances specifically relating to "carrying weapons" in large  
22 numbers during the period from the close of the Civil War in 1865  
23 through the end of the nineteenth century. See  
24 <https://firearmslaw.duke.edu/repository/search-the-repository/>.

25 <sup>7</sup> In the second half of the nineteenth century, items like  
26 metal knuckles and razor blades became targets for proscription  
27 alongside bowie knives, pistols, and sword canes.

28 <sup>8</sup> For example, see Kent. 1859 ch. 33 p. 241.

<sup>9</sup> For example, see Acts of the General Assembly of the  
State of Georgia (1894) available online from the Digital Library  
of Georgia; see  
[https://dlg.usg.edu/record/dlg\\_zlgl\\_75343012/fulltext.text](https://dlg.usg.edu/record/dlg_zlgl_75343012/fulltext.text) and  
[https://dlg.usg.edu/collection/dlg\\_zlgl?range%5Byear%5D%5Bbegin%5D=1880&range%5Byear%5D%5Bend%5D=1899&sort=year+desc](https://dlg.usg.edu/collection/dlg_zlgl?range%5Byear%5D%5Bbegin%5D=1880&range%5Byear%5D%5Bend%5D=1899&sort=year+desc).

<sup>10</sup> For example, see Ga. 1837 ch. 90; Tenn. 1838 ch. 137; 1849  
Vermont ch.36, 26, §1; Hiram Denio, et al, *Revised Statutes of*

(continued...)



1 even required the registration of all purchases of pistols.<sup>11</sup> In  
2 1907, the Texas legislature placed a fifty-percent sales tax upon  
3 pistols; dealers had to report their sales and pay the required  
4 tax to the state comptroller's office on a quarterly basis.<sup>12</sup>  
5 Sales and occupation taxes tended to be less about generating  
6 revenue than regulating an activity that was frowned upon by  
7 society more generally. Occupation tax laws applied to vendors  
8 who appealed to vices like smoking, gambling, and playing games  
9 as well as peddlers and itinerant salesmen. When a Texas  
10 appellate court upheld the stringent sales tax (over loud  
11 complaints by dealers), the judge described the business of  
12 selling pistols as one "hurtful to the welfare of society" and  
13 among that class of occupations "detrimental to the health,  
14 morals, or good order of society." As a result, the court  
15 reasoned that the legislature "would have the right, not only to  
16 levy an excessive tax, which would be prohibitory thereof, but  
17 could go further and absolutely prohibit any one from engaging  
18 therein."<sup>13</sup>

19 15. Prohibiting or otherwise discouraging the sale of  
20 certain weapons had historically gone hand-in-hand with public  
21 carry regulations. During its territorial phase (1822-1845),

22 \_\_\_\_\_  
23 *the State of New York* (Albany: Gould, Banks, & Co., 1852), Part  
24 IV, Title 6, "Misdemeanors," 880, §52. The code section cites  
1849 New York ch. 278; Kentucky 1855 ch.636, 96, §1. This is not  
an exhaustive list.

25 <sup>11</sup> For example, see Ill. 1881 "Criminal Code" §3 p. 73.

26 <sup>12</sup> An Act providing for the levy and collection of an  
27 occupation tax . . . , General Laws of Texas, §XVIII (1907). See  
also Brennan Gardner Rivas, "The Deadly Weapon Laws of Texas:  
Regulating Guns, Knives, and Knuckles in the Lone Star State,  
1836-1930, (PhD diss., Texas Christian University, 2019) 161-162.

28 <sup>13</sup> *Caswell & Smith v. State*, 148 SW 1159 (Tex. App. 1912).

1 Florida had enacted a concealed-carry law with a steep fine of  
2 \$50-500 for violations.<sup>14</sup> When the law did not deliver the desired  
3 effect of reducing the preemptive carrying of deadly weapons,  
4 lawmakers turned to prohibitive taxes to further reduce the  
5 presence of deadly weapons in public. An 1838 statute held that  
6 anyone who chose "to vend dirks, pocket pistols, sword canes, or  
7 bowie knives" had to first pay an annual tax of \$200, "and all  
8 persons carrying said weapons openly shall pay...a tax of ten  
9 dollars annually."<sup>15</sup> In 2023 dollars, the annual open-carry tax  
10 would amount to approximately \$320.00, and the annual occupation  
11 tax to approximately \$6,300.00.<sup>16</sup> Clearly these taxes were  
12 designed to discourage trade in and public carry of deadly  
13 weapons, and the architects of the taxation policy saw it as  
14 intrinsically connected to the previously enacted concealed-carry  
15 restriction.

16 16. In 1837, Georgia enacted a public carry law that also  
17 made it unlawful "for any merchant, or vender of wares or  
18 merchandize in this State, or any other person or persons  
19 whatsoever, to sell, or offer to sell, or to keep, or have about  
20 their person or elsewhere, any of the hereinafter described

21 \_\_\_\_\_  
22 <sup>14</sup> John P. Duval, Compilation of the Public Acts of the  
23 Legislative Council of the Territory of Florida, Passed Prior to  
24 1840 Page 423, Image 425 (1839) available at The Making of Modern  
25 Law: Primary Sources.

26 <sup>15</sup> 1838 Fla., ch. 24, "An Act in addition to An Act,  
27 (approved January 30<sup>th</sup>, 1835,) entitled An Act to prevent any  
28 person in this Territory from carrying arms secretly. This tax  
is not included within the Duke Repository, indicating that that  
database captures only a portion of the occupation and personal  
taxes in force, even at the state/territorial level, during the  
nineteenth century. More research remains to be done on the  
subject.

<sup>16</sup> The amounts reach \$319.14 and \$6,382.73. See: [\\$200 in 1838  
→ 2023 | Inflation Calculator \(in2013dollars.com\)](#).

1 weapons, to wit: Bowie, or any other kind of knives, manufactured  
2 and sold for the purpose of wearing, or carrying the same as arms  
3 of offence or defence." The statute further held that "pistols,  
4 dirks, sword canes, spears, c., shall also be contemplated in  
5 this act, save such pistols as are known and used, as horseman's  
6 pistols."<sup>17</sup> The public carry portion of the Georgia statute was  
7 challenged and overturned in a case called *Nunn v. State* (1846);  
8 but the sales restriction within the statute was neither  
9 challenged by the plaintiff nor addressed by the Georgia Supreme  
10 Court.<sup>18</sup>

11 17. The State of Tennessee, which had enacted a public  
12 carry law in 1801 and an updated version in 1821, adopted a yet  
13 newer public carry law in 1838—and this one included a section  
14 prohibiting "any merchant, pedlar, jeweller, confectioner,  
15 grocery keeper, or other person" to sell "any Bowie knife or  
16 knives, or Arkansas tooth picks, or any knife or weapon that  
17 shall in form, shape or size resemble a Bowie knife or knives, or  
18 Arkansas tooth pick."<sup>19</sup>

19 18. After the Civil War, when their states were engulfed in  
20 political instability, racial strife, and rising rates of  
21 homicide, lawmakers in Arkansas and Tennessee pursued this two-  
22 pronged approach that combined public carry regulation with a  
23 sales ban for certain kinds of weapons. The first prong was to

24 \_\_\_\_\_  
25 <sup>17</sup> Ga. 1837 ch. 90, cited at supra n. 10; HYPERLINK: [Acts of](#)  
26 [the General Assembly of the state of Georgia, passed in](#)  
[Milledgeville at an annual session in November and December, 1837](#)  
[\[volume 1\] - Digital Library of Georgia \(usg.edu\)](#)

27 <sup>18</sup> *Nunn v. State*, 1 Ga. 243 (1846).

28 <sup>19</sup> Tenn. 1838 ch. 137, cited at supra, n.10. This law was  
temporarily suspended during part of the Civil War. See Tenn.  
1862 ch. 23.

1 prohibit the public carrying of pistols with very limited  
2 exceptions.<sup>20</sup> Courts in both states struck down early versions of  
3 the laws because they applied to all revolvers, including those  
4 being issued to certain classes of soldiers by the United States  
5 military.<sup>21</sup> But the respective legislatures of Arkansas and  
6 Tennessee quickly changed the rule to exclude “army and navy  
7 pistols”—those types or models in use by the US military—when  
8 carried openly in the hand. By exempting these models, Arkansas  
9 and Tennessee lawmakers made their gun policies comport with the  
10 reigning Second Amendment jurisprudence of their day, which held  
11 that militia arms enjoyed special protection from certain forms  
12 of regulation.<sup>22</sup> The revised Tennessee law held that “it shall  
13 not be lawful for any person to publicly carry a dirk, sword  
14 cane, Spanish stiletto, belt or pocket pistol, or revolver, other  
15 than an army pistol, or such as are commonly carried and used in  
16 the United States army, and in no case shall it be lawful for any  
17 person to carry such army pistol publicly or privately about his

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18 <sup>20</sup> See 1869-1870 Tenn. Pub. Acts, 2d. Sess., An Act to  
19 Preserve the Peace and Prevent Homicide, ch. 13, § 1; 1874-1875  
20 Acts of Ark., An Act to Prohibit the Carrying of Side-Arms, and  
Other Deadly Weapons, at p. 155, § 1.

21 <sup>21</sup> *Andrews v. State*, 50 Tenn. 165 (1871); *Wilson v. State*, 33  
Ark. 557 (1878).

22 <sup>22</sup> Unlike today, where laws generally prevent the civilian  
23 sale of military-grade weapons while carving out protections for  
24 self-defense weapons, Americans of the nineteenth century did  
25 just the opposite; case law at that time held that a citizen’s  
26 militia obligation conferred upon certain kinds of firearms,  
27 especially muskets and rifles, a protected status under the law  
28 as “militia arms,” while those smaller weapons which lent  
themselves to concealability and were more conducive to  
interpersonal violence could be prohibited. This view of arms  
and their place in society changed in the twentieth century as a  
result of substantial alterations to the militia system (and the  
development of the National Guard) as well as the advent of  
automatic and select-fire weapons for military use.

1 person in any other manner than openly in his hands."<sup>23</sup>  
2 Arkansas's replacement statute was similar to that of Tennessee.<sup>24</sup>  
3 The Tennessee Supreme Court upheld that state's replacement  
4 statute against constitutional challenge, and the revised  
5 Arkansas statute received no notable challenge.<sup>25</sup>

6 19. The second prong which Arkansas and Tennessee employed  
7 was a prohibition on the sale of certain pistols. Tennessee  
8 prohibited "any person to sell, or offer to sell, or bring into  
9 the State for the purpose of selling, giving away, or otherwise  
10 disposing of, belt or pocket pistols, or revolvers, or any other  
11 kind of pistol, except army or navy pistols."<sup>26</sup> Arkansas followed  
12 suit but went even further by prohibiting the sale of pistol

13 \_\_\_\_\_  
14 <sup>23</sup> 1871 Tenn. Pub. Acts 81, An Act to Preserve the Peace and  
15 to Prevent Homicide, ch. 90, § 1; *State v. Wilburn*, 66 Tenn. 57,  
16 61 (1872). It is worth noting that even the exempted army/navy  
17 pistols could not be carried concealed, or even visible within a  
18 waistband or hip holster; the only way to carry legally exempted  
19 pistols was to hold them in one's hand. The purpose of this  
20 additional phrase was to curtail as much as possible the carrying  
21 of these weapons in public spaces so that a person would only do  
22 so in the event of a real emergency.

23 <sup>24</sup> 1881 Ark. Acts 191, An Act to Preserve the Public Peace  
24 and Prevent Crime, chap. XCVI, § 1-2 ("That any person who shall  
25 wear or carry, in any manner whatever, as a weapon, any dirk or  
26 bowie knife, or a sword, or a spear in a cane, brass or metal  
27 knucks, razor, or any pistol of any kind whatever, except such  
28 pistols as are used in the army or navy of the United States,  
shall be guilty of a misdemeanor. . . . Any person, excepting  
such officers or persons on a journey, and on his premises, as  
are mentioned in section one of this act, who shall wear or carry  
any such pistol as i[s] used in the army or navy of the United  
States, in any manner except uncovered, and in his hand, shall be  
guilty of a misdemeanor.").

<sup>25</sup> *State v. Wilburn*, 66 Tenn. 57, 61 (1872).

<sup>26</sup> 1879 Tenn. Pub. Act 135-36, An Act to Prevent the Sale of  
Pistols, chap. 96, § 1; *State v. Burgoyne*, 75 Tenn. 173, 173-74  
(1881).

1 cartridges as well. "Any person who shall sell, barter, or  
2 exchange, or otherwise dispose of, or in any manner furnish to  
3 any person any dirk or bowie knife, or a sword or a spear in a  
4 cane, brass or metal knucks, or any pistol, of any kind of  
5 whatever, except as are used in the army or navy of the United  
6 States, and known as the navy pistol, or any kind of cartridge  
7 for any pistol, or any person who shall keep such arms or  
8 cartridges for sale, shall be guilty of a misdemeanor."<sup>27</sup>

9 20. Throughout the nineteenth century, Americans voiced  
10 their displeasure with the practice of carrying weapons in public  
11 spaces.<sup>28</sup> Condemnations of such behavior and calls for  
12 regulations rang out across the country and became increasingly  
13 common during the late nineteenth century when economic and  
14 technological developments had made them easier to produce and  
15 cheaper to purchase. Arkansas and Tennessee were no exception to  
16 this national rule, and commentators there engaged in the same  
17 discourse of their counterparts elsewhere. The "shocks and  
18 violent convulsions which have been so fatal to law and order in  
19 the South" were well known, as was the fact that "the pistol, the  
20 knife, the shotgun and the bludgeon too often do their bloody  
21  
22

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23 <sup>27</sup> Acts of the General Assembly of Arkansas, No. 96 § 3  
24 (1881).

25 <sup>28</sup> For example, see Patrick Charles, *Armed in America* 152  
26 (2018) (noting the Georgia Supreme Court's view that it was "at a  
27 loss to follow the line of thought that extends the guarantee to  
28 the right to carry pistols, dirks, Bowie-knives, and those other  
weapons of like character, which, as all admit, are the greatest  
nuisances of our day." (quoting *Hill v. State*, 53 Ga. 472, 474  
(1874))).

1 work."<sup>29</sup> After the 1875 statute went into effect in Arkansas,  
2 news editors began praising it as "about the best law that has  
3 ever been enacted in this state," and one that, had it been in  
4 effect since statehood in 1836, "would have saved the lives of  
5 thousands of good men who have fallen victim to the vice of  
6 carrying deadly weapons, or from the results and natural  
7 consequences thereof."<sup>30</sup> Some judges in Tennessee began handing  
8 down penalties of a fifty-dollar fine plus sixty days in jail,  
9 and "as a result few persons carry deadly weapons in [that]  
10 county."<sup>31</sup> Reports of this rigid enforcement in Tennessee  
11 elicited praise among Arkansans, who viewed it as a social  
12 benefit that in Tennessee "men who for years converted themselves  
13 into walking arsenals discover that they can pursue their  
14 ordinary vocations without fear that they may at any moment be  
15 called upon to defend their persons against assault."<sup>32</sup> From

16  
17 <sup>29</sup> "Crime in the South" *Arkansas Democrat* (Little Rock, Arkansas), June 7, 1879, 2.

18 <sup>30</sup> *Newport News* (Newport, Arkansas), quoted in *Daily Arkansas*  
19 *Gazette* (Little Rock, Arkansas), April 27, 1875, 2.

20 <sup>31</sup> The practice began with Judge Horrigan of Shelby County,  
21 the seat of which is Memphis, Tennessee. Judge Quarles of  
22 Nashville declared his intention to follow suit. *Daily Arkansas*  
23 *Gazette* (Little Rock, Arkansas), January 7, 1883, 4. Judge Allen  
24 of Davidson County, Tennessee pledged to "impartially enforce the  
25 law" regarding weapons and "declared that 'it would make no  
26 difference of how high degree a man was, if he was convicted  
27 before him of carrying a pistol he would have to go to jail as  
28 well as pay a fine, and it simply came down to this: if he was  
bound to carry a pistol he was bound to go to jail. That only  
ruffians carried pistols and it gave them an unfair advantage  
over other citizens.'" *Daily Arkansas Gazette* (Little Rock,  
Arkansas), May 13, 1883, 4.

<sup>32</sup> *Daily Arkansas Gazette* (Little Rock, Arkansas), January 7,  
1883, 4.

1 their perspective, the distrust of one's fellow community members  
2 that went along with habitual gun-toting was a burden of fear  
3 that could only be lifted by prohibiting deadly weapons in the  
4 public sphere. Middle-class Americans, white southerners  
5 included, held the view that carrying deadly weapons was not  
6 honorable, and that such behavior should be stopped—and by  
7 banning the sale of specific weapons if necessary.<sup>33</sup>

8 21. To fully understand these regulations, it is necessary  
9 to understand the different kinds of pistols and revolvers  
10 available during this time period. First, at the larger end of  
11 the spectrum was the "army pistol" or "holster pistol," which was  
12 originally fashioned after the "horse pistols" that had been  
13 adopted by mounted units in Europe and the United States. Such  
14 pistols were typically designed to be carried in a saddle mounted  
15 holster and could weigh four pounds or more when loaded. Though  
16 the firearm became slightly smaller and more conducive to being  
17 worn on the person by officers beginning in the 1870s, they  
18 remained the largest gun in Colt's pistol lineup and carried a  
19 higher caliber; they were issued in large numbers by the United  
20 States Army and Navy during the Civil War and postbellum eras.<sup>34</sup>

21 \_\_\_\_\_  
22 <sup>33</sup> For an example from Arkansas and Tennessee, see *Daily*  
23 *Arkansas Gazette* (Little Rock, Arkansas), May 13, 1883, 4  
24 (reporting that a Tennessee district judge stated "that only  
25 ruffians carried pistols and it gave them an unfair advantage  
over other citizens,"). See also Mark Anthony Frassetto, "The  
Myth of Open Carry," *UC Davis Law Review* 55 (June 2022), 2518-  
2519.

26 <sup>34</sup> On size, variability, and manufacture of Colt pistols, see  
27 Jim Rasenberger, *Revolver: Sam Colt and the Six-Shooter that*  
28 *Changed America* (New York: Simon and Schuster, 2021); Martin  
Rywell, *Colt Guns* 66-67, 84-93 (Harriman, TN: Pioneer Press,

(continued...)



1 The Arkansas and Tennessee restrictions carved out an exception  
2 for these weapons, but only when carried openly in the hand.

3 22. Second, "belt pistols" were midsized models and would  
4 have been worn in a hip holster attached to the belt. These  
5 midsized pistols became popular among civilians and may have been  
6 the most common type of revolver in the country around the time  
7 of the Civil War. The Colt navy pistol took on that moniker  
8 during the antebellum years when that model featured an engraving  
9 of a naval battle. In the postbellum decades, "army" or  
10 "holster" models became smaller and the differences between them  
11 and Colt's "navy" pistols lessened<sup>35</sup>; during the period in which  
12 these statutes were written—about fifteen years after the Civil  
13 War—the "army/navy" description most likely reflected this  
14 technological evolution by referring to the larger, heavier,  
15 higher caliber pistols with longer barrels that were then issued  
16 by the United States military. The sales bans under discussion  
17 here generally included "belt" pistols, so it remains unclear  
18 whether and to what extent the Colt's Navy pistol (which was  
19 technically a "belt" model) would have received exemption on the  
20 basis of its name and/or its use by the military forces.

21 23. Finally, the third kind of pistol available was the  
22 "pocket pistol." These were substantially smaller than the  
23 holster and belt models. Pocket pistols ranged from single-shot,  
24 muzzle-loading derringers with barrels under two inches to

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25  
26 1953); R. L. Wilson, *The Colt Heritage: The Official History of*  
27 *Colt Firearms from 1836 to the Present* 173 (New York: Simon &  
Schuster, 1979).

28 <sup>35</sup> See note 34, above.

1 revolvers like Colt's "pocket navy" six-shooter with a three-inch  
2 barrel. After the Civil War, military purchases slowed, which  
3 led gun manufacturers to pivot toward civilian sales. They  
4 marketed pocket pistols heavily. For instance, Colt's produced  
5 both a "ladies' model" as well as a "house" pistol—though the  
6 latter became more widely known as a "Fisk" for its use in the  
7 infamous murder of the robber baron Jim Fisk in 1872.<sup>36</sup> The  
8 explosion in production was all the more pronounced by the entry  
9 of imitation brands that used lower quality metals with less  
10 sophisticated workmanship to sell pocket pistols at much lower  
11 prices than the competition.<sup>37</sup> These cheap revolvers could be had  
12 for a few dollars, with used ones selling for even less.<sup>38</sup>

13 24. It is in this context that the public carry regulations  
14 and associated sales bans and prohibitory taxes mentioned above  
15 must be understood. A confluence of technical advancements and  
16

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17 <sup>36</sup> For example, see *The Pistol as a Weapon of Defence in the*  
18 *House and on the Road: How to Choose It and How to Use It* 23  
19 (1875) (referring to pocket pistols, including "the house pistol  
20 brought out some years ago by the Colt Arms Company, and rendered  
famous by the fact that it was the pistol used by [Edward] Stokes  
in the murder of Fisk").

21 <sup>37</sup> See note 34, above.

22 <sup>38</sup> Colt's Army revolvers cost about \$20 at the time of the  
23 Civil War, but subsequent entrants into the market sold small  
24 pocket pistols for as little as a couple of dollars. For  
25 example, see digitized Sears and Roebuck catalog (1898), pp. 365-  
26 367. Regardless of caliber, the pistols from Colt's ran about  
27 \$12 to \$13 in the catalog but retailed elsewhere for something  
28 closer to \$18 (see pp. 367). Meanwhile, the smaller caliber  
pocket pistols from other brands could be ordered for as little  
as \$1.40 (see pp. 365). For the 1898 Sears & Roebuck catalog  
online, see  
[https://archive.org/details/consumersguideno00sear/page/365/mode/  
lup?q=pistol](https://archive.org/details/consumersguideno00sear/page/365/mode/lup?q=pistol).

1 social changes resulted in the widespread adoption of new  
2 weapons, causing new societal problems that increased levels of  
3 interpersonal violence and ratcheted up public fear. In  
4 response, state legislatures enacted regulations targeting the  
5 source of that problem. In addition to other dangerous weapons,  
6 Tennessee and Arkansas targeted “pocket pistols”—designed to be  
7 concealed from public view and increasingly easy to obtain by  
8 those wishing to cause harm, were a target of these laws. The  
9 legislatures of both Tennessee and Arkansas prohibited both the  
10 public carrying of these weapons, as well as their sale to the  
11 general public. These regulations remained in force well into  
12 the twentieth century.

13 25. Previous scholarship addressing these Arkansas and  
14 Tennessee statutes has cast them as racially motivated.<sup>39</sup> Those  
15 articles did not investigate deeply the primary sources of the  
16 time. My research shows that these accounts have misrepresented  
17 these laws, which were enacted as a public safety measure rather  
18 than an attempt to disarm Black residents. The argument made by  
19 other scholars, again based on little more than inference, has  
20 been that most white men served in the Civil War or had the means  
21 to purchase a “army/navy” pistol, and that the army/navy  
22 exception was tantamount to a whites-only exception to this  
23 policy.<sup>40</sup> Civil War soldiers on both sides of the conflict were  
24 unlikely to be issued a revolver unless they were officers,

25 \_\_\_\_\_  
26 <sup>39</sup> For example, Stefan B. Tahmassebi, “Gun Control and  
27 Racism,” *George Mason University Civil Rights Law Journal* 2, no.  
28 1 (Summer 1991), 74-75; Robert Leider, “Our Non-originalist Right  
to Bear Arms,” *Indiana Law Journal* 89, no. 4, 1619-1620.

<sup>40</sup> Tahmassebi, “Gun Control and Racism,” 74-75.

1 cavalry, or artillery; a great number of enlisted soldiers who  
2 possessed revolvers during the conflict had purchased them on  
3 their own, and at times their carrying of the weapons caused  
4 sufficient trouble within the ranks that officers confiscated  
5 them. Others discarded heavy and seemingly unnecessary pistols  
6 on long, grueling marches.<sup>41</sup> Confederate service did not  
7 automatically correlate to white possession of an exempted  
8 pistol.

9 26. Rather than impute racism to these laws simply because  
10 of their occurrence during Reconstruction, we should embed them  
11 within their appropriate political and cultural context. The  
12 fact that Tennessee's legislature amended the public carry law so  
13 swiftly to add the army/navy exception could indicate to the  
14 casual observer that white residents were dissatisfied with the  
15 original statute; however, when the statutes and their  
16 constitutional challenges are placed in chronological order and  
17 interpreted in light of the other primary sources of the era  
18 (particularly newspapers and the widespread social contempt for  
19 publicly carrying deadly weapons), it is clear that racism was  
20 not behind the army/navy exemption. Instead, it represented the  
21 best effort of Tennessee lawmakers to emulate the kind of

22 \_\_\_\_\_  
23 <sup>41</sup> On pistols and other arms issued during the Civil War, see  
24 Katelyn Brown, "Armed to the Teeth," *Military Images* 33, no. 4  
25 (Autumn 2015), 32-36; Joseph G. Bilby, *Civil War Firearms: Their  
26 Historical Background and Tactical Use* (Conshohocken, PA: Combined  
27 Books, 1996); Graham Smith, *Civil War Weapons* (New York:  
28 Chartwell, 2011); Jack Coggins, *Arms and Equipment of the Civil  
War* (New York: Fairfax Press, 1982); *Arms and Equipment of the  
Union* (Alexandria, VA: Time-Life Books, 1999); Ken Bauman, *Arming  
the Suckers: A Compilation of Illinois Civil War Weapons* (Dayton,  
OH: Morningside House, 1989).

1 comprehensive public carry prohibition that was in force in  
2 Texas<sup>42</sup> while also respecting the parameters set forth by the  
3 state supreme court in *Andrews v. State*. The amendatory statute  
4 did not simply provide an exemption for army/navy pistols—it  
5 specified that even those pistols could not be carried in public  
6 unless openly in the hand. Just like today, it was not common at  
7 that time to see a person walking along a public street carrying  
8 a gun in hand; such behavior would have been understood as an  
9 emergency requiring the intervention of local officers of the  
10 law.

### 11 **III. THE RECENT EMERGENCE OF LARGE-CAPACITY MAGAZINES**

12 27. As explained below, the modern large-capacity magazine  
13 as we know it today was not widely distributed in the United  
14 States until quite recently. The semi-automatic weapons with  
15 which twenty-first century Americans associate large capacity  
16 magazines were either not in existence or not manufactured in  
17 large numbers until the twentieth century. Nineteenth-century  
18

---

19 <sup>42</sup> Texas featured a comprehensive deadly weapon law that  
20 prohibited the open or concealed carrying of “any pistol, dirk,  
21 dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie  
22 knife, or any other kind of knife manufactured or sold for the  
23 purposes of offense or defense.” There were a few exceptions,  
24 such as for travelers, peace officers, and anyone who “has  
25 reasonable grounds for fearing an unlawful attack on his person,  
26 and that such ground of attack shall be immediate and pressing.”  
27 *General Laws of Texas*, ch. XXXIV, §1 (1871). The original  
28 statutes in Arkansas and Tennessee indicate legislative intent to  
enact a comprehensive law like this one, but the decisions from  
their state courts in *Wilson* and *Andrews*, respectively, prevented  
them from doing so; in Texas, on the other hand, cases *English*  
and *Duke* upheld the constitutionality of the deadly weapon law  
without requiring an army/navy exception. See *English v. State*  
*of Texas*, 35 Tex. 473 (1872); *State of Texas v. Duke* 42 Tex. 455  
(1874).

1 magazines capable of storing more than ten rounds of ammunition  
2 at a time were not usually detachable (which made for slower  
3 reloading time) or were designed for large, military-grade  
4 firearms that were not capable of being used or carried for  
5 personal use.

6 **A. Rare and Unusual High-Capacity Firearms**

7 28. Repeating rifles became available for military and  
8 civilian use during the Civil War Era (1850-1870), though prior  
9 to that time there were a few novelty firearms that featured  
10 firing capacities greater than ten rounds. At no point were these  
11 firearms widely available or produced in sufficient numbers to  
12 make them accessible to American consumers. The examples of high-  
13 capacity nineteenth-century firearms cited by plaintiffs fall  
14 into this category.<sup>43</sup>

15 29. Plaintiffs refer to a 24-barreled pepperbox pistol and  
16 a 21-shot revolver which appear in the book *Pepperbox Firearms* by  
17 Lewis Winant (1952).<sup>44</sup> The citations provided do not direct the  
18 researcher to either of those weapons.<sup>45</sup> A specific pepperbox  
19 pistol type discussed on p.118 was produced "with as many as  
20 twenty-four barrels," but was of a European design and appeared  
21 in a chapter titled "European Percussion Pepperboxes."<sup>46</sup> No 21-

22 <sup>43</sup> Memorandum of Points and Authorities in Support of  
23 Plaintiffs' Motion for Summary Judgment, Dkt. 123-1 ("MPA"), at  
24 20.

24 <sup>44</sup> Lewis Winant, *Pepperbox Firearms* (New York: Greenberg,  
1952).

25 <sup>45</sup> Plaintiff's citation to the 24-barreled pistol is Winant,  
26 *Pepperbox Firearms*, 7, but there is no mention or depiction of  
27 such a gun on that page. The only mention of a 24-barreled pistol  
28 is on p.118. One of two citations for a 21-shot, pinfire revolver  
is Winant, *Pepperbox Firearms*, 67-70. There is no mention or  
depiction of such a firearm on those pages that I could find.

<sup>46</sup> Lewis Winant, *Pepperbox Firearms* (1952), 9, 118  
("Mariettes with as many as twenty-four barrels were made.").

1 shot revolver was mentioned in the book that I was able to find  
2 through a scan and keyword search. Images on p.9 show 18- and 19-  
3 shot pistols. The 21-shot revolver referred to was of a pinfire  
4 design, which was quite uncommon in the United States. The author  
5 of the cited work stated unequivocally that "the use of pin-fire  
6 ignition is completely foreign to American pepperboxes."<sup>47</sup> The  
7 vast majority of the pepperbox pistols pictured and described in  
8 Winant's work—including those available to Americans—held between  
9 four and six shots. A second source for the 21-shot revolver,  
10 Supica et al, *Treasures of the NRA National Firearms Museum*  
11 (2013) is a book which has fewer than 60 copies in circulation at  
12 lending institutions nationwide. I was not able to consult this  
13 work within the time constraints for this declaration.

14 30. Another source cited by plaintiffs is *Firearms Curiosa*  
15 (1957) by Lewis Winant.<sup>48</sup> The title of the book clearly indicates  
16 that its contents were curiosities and novelties rather than  
17 widely produced weapons with which regular nineteenth-century  
18 Americans would have been familiar. Winant described a 20-round,  
19 belt-fed chain-pistol, patented in 1866, as "odder and scarcer"  
20 than the bit of curiosa he had discussed immediately prior. The  
21 inventor of the weapon, Harry S. Josselyn, has left scant  
22 records.<sup>49</sup> The Smithsonian Institution holds the patent model of

23 <sup>47</sup> Winant, *Pepperbox Firearms*, 26.

24 <sup>48</sup> Lewis Winant, *Firearms Curiosa* (New York: Bonanza Books, 1955).

25 <sup>49</sup> In a high-level, keyword-search review of *Chronicling*  
26 *America* and the American Periodicals Series (ProQuest), I was not  
27 able to find a written record of Harry S. Josselyn or a Josselyn  
28 chain-pistol. A European designer of chain-fed guns mentioned in  
*Firearms Curiosa*, Thomas Treeby, was similarly difficult find. He  
has neither an entry nor a mention in the Oxford History of  
National Biography. One reference to Treeby's chain gun was made

(continued...)

1 the Josselyn Chain Revolver in its collections and categorizes it  
2 as an item related to Armed Forces History and Military History,  
3 meaning that the firearm may very well have been designed for  
4 military use.<sup>50</sup> A 42-shot Ferris Wheel pistol pictured in *Firearms*  
5 *Curiosa* also appears to be a rare item with which few Americans  
6 would have been familiar. Its inventor, a British man named  
7 Joseph Enouy, has also left few records.<sup>51</sup>

8 31. A final example of a high-capacity, historical firearm  
9 provided by plaintiff is the 12-shot Bennett and Haviland Rifle  
10 patented in 1838. *Flayderman's Guide* describes this weapon in  
11 these terms: "Quantity unknown; likely less than ten," and "very  
12 rare."<sup>52</sup> It was not a common weapon which Americans would have  
13 seen or been familiar with.

14 32. The repeating pistols that had some commercial success  
15 in the antebellum nineteenth century carried between four and six  
16 shots. The repeating rifles that experienced some commercial

17 \_\_\_\_\_  
18 in a 1914 newspaper article, which described the weapon as "a  
19 most extraordinary repeating arm" that was among the collection  
20 of firearms held by a collector named H. H. Harrod. See  
21 "Evolution of Modern Rifle," *New York Tribune* (New York, New  
22 York), September 20, 1914, 6.

23 <sup>50</sup> Patent Model, Josselyn Chain Revolver, Smithsonian  
24 Institution, National Museum of American History, ID No.  
25 AF.251103. HYPERLINK

26 [https://collections.si.edu/search/detail/edanmdm:nmah\\_417116?q=josselyn+pistol&record=1&hlterm=josselyn%2Bpistol](https://collections.si.edu/search/detail/edanmdm:nmah_417116?q=josselyn+pistol&record=1&hlterm=josselyn%2Bpistol)

27 <sup>51</sup> Like Treeby, Joseph Enouy has neither an entry nor a  
28 mention in the Oxford Dictionary of National Biography, and a  
29 cursory keyword search of *Chronicling America* and the American  
30 Periodicals Series (ProQuest) returns no results. An online  
31 gallery of "Unusual Revolvers," which is an informal source,  
32 asserts that most photographs of this gun depict only one  
33 manufactured product—one which was held in an English collection  
34 before being sent to Egypt. It may be that there is no more than  
35 this one example of the Enouy Ferris Wheel Revolver.

36 <http://www.douglas-self.com/MUSEUM/COMMS/revolver/revolver.htm>

37 <sup>52</sup> Norm Flayderman, *Flayderman's Guide to Antique Firearms*  
38 *and Their Values*, 9<sup>th</sup> ed. (Iola, WI: Krause Publications, 2007),  
39 711.



1 success had varied firing capacities. The Colt repeating rifle (a  
2 revolving design) carried five or six rounds, while the early  
3 Spencer lever-action rifles carried seven rounds. The Henry rifle  
4 and Winchester rifles of the 1860s and 1870s were the first  
5 repeating rifles with a magazine capacity greater than ten which  
6 were produced in sufficient numbers to be readily available for  
7 purchase by Americans.

8 **B. High-Capacity Level-Action Rifles, a Nineteenth**  
9 **Century Outlier**

10 33. The lever-action design usually featured a fixed,  
11 tubular magazine that was loaded through a loading port on the  
12 side of the firearm. While there are a handful of examples of  
13 these fixed tubular magazines capable of holding more than ten  
14 cartridges during that time period, such as the famous Winchester  
15 Model 1873 Repeating Rifle,<sup>53</sup> between each shot the user had to  
16 engage the lever action to discharge the spent shell and load a  
17 fresh cartridge from the magazine into the chamber. And when all  
18 rounds had been expended, the user had to individually load  
19 cartridges back into the magazine by inserting them through the  
20 loading port.

21 34. In fact, as the nineteenth century drew to a close,  
22 newly designed lever-action rifles tended to be chambered for  
23 larger center-fire cartridges—which had the effect of reducing  
24 magazine capacity. Where the Henry and Winchester 1866 had been  
25 designed for 44-caliber rimfire cartridges, the Winchester 1873  
26

27 \_\_\_\_\_  
28 <sup>53</sup> Thomas Henshaw, *The History of Winchester Firearms, 1866-1992* (Clinton, NJ: Winchester Press, 1993), 13-19.

1 was chambered for the 44-40 Winchester center-fire round.<sup>54</sup> It was  
2 slightly longer than the 44 Henry and 44 Rim Fire that the  
3 preceding models had used, but it was the beginning of a trend on  
4 Winchester's part to develop and produce rifles capable of firing  
5 stronger, larger center-fire cartridges.<sup>55</sup> The company was  
6 competing for sportsmen as consumers, and sportsmen were drawn to  
7 the single-shot rifles designed for large, heavy center-fire  
8 cartridges that were capable of taking down a large target (like  
9 deer, grizzlies, and buffalo) with one well-placed shot. For this  
10 reason, Winchester developed lever-action rifles for use with  
11 larger cartridges and even manufactured its first single-shot  
12 rifle in 1885.<sup>56</sup>

13 35. Around the turn of the twentieth century, John M.  
14 Browning began working on the design of semi-automatic firearms,  
15 which functioned through a "blowback" method in which "The recoil  
16 from the exploded cartridge ejects the empty shell, cocks the  
17 hammer, and throws a fresh cartridge into the chamber."<sup>57</sup> This  
18 design was sometimes referred to as "automatic," though its

---

19 <sup>54</sup> On these rifles, their magazines, and the associated  
20 cartridges, see Henshaw, *Winchester Firearms*, 6-8, 10-17; and  
21 Frank C. Barnes and Stan Skinner, *Cartridges of the World: A  
Complete and Illustrated Reference for over 1500 Cartridges* 11<sup>th</sup>  
ed. (Iola, WI: Gun Digest Books, 2009), 485, 96.

22 <sup>55</sup> Subsequent Winchester models, including the Winchester  
23 1883 Hotchkiss Repeater, chambered for the newer 45-70 US  
24 Government cartridge, had a magazine in the butt stock that held  
25 6 rounds; and the Winchester Model 1894 Repeating Rifle,  
26 chambered for various center-fire cartridges, had a maximum  
27 magazine capacity was only 8 rounds. See Henshaw, *Winchester  
Firearms*, 23-24, 41; and Barnes and Skinner, *Cartridges of the  
World*, 96-97

28 <sup>56</sup> On Winchester Repeating Arms Co. designing guns in  
competition with other manufacturers' single-shot rifles, see  
Henshaw, *Winchester Firearms*, 25-29.

<sup>57</sup> "Model 1903," Catalogue No. 71 (June 1904), 60. Winchester  
Repeating Arms Company Catalogs 1904-1908, Rare Books, McCracken  
Research Library, Buffalo Bill Center of the West, Cody, Wyoming.

1 function aligns with our current definition of "semi-automatic";  
2 it was also referred to as "auto-loading" or "self-loading."  
3 Winchester released its Model 1903 Automatic Rifle, which  
4 employed this method, and featured a 10-round, fixed, tubular  
5 magazine for .22 caliber cartridges. According to its product  
6 description, "...all that is necessary to do to shoot the ten  
7 cartridges that the magazine holds is to pull the trigger for  
8 each shot."<sup>58</sup> Winchester did not release a semi-automatic sporting  
9 rifle featuring a detachable magazine until its Model 1905 Self-  
10 Loading Rifle, and that detachable box magazine held only five  
11 cartridges in a single column.<sup>59</sup> The subsequent semi-automatic  
12 model, called the Model 1907 Self-Loading Rifle, featured a 5-  
13 round detachable box magazine.

14 36. A major rival of Winchester was Marlin Firearms, a  
15 company that became a highly popular producer of lever-action  
16 rifles. Marlin did not begin manufacturing semi-automatic rifles  
17 until 1931 when the company (under new leadership) released the  
18 22 Caliber Autoloading Rifle, also called the Model 50 / 50E.<sup>60</sup> It  
19 came with a six-round detachable clip magazine.<sup>61</sup>

20 37. As the twentieth century wore on, both Marlin and  
21 Winchester featured semi-automatic rifles as a part of their  
22 regular lineup of hunting firearms, though lever-action, pump  
23

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24  
25 <sup>58</sup> "Model 1903," Catalogue No. 71 (June 1904), 60. Winchester  
26 Repeating Arms Company Catalogs 1904-1908, Rare Books, McCracken  
27 Research Library, Buffalo Bill Center of the West, Cody, Wyoming.

28 <sup>59</sup> Henshaw, *Winchester Firearms*, 61-61.

<sup>60</sup> William S. Brophy, *Marlin Firearms: A History of the Guns  
and the Company that Made Them* (Harrisburg, PA: Stackpole Books,  
1989), 300-301.

<sup>61</sup> Brophy, *Marlin Firearms*, 301.

1 action, and bolt action designs tended to be more popular.<sup>62</sup> The  
2 magazine capacities of their semi-automatic models with  
3 detachable magazines remained at or below 10 rounds with very few  
4 exceptions. One of those few outliers was the Marlin Model 89C,  
5 released in 1948 and chambered for .22 caliber long rifle rounds.  
6 It was originally sold with a standard 7-shot clip magazine, but  
7 beginning in 1953, new models were sold with two 5-shot clip  
8 magazines. In 1957, that changed once again when standard  
9 magazines for new manufactures was a 12-shot clip magazine.<sup>63</sup>  
10 Marlin ceased production of the Model 89C in 1961, and for the  
11 next two decades or more, the company's standard magazine sizes  
12 tended to max out at 7 rounds.<sup>64</sup> The Model 89C and its short-lived  
13 magazine capacity of twelve rounds was an outlier in Marlin's  
14 sales and production catalog.

15 38. Even though Winchester produced semi-automatic rifles  
16 before Marlin, the company did not sell rifles with a standard  
17 clip magazine capacity over 10 rounds to civilians through at  
18 least 1996.<sup>65</sup> For a brief period in the 1970s (1974-1978), the  
19 company produced the Model 490 Repeating (Autoloading) 22 Rim  
20 Fire Rifle. These firearms came with a standard 5-round clip  
21 magazine and were shown with that magazine in Winchester

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22  
23 <sup>62</sup> See the catalogs of Marlin Firearms and Winchester  
24 Repeating Arms Company for the 1950s through the 1990s.  
25 Winchester Catalogs, Rare Books; and Winchester and Marlin  
26 Catalogs and Literature, MS 162, McCracken Research Library,  
27 Buffalo Bill Center of the West, Cody, Wyoming.

28 <sup>63</sup> Brophy, *Marlin Firearms*, 306-307.

<sup>64</sup> Marlin Catalogs, Folders 1/13-1/16, MS 162, Winchester and  
Marlin Catalogs and Literature, McCracken Research Library,  
Buffalo Bill Center of the West, Cody, Wyoming.

<sup>65</sup> Marlin Catalogs, Folders 1/13-1/16, MS 162, Winchester and  
Marlin Catalogs and Literature, McCracken Research Library,  
Buffalo Bill Center of the West, Cody, Wyoming.

1 catalogs; customers who wish to purchase magazines holding 10 or  
2 15 rounds had to do so as accessories.<sup>66</sup> The dearth of Winchester  
3 company records makes it impossible to estimate how many of these  
4 accessory magazines were purchased, but it stands to reason that,  
5 had a standard capacity at or above ten been popular with  
6 consumers, Winchester likely would have sold at least some of  
7 their semiautomatic rifles that way.

8 39. Records relating to the production and advertisement of  
9 rifles manufactured by two of the most popular brands shows that  
10 even though detachable clip/box magazines have been in existence  
11 since the early twentieth century, they were not generally sold  
12 with a capacity of more than 10 rounds until recently. In fact,  
13 these records show that during most of the twentieth century  
14 standard clip/box magazine sizes usually ranged from 3 to 7  
15 rounds.<sup>67</sup>

16 **C. Early Semi-Automatic Pistols Had a Magazine Capacity**  
17 **of Less than Ten Rounds**

18 40. The technological developments that produced automatic  
19 and semi-automatic rifles and shotguns also made possible the  
20 automatic and semi-automatic pistol. In the 1890s, a German  
21 engineer designed the first fully functional semi-automatic  
22 pistol, but its unusual size and shape prevented it from being  
23

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24 <sup>66</sup> Henshaw, *Winchester Firearms*, 174. Winchester Catalogs  
25 1970-1975, Folder 1/3, MS 162, Winchester and Marlin Catalogs and  
26 Literature, McCracken Research Library, Buffalo Bill Center of  
the West, Cody, Wyoming.

27 <sup>67</sup> See the catalogs of Marlin Firearms and Winchester  
28 Repeating Arms Company for the 1950s through the 1990s.  
Winchester Catalogs, Rare Books; and Winchester and Marlin  
Catalogs and Literature, MS 162, McCracken Research Library,  
Buffalo Bill Center of the West, Cody, Wyoming.

1 the financial success its manufacturers wanted.<sup>68</sup> The company  
2 commissioned Georg Luger to redesign it, which he did over the  
3 course of the 1890s.<sup>69</sup> Meanwhile, the American gun designer, John  
4 Moses Browning, developed various semi-automatic pistol designs.  
5 One of his designs, which seemed poised to receive US military  
6 contracts, was purchased by Colt's.<sup>70</sup> The company's developments  
7 began with a series of handguns chambered for .38 Auto, then .45  
8 caliber rounds, each of which had a magazine capacity of less  
9 than ten rounds.<sup>71</sup> Efforts culminated in the development of the  
10 Colt Government Model .45 1911 Automatic—the standard-issue  
11 sidearm for American armed forces until the 1980s, which featured  
12 a magazine capacity of seven rounds.

13 41. Browning's other semi-automatic pistol design was  
14 purchased by Fabrique Nationale d'Armes de Guerre (FN), a Belgian  
15 arms manufacturer. The FN Browning M1900 was released at the  
16 turn of the twentieth century and sold quite successfully in  
17 Europe. It was chambered for .32 caliber cartridges and had a  
18 magazine in the hand-grip which held seven rounds. In Continental  
19 Europe, these "Browning pistols" were associated with a  
20 tremendous rise in crimes, accidents, and deaths related to  
21

22 \_\_\_\_\_  
23 <sup>68</sup> Nathan Gorenstein, *The Guns of John Moses Browning: The Remarkable Story of the Inventor Whose Firearms Changed the World* (New York: Scribner, 2021), 119-120.

24 <sup>69</sup> The company was Deutsche Waffen- und Munitionsfabriken (DWM), which owned a controlling interest in the Belgian  
25 armsmaker Fabrique Nationale d'Armes de Guerre (FN). See  
26 Gorenstein, *The Guns of John Moses Browning*, 128.

27 <sup>70</sup> Gorenstein, *The Guns of John Moses Browning*, 123-125.

28 <sup>71</sup> Charles T. Haven and Frank A. Belden, *A History of the Colt Revolver, and the Other Arms Made by Colt's Patent Fire Arms Manufacturing Company from 1836 to 1940* (New York: Bonanza Books, 1940), 205-207, 209, 210-213.

1 firearms, and particularly the anarchist movement that carried  
2 out numerous assassinations there.<sup>72</sup>

3 42. FN subsequently approached Browning to design another  
4 semi-automatic handgun that might be purchased in large numbers  
5 by the French army. One of the requirements for consideration was  
6 that the firearm have a magazine capacity greater than ten  
7 rounds. Browning was initially reluctant to participate in the  
8 endeavor but soon changed his mind. An engineer from FN,  
9 Dieudonne Saive, developed a functional "double-stacked" magazine  
10 prototype, which offset cartridges in two separate columns to  
11 double the capacity.<sup>73</sup> The resulting hand-grip was significantly  
12 wider than those of previous models, but it held thirteen 9mm  
13 cartridges.<sup>74</sup> The FN Browning M35 Hi-Power pistol went into  
14 production after John M. Browning passed away in the 1930s, but  
15 FN produced the weapon (even though it was not initially selected  
16 by the French military) until 2018. When the Nazis occupied  
17 Belgium, they took over the FN factory and produced some of these  
18 pistols for their own use during World War II.<sup>75</sup>

19 43. Even though American companies and designers proved to  
20 be trailblazers in the development of semi-automatic handguns,  
21 American consumers were not quickly won over by them. Through at  
22 least the World War II era, Americans seem to have preferred  
23 revolvers to semi-automatic designs; this was in sharp contrast  
24 to Europe, where semi-automatic pistols were favored over

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25 <sup>72</sup> Gorenstein, *The Guns of John Moses Browning*, 130-133.

26 <sup>73</sup> Gorenstein, *The Guns of John Moses Browning*, 209-210.

27 <sup>74</sup> Henry M. Stebbins, Albert J. E. Shay, and Oscar R.  
Hammond, *Pistols: A Modern Encyclopedia* (Harrisburg, PA: The  
Stackpole Company, 1961), 140.

28 <sup>75</sup> Stebbins, Shay, and Hammond, *Pistols*, 139-140.

1 revolvers.<sup>76</sup> Browning M35 Hi-Power pistols were sold in the United  
2 States and some Americans purchased them with magazine capacities  
3 greater than ten rounds, but by far most semi-automatic firearms  
4 on the American market maxed out at ten.<sup>77</sup> Brands like Colt's and  
5 Smith & Wesson produced several semi-automatic models for target  
6 shooting, police, military, and personal defense, and these  
7 firearms generally had a capacity of six to ten rounds.

8 44. By 1940, Colt's still had not produced a handgun with a  
9 magazine capacity greater than ten,<sup>78</sup> and by 1944 the inaugural  
10 issue of *Gun Digest* (which published advertisements for the best-  
11 selling American handguns) did not feature one.<sup>79</sup> By 1951, *Gun*  
12 *Digest* included the Browning Hi-Power in its lineup of "military  
13 small arms," but it was an outlier among the other sixteen semi-  
14 automatic handguns with magazine capacities of ten or less.<sup>80</sup> The  
15 section featuring foreign handguns included two models with  
16 magazine capacities over ten out of a total of nine semi-  
17 automatic models.<sup>81</sup> By 1969, the selection of handguns featured in  
18  
19

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20 <sup>76</sup> Gorenstein, *The Guns of John Moses Browning*, 130-133.

21 <sup>77</sup> My examination of firearms books, catalogs, archival  
22 records, and digitized copies of magazines like *Gun Digest*  
23 supports the assertion that most American semiautomatic firearms  
24 models produced between 1900 and 1990 had a standard magazine  
25 capacity of ten rounds or less.

26 <sup>78</sup> Haven and Belden, *A History of the Colt Revolver*, 219-225.

27 <sup>79</sup> *The Gun Digest: Complete Guide to American Rifles,*  
28 *Shotguns, Handguns and Accessories, The Encyclopedia for*  
*Shooters, 1944 First Annual Edition* (Chicago: Follett Publishing  
Company, 1944, repr. 1963), 155-127.

<sup>80</sup> John T. Amber, ed., *The Gun Digest: 5<sup>th</sup> Edition-1951*  
(Northfield, IL: DBI Books, Inc., 1950, repr. 1977), 131-132.

<sup>81</sup> These were the Ranger .22 Automatic with a magazine capacity  
of 11 shots and the Starr Automatic Target Pistol with a magazine  
capacity of 11 shots. See Amber, ed., *The Gun Digest: 5<sup>th</sup> Edition*,  
146-147.



1 *Gun Digest* had grown substantially, but only two models had a  
2 capacity of more than ten rounds.<sup>82</sup>

3 **IV. CONCLUSIONS**

4 45. An important lesson that the study of history shows us  
5 is that nineteenth-century Americans confronted a gun violence  
6 problem, and their solution was the enactment of state and local  
7 regulations that might limit the number of pistols in  
8 circulation. These took the form of public carry laws,  
9 prohibitive taxes, and other sales restrictions. These states  
10 targeted pocket pistols and other types of weapons that, due to  
11 their concealability, were associated with forms of criminal  
12 activity that were threatening the public at that time.

13 46. These restrictions on pocket pistols provide historical  
14 precedent for California's restrictions on large-capacity  
15 magazines. As explained above, large-capacity magazines as we  
16 understand them today only became commercially available for the  
17 first time in the later parts of the twentieth and earlier parts  
18 of the twenty-first. Thus, like with pocket pistols in the  
19 latter half of the nineteenth century, these large-capacity  
20 magazines are associated with new social problems and criminal

21 \_\_\_\_\_  
22 <sup>82</sup> The two models with magazine capacities greater than ten  
23 were the Browning M35 Hi-Power (13 rounds) and the Universal  
24 Enforcer Auto Carbine (30 shot magazine). All other handguns maxed  
25 out at 10 round magazine capacities. See John T. Amber, ed., *Gun  
26 Digest: World's Greatest Gun Book, The Shooter's Encyclopedia of  
27 Handguns, Rifles, Shotguns and Accessories, Twenty-Third  
28 Anniversary DeLuxe Edition, 1969* (Chicago: The Gun Digest Company,  
1968), 294-306. That year's selection of foreign-made handguns  
featured only two models that could come with a standard magazine  
capacity greater than ten rounds. The Luger .22 Auto Pistol had  
"a 12-shot capacity with one round in the chamber," and the MAB  
Autoloading Pistol could be purchased with a magazine capacity of  
either 8 or 15 rounds. See Amber, ed., *Gun Digest 1969*, 345, 344-  
351.

1 use (e.g., the rise of high-casualty mass shootings).  
2 California's regulation, being a prohibition on the sale,  
3 transfer, and manufacture of such magazines, is thus quite  
4 similar to the sale restrictions in states such as Tennessee and  
5 Arkansas.

6 47. As stated above, and as with any historical research  
7 project, my work in this area is still ongoing. There is  
8 significant research and analysis to be done on the drafting and  
9 enforcement of state-level statutes in Arkansas, Tennessee, and  
10 elsewhere. Very little research that is based upon primary  
11 sources—other than the review of case law and historical  
12 statutes—has yet been conducted. Still, this brief account of  
13 deadly weapon regulations from nineteenth-century Tennessee,  
14 Arkansas, Florida, and Georgia demonstrates an important theme in  
15 the history of firearms and weapons regulations in the United  
16 States: that states enacted restrictions upon certain types of  
17 weapons, like pocket pistols and bowie knives, that were uniquely  
18 adaptable to and associated with certain types of crime that  
19 threatened public safety at the time, while also ensuring that  
20 the right of individuals to arm themselves for self-defense in an  
21 emergency or upon their private property was not destroyed.

22 I declare under penalty of perjury under the laws of the  
23 United States of America that the foregoing is true and correct.

24 Executed on April 26, 2023, at Fort Worth, TX.

25  
26  
27 *Brennan Rivas*

28 \_\_\_\_\_  
Brennan Rivas

## **EXHIBIT A**

**Brennan Gardner Rivas**  
Curriculum Vitae · Oct 2022

**Employment**

Lloyd Lewis Fellow in American History, The Newberry Library, 2021-2022  
Bill & Rita Clements Fellow for the Study of Southwestern America, Southern Methodist University, Clements Center for Southwest Studies, 2020-2021  
Lecturer in American History (full-time), Texas Christian University, Department of History, 2019-2020

**Education**

Ph.D., History, Texas Christian University, 2019  
Thesis: “[The Deadly Weapon Laws of Texas](#): Regulating Guns, Knives, & Knuckles in the Lone Star State, 1836-1930”  
Advisor: [Gregg Cantrell](#)  
M.A., History, Texas Christian University, 2013  
Thesis: “Texas Antitrust Law: Formulation and Enforcement, 1889-1903”  
B.A. with Honors, History, Oklahoma State University, 2010

**Publications**

*Refereed Journal Articles*

“[An Unequal Right to Bear Arms](#): State Weapons Laws and White Supremacy in Texas, 1836-1900,” *Southwestern Historical Quarterly* 121 (Jan 2018): 284-303.

*Law Articles*

“Strange Bedfellows: Racism and Gun Rights in American History and Current Scholarship” in Joseph Blocher and Jake Charles, eds., *New Histories of Gun Rights and Regulation: Essays on the Place of Guns in American Law and Society* (New York: Oxford University Press, forthcoming)

“[Enforcement of Public Carry Restrictions: Texas as a Case Study](#),” *U.C. Davis Law Review* (May 2022)

“[The Problem with Assumptions: Reassessing the Historical Gun Policies of Arkansas and Tennessee](#),” *Second Thoughts*, Duke Center for Firearms Law (Jan 2022)

*Short Pieces*

“Charles F. Cooley,” in [Wanted in America: Posters Collected by the Fort Worth Police Department, 1898-1903](#), edited by LeAnna Schooley and Tom Kellam. Fort Worth: TCU Press, 2019.

Review of David R. Berman, *George Hunt: Arizona’s Crusading Seven-Term Governor*, in [Southwestern Historical Quarterly](#) 114, no. 3 (January 2016): 327-329.

**Public History**

“[In the Past, Americans Confronted Gun Violence by Taking Action](#),” *Washington Post: Made by History Blog* (Jun 2022)

- ~ Op-ed showcasing open-mindedness of 19<sup>th</sup> century Americans about experimenting with new gun control measures
- “[The Origin of Public Carry Laws in Texas](#),” *Texas Gun Sense Blog* (Feb 2021)
- “[Texas Gun Laws](#),” Online Primary Source Collection, hosted by [Omeka](#)
  - ~ Online collection featuring primary sources from my research; feature exhibit titled “Crafting a Public Carry Law”
- “[The Deadly Weapon Laws of Texas](#),” Preserving Our Past: Community History Workshop, Center for Texas Studies at TCU (Nov 2020)
  - ~ Public lecture featuring special insights for genealogical researchers
- “The Deadly Weapon Laws of Texas,” Graduate/Undergraduate Public History Seminar, Tarleton State University (Sept 2020)
  - ~ Research presentation focusing on interpretation of county court records
- “[When Texas Was the National Leader in Gun Control](#): How the Land of Gunslinger Mythology Regulated Weapons to Reduce Violence,” *Washington Post: Made by History Blog* (Sept 2019)
  - ~ Op-ed highlighting long history of weapon regulation in Texas

## **Fellowships and Awards**

- Lloyd Lewis Fellowship in American History, 2021-2022
  - ~ Awarded by the Newberry Library to scholars using its collection to research topics in American history
- Bill & Rita Clements Fellowship for the Study of Southwestern America, 2020-2021
  - ~ Awarded by the SMU Clements Center for Southwest Studies to two scholars of Texas, the Southwest, or the U.S.-Mexico borderlands who are developing first books
- The Benjamin W. Schmidt Memorial Scholarship, 2018-2019
  - ~ Awarded by the TCU Department of History to a PhD candidate who shows exceptional professional promise; highest departmental prize for graduate students
- Texas Christian University Department of History, Shinko and Thomas McDonald Research Prize in Texas History, 2019, 2017
  - ~ Awarded by the TCU Department of History to a graduate student with the best research on antebellum Texas history

## **Works in Progress**

*The Revolver Must Go: The Rise and Fall of a Gun Control Movement in Texas*

Aim: Scholarly monograph exploring the rise of a gun control movement in nineteenth-century Texas and the regulatory strategies which it embraced. Widespread acceptance of strict, ambitious gun control laws in the “Wild West” belies current assumptions about Texas and challenges the reigning interpretation of the Second Amendment as a guarantor of expansive gun rights

Status: Editing manuscript

“The Texas Anti-Trust Movement: Antimonopoly, Populism, and Reform in the Long Progressive Era”

Aim: Scholarly article interpreting Texas antitrust policy an example of innovative reform in the Great Plains and trans-Mississippi West

Status: Research and writing in progress

## **University Teaching Experience**

### *Instructor of Record*

Lecturer in American History, Texas Christian University 2019-2020  
“American History to 1877: Social Movements & the Politics of Slavery” (HIST 10603)  
“American History since 1877: The Quest for Equality” (HIST 10613)  
“History of Texas: A Transnational Look at the American Southwest” (HIST 40743)

### *Graduate Student Instructor*

Teaching Assistant, Texas Christian University 2017-2018  
American History to 1877 (HIST 10603)  
American History since 1877 (HIST 10613)

### *Teaching Interests*

American History, Legal History, Southwestern Borderlands, Civil War Era, American West, Gilded Age & Progressive Era, Women’s History

## **Conference Presentations & Invited Talks**

“Reassessing Assumptions about Historical Arkansas and Tennessee Handgun Regulations,”  
Race and Guns Roundtable, Duke Center for Firearms Law, Durham, North Carolina,  
November 2021  
“Enforcement of Public Carry Restrictions: Texas as a Case Study,” The Second Amendment at  
the Supreme Court: 700 Years of History and the Modern Effects of Guns in Public, Davis,  
California, October 2021  
“Race & Guns,” Newberry Library Colloquium, Chicago, Illinois, October 2021  
“Unlawful Carrying: Enforcing the Pistol Law in Texas, 1870-1920,” Texas State Historical  
Association Annual Meeting, Corpus Christi, Texas, February 2019  
“Regulating Deadly Weapons in Nineteenth-Century Texas,” Invited Lecturer, Los Bexareños  
Hispanic Genealogical and Historical Conference, San Antonio, Texas, September 2018  
“Impregnable Citadels of Capital: American Monopolies in the British Radical Press,” Southern  
Conference on British Studies Annual Meeting, St. Pete Beach, Florida, November 2016  
“Dating Violence in Texas: Why the State Family Code Obstructs Accurate Reporting about  
Sexual Assault,” TCU Women & Gender Studies Research Symposium, 2015

## **Service**

Invited Guest, “How to Make the Most of Your Time in Graduate School,” Dept. of History  
Orientation Day, 2020  
~ Advise incoming graduate students on strategies for success in the PhD program,  
emphasizing importance of intellectual development  
Panelist, “Everything You Wanted to Know about TCU but Were Too Afraid to Ask,” Dept. of  
History Orientation Day, 2016  
~ Provide honest and confidential information to prospective graduate students  
Graduate Student Mentor, 2015  
~ Informal departmental program designed to ease the transition for incoming graduate  
students

**Professional Memberships**

Society for Historians of the Gilded Age and Progressive Era

Texas State Historical Association

Southern Historical Association

American Historical Association

**Languages**

Spanish (Proficient)

Latin (Proficient)