No. 20-843

In The
Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, *et al*,

Petitioners,

v.

KEVIN P. BRUEN, *et al*.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* OF THE LEAGUE FOR SPORTSMEN, LAW ENFORCEMENT AND DEFENSE IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS[1]

The League for Sportsmen, Law Enforcement and Defense ("The League") was formed to defend individual Americans' inalienable rights, as set forth in the first ten amendments to the United States Constitution, including the right to keep and bear arms. Every American has the right to protect his home, family, and bodily person Our supporters recognize that firearms ownership is integral to preserving the Constitution and the values enshrined in the Declaration of Independence. The League supports trained, responsible law enforcement officers, in tandem with an armed citizenry, as essential to maintaining a free and civilized society. The League promotes the rule of law, guided by the values of the American Founders, and advocates for judges, prosecutors, and legislators who carry out their responsibilities in a manner consistent with those values.

SUMMARY OF THE ARGUMENT

The royal decrees issued, and the statutes enacted, in the years surrounding the enactment of the *Statute of Northampton* demonstrate that "going armed" was a medieval term of art that referred to wearing body-protecting armour, not to carrying

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[1] All parties have consented to the filing of this brief. Pursuant to Rule 37.6, no party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

weapons and certainly not to carrying firearms, which did not exist at that time.

ARGUMENT[2]

"GOING ARMED" IN THE *STATUTE OF NORTHAMPTON* IS A MEDIEVAL TERM OF ART REFERRING TO WEARING BODY-PROTECTING ARMOUR, NOT THE CARRYING OF FIREARMS OR OTHER WEAPONS.

Several federal appellate decisions interpreting the phrase "bear arms" in the Second Amendment,[3] (along with the vast majority of those

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[2] This brief references the royal decrees and statutes enacted in the years surrounding the enactment of the *Statute of Northampton,* which references are taken, with permission, from a newly-published article by Richard E. Gardiner, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3885061. The article delves more deeply into the historical context of the *Statute of Northampton*'s enactment than is possible in this brief. The League thanks him for allowing it to present his original research to the Court.

[3] *See, e.g., United States v. Tot*, 131 F.2d 261, 266 (3d Cir. 1942), *rev'd in part*, 319 U.S. 463 (1943); *United States* v. *Warin*, 530 F.2d 103, 107 (6th Cir. 1976); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 95 n.20 (2d Cir. 2012); *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012), and 702 F.3d at 944-45 (Williams, J., dissenting); *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 775 F.3d 308, 319-20 (6th Cir. 2014), *rev'd* 837 F.3d 678 (6th Cir. 2016) (en banc); *Wrenn v. D.C.*, 864 F.3d 650, 659-61 (D.C. Cir. 2017); *Kanter v. Barr*, 919 F.3d 437, 456 n.4 (7th Cir. 2019) (Barrett, J., dissenting). *See also, e.g.*, *Bridgeville Rifle & Pistol Club v. Small*, 176 A.3d 632, 644 n.58 (Del. 2017) and 176 A.3d at 672-73 n.55 (Strine, C.J.,

writing about the history of the right to bear arms, irrespective of their viewpoint) have simply assumed, without any evidence, that "going armed" meant carrying weapons. Most recently, in *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021) (*en banc*), the court spent some seven (7) pages (786-793) reviewing what it terms "The English Right to Bear Arms in Public" and discussing in particular the *Statute of Northampton*, 2 Edw. 3, c. 3 (1328), to show that "going armed" in public was a violation of law.

A review of some the royal decrees and statutes discussed by *Young* and, more importantly, of other royal decrees not mentioned, demonstrates, however, that "going armed" did not equate to carrying weapons and certainly did not refer to firearms. -Rather, "going armed" was a medieval term of art, which referred to wearing body-protecting armour.

The *Statute of Northampton*

The *Statute of Northampton* encompassed seventeen (17) chapters covering a wide variety of matters, from pardons to measures of imported cloth to keeping of fairs to inquests. The chapter concerning "going or riding armed" is Chapter 3, which provides:

> Item, it is enacted, that no man great nor small, of what condition soever he be, except the King's servants in his presence, and his ministers in executing of the King's precepts, or of their office,

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dissenting); *State v. Christian*, 249 Ore. App. 1, 41-45 (2012) (Edmunds, S.J., dissenting).

> and such as be in their company assisting them, and also [upon a cry made for arms to keep the peace, and the same in such places where such acts happen,] be so hardy to come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to **go nor ride armed** by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure.

2 Edw. 3, c.3 (1328) (emphasis added).

The *Statute of Northampton* Did Not Refer to Firearms

The first observation about "going armed" is that it did not refer to carrying firearms -- there were no firearms in the 14th Century, or even through most of the 15th Century. Firearms did not come into existence until the late 15th Century:

> The late 1400s saw the appearance of handheld firearms ("arquebuses") that could be carried into battle, followed by heavier versions ("muskets") in the early 1500s that were fired from Y-shaped supports. Arquebuses and muskets were both shoulder arms; pistols did not appear until the mid-1500s.

Chase, *Firearms - A Global History to 1700* at 61 (Cambridge University Press).

Hence, beyond any doubt, "going armed" did not mean carrying firearms. The widespread assumption in both judicial opinions and legal literature is that the phrase "going armed" must mean "carrying weapons." As will be shown *infra*, however, that assumption is erroneous. The context by which "going armed" was used in the years preceding and following the 1328 enactment of the *Statute of Northampton* provides the most certain means of ascertaining its meaning.

The Uses Of "Going Armed" In Royal Orders And Acts Of Parliament

We start with a royal order in 1297 (during the reign of Edward I):

> It was ordered that every bedel [administrator] shall make summons by day in his own Ward, upon view of two good men, for setting watch at the Gates;—and that those so summoned . . . are to be properly **armed with two pieces**; namely, **with haketon**[4] and **gambeson** [inner jacket, worn beneath

[4] An haketon (also aketon, gambeson, padded jack, pourpoint, or arming doublet) is a padded defensive jacket, worn as armor separately, or combined with mail or plate armor. It was produced with a sewing technique called quilting and was usually constructed of linen or wool; the stuffing varied, and could be for example scrap cloth or horse hair. During the 14th century, illustrations usually show buttons or laces up the front. It also contained arming points for attaching plates.

> the haketon, or other armour], or else **with haketon and corset, or with haketon and plates**. . . .

Memorials of London and London Life in the 13th, 14th and 15th Centuries: 1297, 33-36 (Longmans, Green, London, 1868) (emphasis added).

Accordingly, in this order, "armed" meant only wearing body-protecting armour.

Two years later, Edward I sent an order to the sheriffs of Salop and Stafford ordering them to issue a proclamation:

> prohibiting any one, under pain of forfeiture of life and limb, lands, and of everything that he holds in the realm, from **tourneying, tilting (bordeare) or jousting, or making assemblies, or otherwise going armed** within the realm without the king's special licence.

4 *Calendar of the Close Rolls, Edward I, 1296-1302*, 318 (September 15, 1299, Canterbury) (H.C. Maxwell-Lyte ed., London, Mackie And Co. 1906) (emphasis added).

Tourneying, tilting, and jousting were martial games between two riders on horseback wearing body armour and wielding lances with blunted tips for the purpose of replicating a clash of heavy cavalry, with each participant trying to strike the opponent while riding towards him at high speed, breaking the lance on the opponent's shield or jousting armour if possible, or unhorsing him. The term "going armed" was thus a reference to the

wearing of body-protecting armour, not the carrying of weapons.

Three years after issuing the above order, Edward I similarly instructed the sheriff of York to prohibit:

> any knight, esquire or any other person from **tourneying, tilting (*burdeare*), making jousts, seeking adventures or otherwise going armed** without the king's special licence, and to cause to be arrested the horses and **armour** of any persons found thus going with arms after the proclamation, as the king wills that no tournaments, tiltings or jousts shall be made by any persons of his realm without his special licence.

4 *Calendar of the Close Rolls, Edward I, 1296-1302*, 588 (July 16, 1302, Westminster) (H.C. Maxwell-Lyte ed., London, Mackie And Co. 1906) (emphasis added).

Young cited this order as prohibiting "any knight, esquire or any other person from . . . going armed without the king's special licen[s]e." 992 F.3d at 786. Thus, the court's analysis omitted key words of the order: "tourneying, tilting (*burdeare*), making jousts, seeking adventures or otherwise," an omission which not only broadens the scope of the order, but removes "going armed" from its context, thereby obscuring its true meaning. By including the omitted language, it is evident that "going armed" referred not to carrying weapons, but to the wearing of body-protecting armour needed to protect a knight while replicating a clash of heavy cavalry.

In *Young*'s discussion of a similar order directed to the sheriffs of Leicester and York two years later (992 F.3d at 786), *Young* again omits the same key words from the order; the order actually directed that the sheriffs issue a proclamation prohibiting "any knight, esquire or other person from tourneying, tilting (burdar'), making jousts, seeking adventures, or otherwise going armed in any way without the king's licence." 5 *Calendar Of The Close Rolls, Edward I, 1302–1307*, at 210 (June 10, 1304, Stirling) (H.C. Maxwell-Lyte ed., 1908).

In preparation for the coronation of Edward II after Edward I's death, a directive proclaimed that:

> no one shall be so daring, on the day of the Coronation, as to **carry sword, or knife with point, or misericorde** [short dagger], **mace, or club, or any other arm**, on pain of imprisonment for a year and a day.

Memorials of London and London Life in the 13th, 14th and 15th Centuries: 1308, 63-67 (H.T. Riley, London, 1868) (emphasis added).

Thus, the term "arm," used as a noun, referred to weapons that one could "carry": a "sword, or knife with point, or misericorde [short dagger], mace, or club . . . ." Because what was prohibited was carrying weapons, the order makes no reference to "going armed," which meant wearing body-protecting armour.

Young also cited a different order issued in the months leading up to Edward II's coronation. 992 F.3d at 786. As with the previous orders concerning

tourneying and jousting, *Young* omitted the order's key part. That order, in full, prohibited any "knight, esquire, or other" from "presum[ing] to tourney or make jousts or bordices (torneare, justas seu burdeicias facere), or otherwise go armed at Croydon or elsewhere before the king's coronation." 1 *Calendar Of The Close Rolls, Edward II, 1307–1313*, at 52 (Feb. 9, 1308, Dover) (H.C. Maxwell-Lyte ed., 1892).

Two years after his coronation, Edward II issued an order to all the sheriffs of England, prohibiting any "earl, baron, knight, or other" from "tourney[ing], bourd[ing], or mak[ing] jousts or seek adventures, or otherwise go[ing] armed, under pain of forfeiture . . . ." 1 *Calendar Of The Close Rolls, Edward II, 1307–1313*, at 257 (Apr. 9, 1310, Windsor). *Young*'s recitation of this order (992 F.3d at 786) again omits the order's key language: the prohibition on "tourney[ing], bourd[ing], or mak[ing] jousts or seek adventures," taking the prohibition on "go[ing] armed" out of context and obscuring its true meaning.

In discussing a similar order issued two years later, *Young* again omitted significant contextual language (992 F.3d at 786). In full, the order provided:

> [N]o one shall, under pain of forfeiture, *make assemblies with horses and arms or* go armed *or hold tournaments, jousts, etc.,* without the king's special licence, or do anything to disturb the peace, and to arrest all persons doing contrary to this order, certifying the

> king of the names of any persons resisting him.

1 *Calendar Of The Close Rolls, Edward II, 1307–1313*, at 553 (Oct. 12, 1312, Windsor).

In 1314, Edward II ordered the mayor and bailiffs of Northampton "to **arm** [twenty crossbowmen] with **aketons**, hauberks or **breastplates** (loricis vel platis), **bacinets**[5]. . . ." 2 *Calendar of the Close Rolls, Edward II, 1314-1318*, 200-203 (November 19, 1314, Northampton) (H.C. Maxwell-Lyte ed., London, 1893) (emphasis added).

Thus, as a verb, "to arm" meant to don a jacket with padding underneath armour, breastplates, and a helmet.

The *Calendar of the Close Rolls, Edward II, 1318-1323,* further reveals that, on May 21, 1320, "a barrel full of **helmets**, **haubergeons** (hauberiettorum) [sleeveless coat of chain mail], and other **armour**" were sold. 3 *Calendar of the Close Rolls, Edward II, 1318-1323*, 189-192 (May 21, 1320, Odiham) (H.C. Maxwell-Lyte ed., London, 1895) (emphasis added). While this entry does not use the

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[5] The bascinet –- also bassinet, basinet, or bazineto -– was a Medieval European open-faced military helmet. It evolved from a type of iron or steel skullcap, but had a more pointed apex to the skull, and it extended downwards at the rear and sides to afford protection for the neck. A mail curtain ("camail" or aventail) was usually attached to the lower edge of the helmet to protect the throat, neck, and shoulders. A visor (face guard) was often employed from ca. 1330 to protect the exposed face.

term "armed," it refers to "armour" as helmets and a sleeveless coat of chain mail.

Edward II's order of February 14, 1322 plainly uses "armed" to refer to items to be worn for bodily protection: He ordered the mayor and bailiffs of the town of Bristol to provide "a hundred footmen suitably **armed** with **aketons**, **bacinets, iron gloves**, and other arms . . ." 3 *Calendar of the Close Rolls, Edward II, 1318-1323*, 512-524 (February 14, 1322, Gloucester) (H.C. Maxwell-Lyte ed., London, 1895) (emphasis added).

A little more than a month later, Edward sent a similar order to John de Bermyngeham, justiciary of Ireland; to provide, *inter alia*, the following men for the king's army: "6,000 footmen **armed with aketon, bascinet, and iron gloves** at least . . . ." 3 *Calendar of the Close Rolls, Edward II, 1318-1323*, 529-540 (April 3, 1322, Altofts) (H.C. Maxwell-Lyte ed., London, 1895) (emphasis added).

A year later, Edward II ordered the treasurer, barons, and chamberlains of the exchequer "to ordain for the payment of the wages of the following," including "from co. Cornwall, 200 footmen **armed with aketons, bascinets, or palets (palettis) at least**, and other suitable arms . . . ." 3 *Calendar of the Close Rolls, Edward II, 1318-1323*, 645-655 (May 5, 1323, York) (H.C. Maxwell-Lyte ed., London, 1895)(emphasis added).

In March 1326, language that would find its way into the *Statute of Northampton* two years hence appeared for the first time when Edward II sent an order to all sheriffs of England, which began with:

> [I]f any man hereafter **go armed** on foot or on horseback, within liberties or without, he shall be arrested without delay by the sheriffs and bailiffs and the keepers of the king's peace, and his body shall be delivered to the nearest gaol **in the arms wherewith he shall be found** . . . .

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 547-552 (March 6, 1326, Leicester) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

This order had its genesis in Chapter VI of the *Statute of Winchester*, 13 Edward I (1285), which required that men between the ages of 15 and 60 have in house certain armour and weapons "according to the quantity of their Lands and Goods"[6] so that they could "be ready and apparelled to pursue and arrest felons and other evildoers and also the enemies of the king and of the realm in case aliens or other rebels enter the realm as enemies . . . ."

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[6] "[T]hat is to wit, [from] Fifteen Pounds Lands, and Goods [of] Forty Marks, an Hauberke, [a Breast-plate] of Iron, a Sword, a Knife, and an Horse; and [from] Ten Pounds of Lands, and Twenty Marks Goods, an Hauberke, [a Breast-plate of Iron,] a Sword, and a Knife; and [from] Five Pound Lands, [a Doublet,] [a Breast-plate] of Iron, a Sword, and a Knife; and from Forty Shillings Land and more, unto One hundred Shillings of Land, a Sword, a Bow and Arrows, and a Knife; and he that hath less than Forty Shillings yearly, shall be sworn to [keep Gis-armes] Knives, and other [less Weapons]; and he that hat less than Twenty Marks in Goods, shall have Swords, Knives, and other [less Weapons]; and all other that may, shall have Bows and Arrows out of the Forest, and in the Forest Bows and [Boults]."

Edward II issued the above order because he was:

> given to understand that certain evildoers and disturbers of his peace in divers places are allied together (entrealies), and, under colour of the said statute, cause themselves to be **armed** and ride about in warlike manner (chivauchent), and go by day and night with force and arms, to the terror of the king's people, and take and rob men at their will, and imprison some until they make fine and ransom with the said evildoers, and that the evildoers come into fairs and markets and take men's goods without paying for the same against their owners' will, and beat and maltreat (defoulent) those who will not be of their accord, and that certain of them take and hold passes (paas) in divers places under cover and in the open (en covert et dehors), and rob merchants and other men notoriously and openly.

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 547-552 (March 6, 1326, Leicester) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

What is first notable about the March 1326 order is that when the king orders the arrest of men who "go armed," he orders that they be "delivered to the nearest gaol **in the arms** wherewith he shall be found . . . ." (Emphasis added). Plainly, by requiring that the offenders be delivered "in the arms" in

which they are found, the king was referring to their body-protecting armour, not their weapons (which, at the time, would have been a sword, a knife, a bow and arrows, or a gisarme [a medieval weapon consisting of a blade mounted on a long staff]). Accordingly, "armed" could have been only a reference to body-protecting armour, not to weapons. Further, the king's concern was not merely with men riding armed, but with them "rid[ing] about in warlike manner (chivauchent), and go[ing] by day and night with force and arms, to the terror of the king's people . . . ."

Even prior to the enactment of the *Statute of Northampton*, it is apparent that the king's concern was with acts that terrorized his subjects.

The next month, Edward II ordered Richard le Wayte, "escheator in cos. Wilts, Southampton, Oxford, Berks, Bedford, and Buckingham" "not to intermeddle further with the manor of La Hale near Brommore, and to restore the issues thereof to Christina, late the wife of Adam de la Forde . . . ." The king's order noted that:

> the manor is held in chief by the service of finding a footman **armed with** a **hauberget** [long coat of mail], **purpoint** [padded defensive jacket, worn as armor separately, or combined with mail or plate armor], and **iron hat** in the king's war in England for 40 days at their cost, for all service . . . .

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 465-472 (April 2, 1326, Kenilworth) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

Consistent with the previous usages, the le Wayte order's use of the term "armed" refers exclusively to items that are worn as body protection, not to weapons. This was just two years before the *Statute of Northampton*'s enactment.

Later that month, language that would appear in the *Statute of Northampton* two years hence first appeared when Edward II sent the following order to the sheriff of Huntingdon:

> Whereas the king lately caused proclamation to be made throughout his realm prohibiting any one **going armed** without his licence, except the keepers of his peace, sheriffs, and other ministers, . . .; the king now learns that Thomas de Eye, John Grubbe, and Richard le Orfreysier, who are not, it is said, keepers of his peace or other ministers of his, frequently **go about armed with aketons, bacinets, and other arms** by day and by night in towns, fairs, markets, and other public and private places, committing many evil deeds, contrary to the proclamation and inhibition aforesaid; . . . [the king] . . . therefore orders the sheriff to . . . take and imprison until further orders all those found guilty of the premises and all those whom he shall find hereafter **going about armed in such arms** anywhere in his bailiwick . . . .

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 559-570 (April 28, 1326, Kenilworth) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

Edward's use of the term "armed" unmistakably referred to wearing of items that were used as body protection: aketons and bacinets. This is confirmed by the fact that the order requires the imprisonment of those going about armed "in" such arms; a person can only be "in" protective body armour.

While *Young* cites this order, 992 F.3d 787, it omits the latter part of the order describing exactly how Thomas de Eye, John Grubbe, and Richard le Orfreysier were "going armed": "with aketons, bacinets, and other arms," and omits the reference to "going about armed **in** such arms . . . ." (emphasis added). Those omissions (again) obscured the true meaning of "going armed."

Little more than a week later, Edward issued the following order:

> And whereas the men dwelling in the city and strangers coming and repairing thither are consorted together and rendered bold (embaudiz) to assail others and to do evil by reason of their **arms and armour** borne by them: let prohibition be made of any one **being armed or carrying arms**, except according to the commission that shall be made for that purpose.

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 559-570 (May 8, 1326, Pirton) (H.C. Maxwell-Lyte ed., London, 1898).

In this order, there is a clear distinction drawn between "being armed" and "carrying arms." Had the term "armed" referred to carrying weapons, the "carrying arms" prohibition would have been unnecessary; the fact that both prohibitions are found in the order indicates that "being armed" and "carrying arms" were two different acts.

Four months later, Edward II sent out the following proclamation to the sheriff of Hereford, which the sheriff was to disseminate "at days of the county [courts], in fairs, markets, and other places, at least two or three times a week":

> [T]he king . . . wills . . . that all those . . . who shall come to him to set out with him against his said enemies shall be paid their wages according to their value promptly, to wit, a man-at-arms 12d., a hobeler 6d., a **footman armed with double garment** 4d., **armed with single garment** 3d., and an archer 2d. a day each. . . .

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, 648-653 (September 28, 1326, The Tower) (H.C. Maxwell-Lyte ed., London, 1898) (emphasis added).

Yet again, when Edward II used the term "armed," he was referring not to the carrying of a weapon, but to the wearing of a "garment" for bodily protection.

Like his father, Edward III[7] issued orders which continued the then-established usage of "armed." Edward III's orders, however, came after the enactment by the Northampton Parliament of the *Statute of Northampton* and the approval of the *Treaty of Edinburgh–Northampton* with Scotland.[8]

On August 29, 1328, Edward III ordered the bailiffs of the abbot of Redyngges to release John and Thomas Wynter "and their goods" "upon their finding mainprise" [providing sureties pending trial, similar to a bail bond] and "to have them before the king in three weeks from Michaelmas." 1 *Calendar of the Close Rolls, Edward III, 1327-1330*, 305-319 (August 29, 1328, Clipstone) (Her Majesty's Stationery Office, London, 1896). The Wynters had been arrested at the abbot's fair, where they had gone to trade their goods "and for no other purpose," because they each wore a "single (simplicibus) aketon[]" "by reason of the dangers of the road and not for the purpose of committing evil . . . ." *Id.* Their arrest was:

> by virtue of the ordinance in the late parliament at Northampton that no one

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[7] Edward II abdicated in favor of his son Edward III in January 1327.

[8] The *Statute of Northampton* should be considered in historical context. The *Treaty of Edinburgh–Northampton* did not endear the youthful Edward III (who actually had severe misgivings about the Treaty) to the northern English nobles because it required them to give up their claims to land in Scotland. Thus, it would appear that the *Statute of Northampton* was enacted not as a crime prevention measure, but rather as an attempt to protect Edward III from the rebellious northern nobles.

> shall **go armed** in fairs or markets of elsewhere, under pain of imprisonment and loss of their arms . . . .

Id. (emphasis added).

The order makes no mention of the Wynters carrying weapons of any sort; they were each merely wearing an aketon for their own bodily protection, not for the purpose of committing evil,–which wearing of an aketon was considered to be "go[ing] armed."[9]

The next year, an order was issued by the Mayor and Aldermen of London stating:

> [N]o person, native or stranger, shall **go armed** in [London], **or shall carry arms** by night or by day, on pain of imprisonment, and of losing his arms; save only, the serjeants at-arms of our

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[9] Later that year, Edward III issued an order to all sheriffs stating:

> Order to cause the statute made in the late parliament at Northampton prohibiting men coming armed before justices or other ministers of the king, or **going armed**, etc., to be observed in all its articles throughout the whole of his bailiwick, and to take and imprison all found contravening it, certifying the king of their names and the cause of their arrest.

1 *Calendar of the Close Rolls, Edward III, 1327-1330*, 420-422 (November 10, 1328, Wallingford) (Her Majesty's Stationery Office, London, 1896) (emphasis added). Because this order simply repeats the language of the *Statute of Northampton*, it sheds no light on the meaning of "going armed."

> Lord the King, and of my Lady the Queen, and the vadlets of the Earls and Barons; that is to say, for every Earl or Baron one vadlet, carrying the **sword** of his lord in his presence; and save also, the officers of the City, and those who shall be summoned unto them, for keeping and maintaining the peace of the City. . . .
>
> And that every hosteler and herbergeour in the City shall cause his guests to be warned as to the points of this cry; and if any stranger shall from henceforth be found in the City **armed or bearing arms**, for default of such warning, his host shall have the punishment in his stead. . . .

Memorials of London and London Life in the 13th, 14th and 15th Centuries: 1329, 171-178 (H.T. Riley, London, 1868) (emphasis added).

Once again, the order draws a clear distinction between "go[ing] armed" and "carrying/bearing arms" -- the former referring to wearing body-protecting armour and the latter referring to carrying or bearing weapons (such as a sword).

Young cites to an order of April 3, 1330, to the sheriff of Surrey and Sussex, 992 F.3d at 789, ordering them to:

> take all those whom he shall find going armed, with their horses and armour, and to cause them to be imprisoned,

> and their horses and armour to be kept safely until otherwise ordered, certifying the king of the names of those arrested and of the value of their horses and arms, as the king understands that many are going about armed in the sheriff's bailiwick, contrary to the form of the statute made in the late parliament of Northampton.

2 *Calendar Of The Close Rolls, Edward III, 1330–1333*, 131 (April 3, 1330, Woodstock) (H.C. Maxwell-Lyte ed., 1898).

This order, however, merely uses the term "going armed" without an indication of what that term encompasses, making *Young*'s citation to it unilluminating.[10]

Four years later, a similar order was issued by the Mayor, Aldermen, and Commonality, of the City of London:

> [N]o person, denizen or stranger, other than officers of the City, and those who have to keep the peace, shall **go armed, or shall carry arms**, by night or by day, within the franchise of said city . . . .

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[10] The same is true of an order concerning "malefactors and disturbers of the peace" in York; it thus does not help understand the meaning of "going armed." 3 *Calendar Of The Close Rolls, Edward III, 1333–1337*, 293-298 (January 30, 1334, Woodstock) (H.C. Maxwell-Lyte ed., 1898).

Memorials of London and London Life in the 13th, 14th and 15th Centuries: 1334, 192 (Longmans, Green, London, 1868) (emphasis added).

As with their previous order, the Mayor and Aldermen, and the Commonality, were consistent in drawing a clear distinction between "go[ing] armed" and "carry[ing] arms."

Young also cited to an act of Parliament enacted in 1350, 25 Edw. 3, 320, st. 5, c. 2, § 13 (1350), as "specifically bann[ing] the carrying of concealed arms." 992 F.3d at 788. In fact, the statute delineated certain acts of riding armed that would not constitute treason; it did not ban the carrying of concealed arms. In full, the act states:

> [I]f percase any Man of this Realm ride armed [covertly] or secretly with men of arms against any other, *to slay him, or rob him, or take him, or retain him till he hath made fine or ransom for to have his deliverance,* ***it is not the mind of the King nor his council, that in such case it shall be judged treason****, but* shall be judged felony or Trespass, according to the laws of the land of old time used, and according as the case requireth. (Emphasis added).

Moreover, the terms "covertly" and "secretly" in context do not refer to how weapons were carried. Instead, they refer to how a man was riding with "men of arms against" another person. As used here, "armed" does not refer to carrying weapons. Indeed, the word "carry," or any variant thereof, is not used in the statute, as was the common practice when

referring to carrying weapons. Rather, "armed" referred to wearing body-protection armour.

Young is able to make its erroneous assertion about the statute because the court's quotation from the statute omitted the above-italicized language. Reading the complete sentence, however, clarifies precisely what the statute purported to do, which had nothing to do with banning the carrying of concealed weapons.

In 1363, Edward III issued a proclamation that again drew a distinction between carrying weapons and "going armed," stating in part:

> That no man of whatsoever condition shall **go armed** in the said city nor suburbs, **nor carry arms** by day nor by night, **except** yeomen of the great lords of the land carrying their lords' **swords** in their presence . . . .

11 *Calendar of the Close Rolls, Edward III, 1360-1364*, 528-537 (June 12, 1363, Westminster) (H.C. Maxwell-Lyte ed., London, 1909) (emphasis added).

There are two prohibitions here: (1) going armed; and (2) carrying arms. Thus, the carrying arms prohibition exempts certain carrying of swords. Accordingly, "go armed" meant something different than carrying weapons like swords.

The distinction between carrying weapons and wearing bodily protection continued into the reign of Edward III's successor, his grandson, Richard II. In an order of December 1, 1377, Richard II ordered the mayor and bailiffs of Newcastle upon Tyne to arrest

and imprison "until further order" all those "who shall be found by night or day . . . **going armed, bearing arms** or leading an armed power to the disturbance of the peace" because:

> the king is informed that great number of evildoers and disturbers of the peace . . . have heretofore made and cease [not] daily to make unlawful assemblies etc. by night and day in that town and neighbouring places, have gone and **go armed and bearing arms** wander hither and thither, laying snares for men coming to or from the town and those dwelling therein, beating, wounding and evil treating them, robbing some of their property and goods, and daily committing many other hurts and mischiefs not to be borne, in contempt of the king, in breach of the peace and to the terror of the people in those parts.

1 *Calendar of Close Rolls, Richard II, 1377-1381* 34 (December 1, 1377, Westminster) (H.C. Maxwell-Lyte ed., 1914).

Once again, the royal order distinguishes between "go[ing] armed" and "bearing arms," the first being a reference to wearing body-protecting armour, and the latter referring to carrying weapons.

The distinction drawn by Richard II between "go[ing] armed" and carrying weapons continued into 1381, when a proclamation was issued, stating:

> Be it proclaimed on behalf of our Lord the King, for the safekeeping of the peace, that no one repairing unto the City, after he shall have taken up his lodging there, **shall go armed, or shall carry upon him, or have carried after him, a sword**, unless he be a knight.

Memorials of London and London Life in the 13th, 14th and 15th Centuries: 1381, 447-455 (Longmans, Green, London, 1868) (emphasis added).

There are three offenses here: "go[ing] armed," "carry[ing]" a sword "upon" the person, and having a sword "carried after" the person. By distinguishing "go armed" from sword carrying, it is evident that sword carrying was not the same as "go[ing] armed."

A decade later, Richard II sent a similar order to the mayor and sheriffs of London "to cause proclamation to be made" that:

> no man of whatsoever estate or condition shall make unlawful assemblies within the city or suburbs, **go armed**, **girt with a sword** or arrayed with other unaccustomed harness, **bear arms, swords** or other such harness . . . .

4 *Calendar of Close Rolls, Richard II, 1389-1392* 530 (December 23, 1391, Westminster) (H C Maxwell Lyte, London, 1922) (emphasis added).

The reason for the proclamation was that:

> it has now newly come to the king's ears that numbers of evildoers and breakers of the peace, **some armed, some girt about the midst with swords** and others arrayed as aforesaid, do in contempt of the king, in breach of the peace, to the disturbance and terror of the people contrary to those statues lurk and run about in divers places within the city and suburbs, committing assaults, mayhems, robberies, manslaughters etc., and hindering the ministers and officers of the city from exercising their offices, which the king will not and ought not to endure.

Id.

The proclamation exempted "lords, great men, knights and esquires of decent estate, and other men at their entry into or departure from the city" as well as "the king's officers and ministers appointed to keep the peace . . . ." *Id.*

As is readily apparent from the order's plain language, "go[ing] armed" and "girt with a sword" are two different acts, a point emphasized by the king's noting that he has heard that "some" of the evildoers are "armed" and "some" are "girt about the midst with swords . . . ."

The Uses Of "Going Armed" In Other Legal Authorities

Legal authorities interpreting and applying the *Statute of Northampton* support the notion that "armed" referred not to carrying weapons, but to wearing bodily protection.

One of the few cases for which a record is extant is that involving Sir Thomas Figett. The earliest surviving account of the case is from a 1584 treatise stating: "a man will not **go armed** overtly, even though it be for his defense, but it seems that a man can **go armed under his private coat of plate**, underneath his coat etc., because this cannot cause any fear among people." Richard Crompton, *L'office et Aucthoritie de Iustices de Peace* 58 (1584) (emphasis added).

In Edward Coke's *The Third Part of The Institutes of The Laws of England*, Coke discusses Sir Thomas' case, describing him as a person who "**went armed under his garments**, as well in the palace, as before the justice of the kings bench . . . ." Coke, *The Third Part of The Institutes of The Laws of England* at 161 (1644) (emphasis added).

It is thus apparent that, while "armed" could possibly have meant carrying a weapon, it is far more likely that "armed" referred to wearing some form of protective body armour because the item that was at issue was under his garments, which is ordinarily how body armour was worn, *e.g.*, a haubergeon, a sleeveless coat of chain mail.

Sir Thomas' defense lends weight to that interpretation of "armed":

> he said that there had been debate between him and sir John Trevet knight in the same week, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, **he went so armed** [i.e. under his garments].

Coke, at 162.

Similarly, William Hawkins, in his *A Treatise Of The Pleas Of The Crown, Book I* (1716), refers to persons being "armed" with "privy Coats of Mail" to "the Intent to defend themselves against their Adversaries, are not within the Meaning of this Statute [of Northampton], because they do nothing *in terrorem Populi*." *Id.* at Sec. 9. Indeed, Hawkins distinguishes between wearing weapons and being "armed with privy Coats of Mail" when he notes that "Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons" and that, "from the same Ground it **also** follows, That Persons **armed with privy Coats of Mail** to the Intent to defend themselves against their Adversaries, are not within the Meaning of this Statute, because they do nothing *in terrorem Populi*." *Id.*

The most famous case involving the *Statute of Northampton* is *Sir John Knight's Case*, 87 Eng. Rep. 75, 3 Mod. 117 (K.B. 1686) and 90 Eng. Rep. 330 (K.B. 1686). The case had been brought by the Attorney General for England and Wales against Sir

John Knight. In the first version, the following was reported:

> The information sets forth, that the defendant did walk about the streets armed with guns, and that he went into the church of St. Michael, in Bristol, in the time of divine service, with a gun, to terrify the King's subjects, *contra formam statuti*.
>
> This case was tried at the Bar, and the defendant was acquitted.
>
> The Chief Justice said, that the meaning of the statute of 2 Edw. 3, c. 3, was to punish people who go armed to terrify the King's subjects. It is likewise a great offense at the common law, as if the King were not able or willing to protect his subjects; and therefore this Act is but an affirmance of that law; and it having appointed a penalty, this Court can inflict no other punishment than what is therein directed.

87 Eng. Rep. 75, 76.

> The second version reported the following:
>
> Information for going to church with pistols, &c. contra stat. 2 Ed. 3, of Northampton.

Winnington *pro defendente*. This statute was made to prevent the people's being oppressed by great

men; but this is a private matter, and not within the statute. Vide stat. 20 R. 2.

> C. J. This offence had been much greater, and better laid at common law. But tho' this statute be almost gone in *desuetudinern*, yet where the crime shall appear to be *malo animo*, it will come within the Act (tho' now there be a general connivance to gentlemen to ride armed for their security); but afterwards he was found, not guilty.

90 Eng. Rep. 330, 330.[11]

What is abundantly clear is that Sir John was acquitted. Why? The simplest and most obvious reason is that there was no allegation that he was wearing bodily-protection armour, *i.e.*, that he was "going armed" as had long been understood as the meaning of that phrase. He was only alleged to have gone "into the church . . . in the time of divine service, with a gun" or to have "go[ne] to church with pistols . . . ." His counsel (Winnington) thus successfully argued that Sir John's act was "not within the statute . . . ."

Understanding that "go armed" referred to wearing body-protecting armour also explains the Chief Justice's statements in both versions of the trial. In the 87 Eng. Rep. version, the Chief Justice

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[11] See also 1 Narcissus Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714* 380 (Oxford 1857) ("Sir John Knight pleaded not guilty to an information exhibited against him for goeing with a blunderbus in the streets, to the terrifyeing his majesties subjects.").

states that the meaning of the statute "was to punish people who go armed to terrify the King's subjects." If "go armed" referred to carrying weapons, it would seem odd that Sir John would have been acquitted since he was undoubtedly carrying guns (or "pistols, &c." or a "blunderbus") openly in the streets. But, if "go armed" referred to wearing protective body armour, and there was no allegation that Sir John was so appareled, it follows that he should have been, and in fact was, acquitted.

Further, if "go armed" referred to wearing body armour for protection, there is a ready explanation for the Chief Justice's statement that "this statute be almost gone in *desuetudinern*" (*i.e.*, discontinuance from use) because, by 1686, knights' wearing of body-protecting armour was largely obsolete due to the invention, and common use in battle, of long-barreled firearms, which could easily defeat body armour. *See* Chase, *Firearms - A Global History to 1700* (Cambridge University Press) at 61 ("there was no musket-proof armour. As the musket became more prevalent, soldiers dispensed with most of their useless armour.").

That "go armed" referred to wearing body-protecting armour for protection also explains the Chief Justice's comment that there is "a general connivance to gentlemen to ride armed for their security" in that "connivance" is "knowledge of and active or passive consent to wrongdoing" and wearing armour, while not useful in battle, would certainly provide personal protection even though, strictly speaking, wearing armour was prohibited by the *Statute of Northampton*.

The Uses Of "Going Armed"
In Treatises and Literature

In 1419, a legal treatise was published by John Carpenter entitled *Liber Albus: The White Book of the City of London*. In it, Carpenter summarized the law as follows:

> [T]hat no one, of whatever condition he be, **go armed** in the said city or in the suburbs, **or carry arms**, by day or by night, except the vadlets of the great lords of the land, **carrying the swords** of their masters in their presence, and the serjeants-at-arms of his lordship the King, of my lady the Queen, the Prince, and the other children of his lordship the King, and the officers of the City, and such persons as shall come in their company in aid of them, at their command, for saving and maintaining the said peace; under the penalty aforesaid, and the loss of their arms and armour.

Id. at 335 (emphasis added).

As with all the authorities previously cited, particularly the then-recent orders of Richard II, Carpenter understood the difference between "go armed" and "carry arms."

The distinction was also observed in literature. In Chaucer's *The Knight's Tale* (from *The Canterbury Tales*, *circa* 1387 to 1400), is the following verse:

> With hym ther wenten knyghtes many on;
>
> [With him there went knights many a one;]
>
> Som wol ben armed in an haubergeoun,
>
> [Some of them will be **armed in a long coat of mail**,]
>
> And in a brestplate and a light gypoun;
>
> [And in a **breastplate** and a light tunic;]
>
> And som wol have a paire plates large;
>
> [And some of them will have a set of **plate armor**;]
>
> And som wol have a Pruce sheeld or a targe;
>
> [And some of them will have a Prussian shield or a buckler.]

See lines 1260-64.[12] The term "armed" is thus used in referring to an item that is worn for bodily protection.

Almost two centuries later, Shakespeare (bapt. 26 April 1564 – 23 April 1616), wrote in *Henry VI*, Part 2, Act 3, Scene 2:

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[12] http://www.librarius.com/canttran/knighttr/knight1259-1296.htm(accessed July 19, 2021).

> What stronger **breastplate** than a heart untainted!
>
> Thrice is he **armed** that hath his quarrel just,
>
> And he but naked, though **locked up in steel**,
>
> Whose conscience with injustice is corrupted.

Shakespeare, W., Hamlet, Act 1, Scene 2.

Shakespeare understood that to be "armed" meant to have a breastplate and to be "locked up in steel." Similarly, in *Hamlet*, Act 1, scene 2, Hamlet asks for a description of his father's ghost):

> HAMLET: **Armed**, say you?
>
> ALL: **Armed**, my lord.
>
> HAMLET: From top to toe?
>
> ALL: My lord, **from head to foot**.
>
> HAMLET: Then saw you not his face?
>
> HORATIO: O, yes, my lord, he **wore his beaver (helmet's face protector)** up.

Shakespeare, W., Henry VI, Part 2, Act 3, Scene 2. "Armed" thus referred to wearing body-protecting armour.

CONCLUSION

Through "the [American] Revolution" "[w]e separated ourselves from the mother country, and we have established a republican form of government, securing to the citizens of this country other and greater personal rights, than those enjoyed under the British monarchy." *Bridges v. State of Cal.*, 314 U.S. 252, 264, n.7 (1941) (internal quotation and citation omitted).

Hence, the limits upon rights in medieval English law plainly do not restrict rights guaranteed by the Bill of Rights of the United States Constitution, including the Second Amendment. Nonetheless, if English law is to be cited in discerning the Second Amendment's scope, it should be done accurately and completely. As this brief shows, judicial opinions like *Young* (and other legal writings) have been wrong to assume that "going armed" meant carrying weapons. In fact. history evidences otherwise: "Going armed" did not equate to carrying weapons, and certainly did not refer to firearms that had yet to be invented. Rather, "going armed" was a medieval term of art referring to wearing body-protecting armour.

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