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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11 CIVIL DIVISION

12
13 **VIRGINIA DUNCAN, RICHARD**
LEWIS, PATRICK LOVETTE,
14 **DAVID MARGUGLIO,**
CHRISTOPHER WADDELL, and
15 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INC., a California
16 **corporation,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity as**
20 **Attorney General of the State of**
21 **California; and DOES 1-10,**

22 Defendants.

Case No. 17-cv-1017-BEN-JLB

DECLARATION OF DENNIS
BARON

Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

DECLARATION OF DENNIS BARON

I, Dennis Baron, declare under penalty of perjury that the following is true and correct:

1. I have been retained by the State of California to provide expert opinion and testimony regarding Corpus Linguistics research. I am being compensated at a rate of \$350 per hour.

2. I have evaluated the historical use of the terms *arms* and *accoutrements* in order to show that large-capacity magazines (henceforth, LCMs), along with magazines in general, ammunition cases, cartridge cases or boxes, and other ammunition storage containers or devices are not *arms* but are part of the category known as *accoutrements* from the Founding Era through the period following the ratification of the Fourteenth Amendment.

BACKGROUND AND QUALIFICATIONS

3. I am a resident of Champaign, Illinois, and I am currently Professor Emeritus and Research Professor at the University of Illinois, where I have served as a member of both the Department of English and the Department of Linguistics since 1975. I served as Head of the Department of English for six years and before that as Director of Rhetoric at the university for 11 years. I earned my Ph.D. in English language and literature from the University of Michigan in 1971, with a dissertation on historical aspects of the English language from Old English to Present-Day English, and I continue to publish widely on matters of historical language use, and on topics related to language and law. I am a life member of the Linguistic Society of America, the American Dialect Society, and the Modern Language Association, as well as a member of the National Council of Teachers of English. I have held a Fulbright Fellowship (to France), a National Endowment for the Humanities Fellowship, for work on a book on language and law, and, most recently, a Guggenheim Fellowship, for work on my latest book on language and

1 law. I have also published books on language reform, on usage, and on gender in
2 language.

3 4. Most relevant for this report, I published two books on language and
4 law: *The English-Only Question: An Official Language for Americans?* (Yale Univ.
5 Press, 1990) and *You Can't Always Say What You Want: The Paradox of Free*
6 *Speech* (Cambridge Univ. Press, January 2023). In addition, I served as lead author
7 on what came to be called "the Linguists Brief" in *District of Columbia v. Heller*
8 (2008), a brief cited both by J. Scalia in his opinion in the case, and by J. Stevens in
9 his dissent. I was a co-author on another brief by professors of linguistics and
10 corpus linguistics, in *New York State Rifle and Pistol Ass'n. v. Bruen* (No. 20-843,
11 2022), which J. Breyer cited in his dissent. In that dissent, J. Breyer also quoted
12 directly from my essay "Corpus evidence and the meaning of 'bear arms'"
13 (*Hastings Constitutional Law Quarterly*, 46.3: 2019). I have spoken about historical
14 meaning and the Second Amendment at the Federalist Society at the Univ. of
15 Chicago Law School, at the Neubauer Symposium on Historical Semantics at the
16 Univ. of Chicago, at Brigham Young Univ. Law School, at Stanford University,
17 and at the conference "*Heller* after Ten Years" at Hastings College of Law. I've
18 also written opinion essays on historical meaning and the Second Amendment for
19 the *Washington Post* and the *Los Angeles Times*. And I have submitted a
20 declaration on behalf of the State of Rhode Island in *Ocean State Tactical, LLC, et*
21 *al. v. State of Rhode Island* (Case No. 1:22-cv-00246-JJM-PAS) (D. R.I.). In the
22 past twenty years I have been an expert consultant in perhaps a dozen cases
23 involving document interpretation.

24 5. My forthcoming essay, "Look It Up in Your *Funk and Wagnalls*: How
25 Courts Define the Words of the Law," an analysis of how courts incorporate
26 information from dictionaries and digitized corpora as they ascertain legal meaning,
27 will appear in the next issue of the academic journal of the Dictionary Society of
28 North America, *Dictionaries*.

6. This report is made based on my professional knowledge and expertise, and on my research using accepted scientific linguistic methodology in the field of Corpus Linguistics, the analysis of large digitized corpora consisting of many millions of words.

OPINIONS

I. SUMMARY OF CONCLUSIONS

7. Historical evidence from a number of large textual databases, or corpora, shows that during the Founding Era and the Reconstruction Era, *arms* is used as a general term for weapons (typically swords, knives, rifles, and pistols), but *arms* does not include ammunition, ammunition containers, flints, scabbards, holsters, armor, or shields, which are included in the category *accoutrements*. Nor does *arms* refer to *parts* of weapons, for example the trigger of a gun, the hilt of a sword, the cartridge box or magazine which holds the bullets. Instead, when this additional equipment is mentioned, we find phrases like *arms and ammunition*; *arms and accoutrements*; or *arms, ammunition, and accoutrements*. A phrase like *arms and accoutrements* is frequently used in military contexts to distinguish weaponry from the rest of a soldier or militia member's kit, or equipment. For example, militia requirements often specify that soldiers have certain *arms* (pistols, swords, rifles, according to their rank) as well as certain *accoutrements* or equipment (including horses, saddles, cartridge cases or boxes, scabbards, flints, and so on). When the term *accoutrements* occurs alone, as in *the accoutrements of a soldier*, it may include both arms and accessories. But when the word *arms* occurs alone, as it does in the Second Amendment, for example, it does not include these accessories. And when *arms and accoutrements* occurs as a phrase, there is a clear distinction made between weapons and the soldier's accessories.

8. Militia regulations in the Founding Era often specified the types of arms required for officers and troops (for example, pistols and/or swords for the officers; rifles for the lower ranks). And they often specified, separately, the

1 different accessories that officers and the rank and file soldiers were also required
2 to have.

3 **II. THEORY AND METHODOLOGY**

4 9. Corpus linguistics as a field developed in the late 1960s, when scholars
5 began using computer programs to analyze large bodies of digitized text. Initial
6 work in corpus linguistics did not typically involve legal issues. Literary scholars
7 developed computerized concordances to the works of Shakespeare, Milton, and
8 other major English writers. Scholars plotted the frequency of words and phrases in
9 order to develop a picture of an author's style, and to determine authorship of a
10 particular work when the provenance was in doubt. Soon, in addition to solving
11 literary mysteries, the methodologies developed by corpus linguists were
12 successfully applied in a number of criminal cases in the US and in England
13 involving, for example, the authorship of a ransom note or an email.

14 10. Lexicographers, who began compiling large analog databases of text in
15 the late 19th century, began to digitize their libraries of paper data and to add to that
16 material, assembling computerized databases of historical and contemporary text
17 and, more recently, of spoken language as well, in order to arrive at more precise
18 definitions of the multiple senses of words and phrases.

19 11. As a graduate student at the Univ. of Michigan in 1970, I coded analog
20 texts from the *Oxford English Dictionary* files to help build the computerized
21 database for the Dictionary of Early Modern English, the period from 1500–1800
22 that is particularly relevant to the language of the Founding Era. Today, major
23 dictionaries like the *Oxford English Dictionary* and the Merriam-Webster suite of
24 dictionaries rely on public databases of oral and written language, as well as their
25 own proprietary databases, in order to revise older definitions and to track the
26 spread of new words and meanings. The great dictionary makers of Europe use
27 similar databases in their own work.

12. Over the past twenty years, Legal Corpus Linguistics (LCL) has developed as a subset of Corpus Linguistics. LCL involves the analysis of digitized corpora of current and historical English to establish meaning—often referred to as Original Public Meaning (OPM)—in statutes and in the Constitution. The promise of LCL attracted jurists as well as scholars with a specific interest in language and law. In *Muscarello v. United States* (524 US 125 1998), a case which held that “a person who knowingly possesses and conveys firearms in a vehicle, including in its glove compartment or truck, can be deemed to be within the scope of the statutory phrase ‘carries a firearm,’” J. Breyer searched two computerized newspaper databases (Lexis/Nexis for the *New York Times* and Westlaw, for “US News”) to clarify the meaning of the words *carry*, *vehicle*, and *weapon*. In her dissent, J. Ginsburg expressed skepticism that either dictionary evidence, or Breyer’s innovative newspaper searches, were useful in determining what Congress intended by the verb *carry* in the law in question. Her critique did not deter courts from performing other computerized data searches to determine legal meaning. In 2012, Judge Richard Posner, then Chief Judge of the Seventh Circuit, was perhaps the first jurist to use a general internet search in order to determine a word’s meaning in a statute. Not satisfied with the dictionary definition that the government relied on in the case before him, Posner ran a Google search to confirm that the word *harbor* in the Immigration Act of 1917 does not mean ‘shelter,’ as the government claimed, but rather ‘hide, conceal from view,’ as he felt it must mean in the context of the statute (*United States v. Costello*, 2012). Subsequent research by trained corpus linguists pointed out that a more-structured internet search revealed that *harbor* can indeed mean ‘provide shelter’ as well as the narrower sense, ‘hide someone from the authorities.’ But in the context of the Immigration Act, *harbor* appears alongside other terms involving secret, illegal activity, and so even though, using more rigorous parameter’s showed that Posner’s Google search may have been flawed, his understanding of the word *in context* seems clearly to be correct.

1 13. More principled, scientific database searches soon followed, and in 2018
2 Judge Thomas Lee, of the Utah Supreme Court, a long-time champion of corpus
3 linguistics, together with the legal scholar Stephen Mouritsen, published “Judging
4 Ordinary Meaning” (*Yale Law Journal* 127), summarizing the latest research in
5 corpus linguistics and championing LCL as a way to determine ordinary meaning,
6 and more specifically, OPM, with more clarity. Jurists over the past few years have
7 found that in several cases, LCL proves more useful than the period dictionaries
8 (for example, the dictionaries of Samuel Johnson and Noah Webster) that courts
9 have often relied on to determine historical meaning. LCL often supplements the
10 historical interpretations found in older dictionaries and in the *Oxford English*
11 *Dictionary*, as well, allowing a more precise interpretation of historical text data.

12 14. In addition to the publication of several significant law review articles by
13 experts in the field of corpus linguistics, there have been several conferences on
14 Legal Corpus Linguistics in the past few years, and a number of continuing-
15 education seminars on LCL are now offered for judges and lawyers. As a result,
16 Corpus Linguistics has drawn increased attention from the courts, including recent
17 mentions in decisions in the Sixth, Seventh, and Ninth Circuits, as well as a
18 comment by J. Alito in his concurrence in *Facebook v. Duguid* (2021), where he
19 suggested that LCL may one day provide a useful alternative to the canons of
20 interpretation. Over the past decade, LCL has become an important tool in helping
21 to determine original public meaning when such meaning is in doubt.

22 15. Several large databases have come online in the past few years that
23 facilitate LCL research. They have proved invaluable to me in compiling this
24 report. Brigham Young University’s Center for Law and Corpus Linguistics
25 sponsors the Corpus of Founding Era American English (COFEA), with more than
26 126,000 texts, comprising close to 137 million words, covering the years 1760–
27 1799. BYU’s Corpus of Early Modern English (COEME), covering the years
28 1475–1800, contains over 40,000 texts and 1.1 billion words. For the nineteenth

1 century, the Corpus of Historical American English (COHA), which was initially
2 developed at BYU as well but is now independent of that institution, currently
3 contains 475 million words of text from 1820–2020. The size of these databases
4 continues to grow as more works are digitized, coded, and added to the corpora.

5 16. Critics of LCL have complained that databases like COFEA and COEME
6 contain only texts written by “elites,” whose language may differ from that of
7 “ordinary people” who do not write at all, or who for various reasons do not write
8 texts likely to be included in the available corpora. It is certainly the case that many
9 printed books and periodicals, along with documents like the Constitution, its
10 amendments, and state and federal statutes, tend to be written by educated
11 specialists and professional writers, and although ordinary people are expected to
12 understand the language of the Constitution, the Declaration of Independence, and
13 other founding documents, as well as the laws that govern the nation, such texts
14 typically require specialized knowledge. A reading-difficulty formula like the
15 commonly-used Flesch-Kincaid scale suggests that the Declaration of
16 Independence and the Constitution require a fifteenth-grade reading level, while
17 according to one comprehensive study, *Adult Literacy in America* (US Department
18 of Education, 1993), the average American today tends to have a seventh-grade
19 reading level.

20 17. In order to counter any “elite” bias that may be found in databases like
21 COFEA, COEME, and COHA, I rely as well on five digitized newspaper databases
22 covering the period 1750–1900, focusing for this report on the Founding Era and on
23 the period of Reconstruction after the passage of the Fourteenth Amendment. Print
24 technology remained relatively static between the 1450s, when printing presses first
25 appeared in Europe, and the early 19th century, when the Industrial Revolution
26 drastically changed print technology. The first printing press was adapted by
27 Gutenberg from the design of the traditional wine press, and printing was a slow
28 and labor intensive process. As a result, newspapers in the founding era were small,

1 averaging four to eight pages. Publication was less frequent as well. Papers tended
2 to appear weekly or semi-weekly, rather than daily. Even so, newspapers in the
3 Founding Era and later, during Reconstruction, provided average Americans with
4 their principal access to all the critical events and documents of their time, along
5 with coverage of local and international news. Even though newspaper subscribers
6 tended to be “elites,” newspaper content was widely shared by word-of-mouth:
7 ultimately, most Americans in the Founding Era, including those who would be
8 classified as illiterate or poorly educated by today’s standards, got their news from
9 newspapers.

10 18. The invention of the steam engine in the 19th century, along with growth
11 of paper mills that facilitated the production from wood pulp of large and
12 inexpensive rolls of newsprint, led to a revolution in print technology. This led to
13 an explosion in the size of newspapers and the frequency of their publication, to the
14 point where, at their height, papers in big cities were publishing several editions a
15 day. This growth in newspapers, along with a substantial increase in periodical and
16 book production, paralleled a growth in literacy in the US and Europe that tracked
17 the industrial revolution and the subsequent rise in universal public education. By
18 the end of the Civil War, there were more readers than ever, and they demanded
19 more reading material.

20 19. As for the question of “elites,” as the principal means of communicating
21 news and information, the newspapers of the 18th and 19th centuries embodied
22 much of the language of the “ordinary people” who read them. Newspapers also
23 provide researchers with more data for the 19th century than a corpus like COHA,
24 which covers the same period but tends to focus on literary and specialized texts
25 rather than material for the general reader.

26 20. Since the 1960s, database compilers have been able to track
27 contemporary spoken English more successfully, though for obvious reasons, none
28 of the databases for the Founding Era and for the post-Civil War period cover the

1 spoken language of Americans. Although scholars can reconstruct some of that oral
2 language, we are always doing so through the lens of print versions purporting to
3 represent or comment on ordinary speech.

4 21. The newspaper databases I have examined are Readex Historical
5 American Newspapers; Chronicling America (newspapers digitized by the Library
6 of Congress); the British Newspaper Archive (digitized by the British Library); and
7 two private subscription services, newspapers.com and newspaperarchive.com. For
8 this report, newspapers.com provides the most-complete picture of the language of
9 the Founding Era newspapers as well as the ordinary language of the later 19th
10 century.

11 22. All the databases contain some duplicates. COFEA and COEME digitize
12 multiple editions of the same work; and the newspaper databases contain a number
13 of duplicate stories because, particularly in the period of newspaper growth during
14 the 19th century—in an age before the wire services and syndication appeared, and
15 before the larger papers began to set up news bureaus in key areas around the
16 country and around the world—newspapers routinely printed each other’s stories,
17 sometimes acknowledging their source and sometimes not. Still, the databases often
18 offer more insight into the meaning of words and phrases than simply going to a
19 dictionary. Jurists from Learned Hand to Felix Frankfurter to Frank Easterbrook
20 and Richard Posner have warned their colleagues not to make a fortress of the
21 dictionary. The corpora are by necessity incomplete. LCL doesn’t replace
22 dictionary look-ups, but it does provide an important supplement to them.

23 **III. THE MEANING OF ARMS AND ACCOUTREMENTS IN THE DATABASES**

24 23. I was asked to look at the meaning of *arms* and *accoutrements*, along
25 with the phrase *arms and accoutrements*, current in the Founding Era and during
26 the period immediately following the adoption of the Fourteenth Amendment,
27 focusing on whether the word *accoutrements* may be considered analogous to the
28 present-day use of the term *magazine* in reference to firearms.

24. In the eighteenth and nineteenth centuries, *magazine* was a word that meant ‘storehouse, depot.’ A *magazine* was a place, often a building or warehouse, to store goods and supplies. When used in a military sense, a *magazine* was a designated area for storing gunpowder, and as such, it was subject to strict regulation: because gunpowder was an explosive substance, some towns banned or heavily regulated the storage of gunpowder within city limits. The term *magazine* was not used to refer to the compartment of a gun containing bullets until late in the nineteenth century, and the term was relatively rare until the 1920s. Before that time, bullets were kept in *cartridge boxes* or *cartridge cases*, and these bullet storage containers were part of the general category of military *accoutrements*, not *arms*.

25. The data on *accoutrements* suggest that the analogous LCMs are not *arms*, but *accoutrements*, the ancillary equipment associated with soldiering, or service in the military. *Cartridges*, *cartridge boxes* and later, *magazines*, are not arms in and of themselves.

26. The *Oxford English Dictionary* (OED), the standard dictionary of the English language compiled on historical principles, defines *accoutrements* as, items of apparel; (more generally) additional pieces of dress or equipment, trappings; (Military) the outfit of a soldier other than weapons and garments. [*OED* online, s.v. *accoutrement*; the *OED* and the corpus evidence make clear that *accoutrements* typically occurs as a plural.]

27. *Accoutrements* in its non-military sense typically refers to specialized clothing—that associated with certain professions (for example, clerical robes) or suitable for fancy-dress occasions (ball gowns, tuxes, and other formal attire). But the military sense of *accoutrements* generally refers not to uniforms or to weaponry, but to other military accessories worn or carried by soldiers. The example given to illustrate this second, military, sense is from the Duke of Wellington’s dispatches in 1813: “In order to collect the wounded and their arms and accoutrements.” Here

1 Wellington, recognized by all as a consummate soldier who would soon defeat
 2 Napoleon at the Battle of Waterloo in 1815, makes a clear distinction between *arms*
 3 and *accoutrements*.

4 28. The term *accoutrement-maker*, though not defined separately by the
 5 *OED*, is illustrated with examples referring to a manufacturer of military
 6 accessories rather than arms; and the term *accoutrement shop* has this 1831
 7 example where guns and accoutrements are differentiated: “The crowd was so great
 8 in the Rue de Richelieu, . . . especially about the gunsmiths and accoutrement shops
 9 in the vicinity of the Palais Royal.” [*United Service Jrnl.* i. 325]

10 29. The *OED* definitions are instructive. But in order to determine more
 11 specifically what the term *accoutrements* refers to, I consulted two digitized
 12 historical databases, or corpora. A COFEA database search for the occurrence
 13 *accoutrements* within 6 words of *arms* returned 873 hits (including a small number
 14 of duplicates). A similar search of COEME returned 126 hits, the earliest from
 15 1656. I determined that the two search terms, *arms* and *accoutrements*, often appear
 16 together as a single phrase, *arms and accoutrements*, typically in military contexts
 17 having to do with an army or militia unit. *Accoutrements* often occurs in a list
 18 alongside, but separate from, ammunition: *arms, accoutrements, (and) ammunition*,
 19 though when *ammunition* is not listed separately, the term *accoutrements* will
 20 generally include *ammunition*. *Accoutrements* sometimes occurs in a list alongside
 21 *clothing*, suggesting it may not always include uniforms (this finding informs the
 22 *OED* definition: military equipment other than arms and uniforms). But
 23 occasionally, *accoutrements* may include items classified as part of a uniform
 24 (influenced, most likely, by the general, nonmilitary sense of *accoutrements*, where
 25 the term usually refers to clothing associated with particular professions or
 26 activities). In sum, in the vast majority of examples, *accoutrements* functions as a
 27 catch-all term for military equipment *separate* from, and not including, *arms*.
 28

30. But English usage is never simple. As linguists often say, “all grammars leak”—which is to say, there are always a few counterexamples in the data. The existence of counterexamples does not invalidate the data or undercut an interpretation: it simply shows that although the users of a language share a common sense of what words and grammatical constructions mean, variation in meaning and usage is a necessary aspect of all human language. It is not surprising, then, that rarely, in COFEA, *accoutrements* does encompass *arms*, as it does in this example:

A few years since, some boys, equipped in mock military *accoutrements*, such as paper-caps, paper-belts, wooden swords, &c. were beating up for recruits in Parliament-street, Boston. [*The American jest book*: Part I[-II], 1789; emphasis added; here military accoutrements includes toy swords.]

31. This cite from 1776 refers to guns and *other* military accoutrements, implying, too, that arms may be a subcategory of *accoutrements*:

[He] shall be provided with a fire arm and other military accoutrements provided by the militia law.

32. But besides a handful of exceptions, in literally hundreds and hundreds of cases, *arms* and *accoutrements* are treated as separate items of military gear. Here are some typical examples from the Founding Era:

1776: Fire arms and accoutrements

1780: arms, ammunition, accoutrements, drums and fifes in possession of the respective regiments.

1795: you will march . . . with arms and accoutrements in good order. If any volunteer should want arms and ammunition, bring them forward, and they shall be supplied as well as possible. [COEME; the other examples are from COFEA]

1798: To hold his powder and his ball, his gun, accoutrements

1 and all . . . [This example rhymes because it's from a poem,
 2 indicating that the idiomatic phrase arms and accoutrements has
 3 become part of the general language available not just to military
 4 specialists but also to poets and novelists.]

5 33. A second COFEA search, for *accoutrements* alone, returned 1,235 hits.
 6 COEME yields 771 hits. These searches add a number of non-military contexts,
 7 where accoutrements refers to religious gear (robes, mitres, and so on) as well as
 8 other sorts of fancy or special clothing. These non-military examples do not
 9 reference weapons, ammunition, or other military equipment.

10 34. I supplemented my COFEA search with a search of the newspaper
 11 database, newspapers.com, for the Founding Era period, 1750–1800. The
 12 newspaper databases do not permit the kind of collocate searches that COFEA,
 13 COEME, and COHA allow. Entering two search terms returns results in which
 14 either one or both terms occur on the same page, though not necessarily in the same
 15 sentence, or even in the same article, and not necessarily as linked terms. There are
 16 1,392 hits for *accoutrements*. There are 692 matches for the exact phrases *arms and*
 17 *accoutrements*.

18 35. Here's a mid-18th century British example from the newspapers.com
 19 corpus where *arms* and *accoutrements* are separate categories, as is *ammunition*:

20 36. This Militia shall receive their Arms, Accoutrements, and
 21 Ammunition from the Ordnance. *Derby Mercury*, 1756.

22 37. Similarly, there's this “ploughshares into swords” example of a
 23 Cambridge University library to be converted to a military barracks:

24 [T]he new Building intended for a publick Library . . . may be
 25 converted into a Barrack, and be supplied with Provisions, Arms,
 26 and Accoutrements, at the Expence of the University. 1756

27 38. A search of the Readex database of America's Historical Newspapers
 28 returns 3,103 hits from 1750–1800; and 2,036 hits from 1868–1880. This early

1 example from the colonial period appeared in the **Boston Evening Post** in 1750. It
 2 distinguishes *arms* from uniforms, accoutrements, and other military equipment:

3 All Gentlemen Volunteers [in Nova Scotia] . . . shall be completely
 4 Cloathed in blue Broad Cloth, receive Arms, Accoutrements, Provisions,
 5 and all other Things necessary for a Gentleman Ranger.

6 39. This cite from the *Pittsburgh Gazette* in 1789 reflects a clear sense that
 7 arms and accoutrements are distinct categories in the new nation as well:

8 The militia . . . must be considered as the palladium of our security
 9 The formation and discipline of the militia of the continent should be
 10 absolutely uniform; and that the same species of arms, accoutrements, and
 11 military apparatus, should be introduced in every part of the United States.

12 40. The text of a bill in Congress to establish a uniform militia appeared in
 13 the *New York Journal*, in 1790. It confirms the Founding-Era sense that *arms*,
 14 *ammunition*, and *accoutrements* make up distinct and separate elements of a
 15 soldier's kit:

16 There shall be appointed an adjutant general for each state . . . whose duty
 17 it shall be to . . . report[] the actual situation of their arms, accoutrements,
 18 and ammunition. . . Every non-commissioned officer or private . . . for
 19 appearing at such meeting or rendezvous without his arms, ammunition, or
 20 accoutrements, as directed by this act, shall pay the sum of twenty-five
 21 cents.

22 41. And this cite from 1868 clearly distinguishes what counts as arms, and
 23 what counts, separately, as accoutrements:

24 At Watertown Arsenal, Massachusetts . . . the following Arms, &c., will
 25 be sold: 10,699 rifled and smooth-bore Muskets . . . ; 261 Carbines . . . ; 305
 26 Sabres . . . ; lot of cavalry accoutrements, consisting of Bayonet Scabbards,
 27 Cap Pouches, Cartridge Boxes, Gun Slings, Waist Belts, &c.”

28 42. The newspaper data parallels that of COFEA: the phrase *arms and*

1 *accoutrements* is almost always military. The phrase sometimes occurs alongside
 2 *ammunition* as a separate list item. *Accoutrements*, when it appears alone, is a more
 3 general term, used both for military and other gear, though in non-military contexts
 4 it is more directed toward clothing rather than ‘equipment’ (priests’ robes,
 5 ministerial garb, fancy ball gowns, badges of office), as is also indicated in the
 6 *OED* citations. In non-military contexts, *accoutrements* carries the suggestion of
 7 ceremonial gear, and less commonly, nonmilitary tools of the trade.

8 43. It’s clear that *arms and accoutrements* was, during the 18th and 19th
 9 centuries, a common military phrase, in both England and America. English often
 10 yokes terms commonly found together into idiomatic pairings, sometimes called
 11 binomials, like *bacon and eggs*, *salt and pepper*, or, in a legal context, *assault and*
 12 *battery* or *breaking and entering*. Such pairs take on the characteristics of a
 13 formula, and often appear in the same order (this order may be dictated by logical
 14 succession of events, or it may be random). *Eggs and bacon* is rarer than *bacon and*
 15 *eggs*. And it would be unusual to find *battery and assault*. Such ordered pairs are
 16 called “irreversible binomials,” though there’s nothing but custom (as in *salt and*
 17 *pepper*) and sometimes logic (as in *breaking and entering*) to prevent anyone from
 18 reversing the order.

19 44. The word *accoutrements* typically occurs in a list after *arms* (more rarely,
 20 it may occur before *arms* as well), and it is typically a separate category from *arms*
 21 (though not always, as the above examples show).

22 45. There are over 47,000 citations in newspapers.com for *arms* or
 23 *accoutrements* in the period 1868–1900, and 15,799 cites for the exact phrase *arms*
 24 *and accoutrements*. Examining a selection of the 15,799 citations of the phrase
 25 confirms that both in England and the US, *arms* and *accoutrements* are separate
 26 categories. Here is one example from Gloucestershire, in England, dated 1868:

27 [A] letter was received from the Home Secretary, pointing out the danger
 28

1 of permitting an accumulation of arms and accoutrements to take place in
 2 prisons, and requesting, if there were any arms or munitions of war stored
 3 in the prison, that they should be removed to the nearest military depot.

4 46. A similar cite from Iowa in 1868: “Persons having in their possession any
 5 arms, accoutrements or ammunition belonging to the State, are requested to return
 6 the same at once to the Adjutant General, as proper places have been provided by
 7 the State for the safe keeping of all such property.”

8 47. And this, from Stroudsburg, PA, also 1868: “More than half of the
 9 Seventh Cavalry (Custer’s) decamped with their horses, arms, and accoutrements,
 10 and probably made their way to the gold regions of Colorado and Montana.”

11 48. The circa-1868 data confirmed the Founding Era data that *accoutrements*
 12 is primarily a military term, and that when *accoutrements* co-occurs with *arms*, the
 13 terms refer to separate categories of equipment.

14 49. One final note on *accoutrements*. The U.S. Supreme Court’s recent
 15 decision in *New York State Rifle and Pistol Association v. Bruen* (No. 20-843,
 16 2022) references *North Carolina v. Huntley* (25 N.C. 418, 1843), a decision by the
 17 North Carolina Supreme Court affirming Huntley’s conviction for carrying a
 18 shotgun illegally “to the terror of the people,” as forbidden by the Statute of
 19 Northampton in 1328. In that decision, the Court states, A gun is an ‘unusual
 20 weapon,’ wherewith to be armed and clad. No man amongst us carries it about with
 21 him, as one of his everyday accoutrements—as a part of his dress.

22 50. In the citation above, *accoutrements* does not refer to weaponry, but to
 23 the more general category of ‘everyday attire, or clothing.’ It may be normal to
 24 wear a shirt, or a belt, or shoes, but it’s not normal, the Court is saying, to wear a
 25 gun in North Carolina in 1843. It’s legal—the Court agrees—to carry a gun for any
 26 lawful purpose, “either of business or amusement”—but it’s not *normal* or typical
 27 to do so. In affirming Huntley’s conviction, the Court noted that his purpose in
 28 carrying a shotgun was not a legal one.

1 **IV. SOME HISTORICAL NOTES ON THE USE OF THE WORD MAGAZINE**

2 51. Since the technology of arms and ammunition was changing by the mid-
 3 nineteenth century, I also searched for new uses of the term magazine in relation to
 4 *arms* and *accoutrements*. With advances in the design and manufacture of guns and
 5 ammunition, by the mid-nineteenth century, the term *magazine* starts to appear in
 6 the sense ‘ammunition container’ (replacing the earlier *cartridge box* or *cartridge*
 7 *case*). According to the *OED*, in the 18th and early 19th centuries, magazine
 8 referred generally to ‘a storehouse,’ and in military contexts it referred specifically
 9 to a storehouse for gunpowder. (The sense of ‘storehouse’ also led to the use of
 10 *magazine* to refer by the 18th century to a print publication containing a variety of
 11 articles, and its sense of ‘depot, warehouse,’ is cognate with the French word
 12 *magasin*, ‘a shop or store’).

13 52. Although most uses of the word *magazine* still refer to printed
 14 periodicals, during the 19th century, one sense of the term *magazine* narrows,
 15 referring more and more to an ‘ammunition container,’ a primary sense of the word
 16 in reference to firearms today. The *OED* defines sense IV b. of *magazine* as “A
 17 container or (detachable) receptacle in a repeating rifle, machine-gun, etc.,
 18 containing a supply of cartridges which are fed automatically to the breech,” with
 19 the earliest citation in this sense from 1868, the time period that marks the
 20 ratification of the Fourteenth Amendment and so is relevant to this LCL analysis.

21 53. COFEA and COEME do not cover the period past 1800. COHA, which
 22 does have 19th century coverage, turns up only a handful of uses of *magazine* in
 23 collocation with bullets, guns, rifles, or weapons, none of them before the 1890s.
 24 Most COHA cites refer to print magazines; a smaller number from 1820–1880 refer
 25 to gunpowder storehouses. Searching the word *magazine* in newspapers.com results
 26 in more than 3.3 million hits, the vast majority of them also referring to print
 27 journals. *Magazines* meaning ‘devices for holding bullets’ form only a very small
 28 subset of these citations. It took some thirty to forty years for the ‘bullet holder’

1 sense of the word *magazine* to become more common, and even then, text
2 references to ammunition magazines often appear, not in general discourse, but in
3 legislation restricting their size or use.

4 54. Most militia laws and regulations from the Founding Era specify
5 minimum requirements for soldiers' weapons, ammunition, and accoutrements.
6 Most laws regulating weapons in the mid-19th century restrict or ban specific kinds
7 of weapons, often enumerating them, sometimes in terms we find colorful today but
8 which were common at the time (Arkansas toothpicks, Bowie knives, slung shots,
9 swords in canes, pistols capable of being concealed in a pocket). Occasionally these
10 laws further identified such weapons as those used by "brawlers," thieves, robbers,
11 or others bent on illegal activities. Other weapons restrictions follow the English
12 tradition of limiting possession of weapons by social class, nationality, or race.

13 55. Although militia laws do specify weapons and other required
14 accoutrements or pieces of military equipment, including horses for the officers,
15 those laws that prohibit certain kinds of weapons during the two critical periods
16 (1789–1810; 1868–1880) do not single out *parts* of weapons. Here is one
17 exception, from a 1776 Maryland statute: "Resolved, that no muskets or rifles,
18 except by the owner thereof on his removal to reside out of this province, or any
19 gun barrels, gun locks, or bayonets, be carried out of his province, without the leave
20 of the council of safety for the time being." [1776 Md. Laws 146].

21 56. I surveyed the gun regulations in the Duke Historical Database from the
22 early medieval period through 1885 to see what terminology was used. None of the
23 laws that prohibit weapons, aside from the Maryland statute above, specifies a gun
24 part or ammunition case or accoutrements of any kind. Although many present a list
25 of banned or prohibited weapons—usually without defining them [the assumption
26 is that the reader knows what they refer to], none of the laws mention cartridge
27 boxes, bullets, barrels, or other parts of any weapons.

1 57. Later, however, in the decades after the introduction of *magazines* as
2 ‘carriers or holders of bullets,’ laws and regulations against their nonmilitary use
3 started to appear. Here’s a 1919 Maine law banning guns with loaded magazines:
4 No person shall have a rifle or shotgun, either loaded or with a cartridge in the
5 magazine thereof, in or on any motor vehicle while the same is upon any highway
6 or in the fields or forests.

7 58. Laws banning *machine guns* or firearms with *magazines* capable of firing
8 multiple times without reloading appear in Vermont (1923), Rhode Island (1927),
9 and Massachusetts (1927), among other states. Rhode Island’s law bans magazines
10 which fire automatically or which hold more than twelve rounds: “machine gun”
11 shall include any weapon which shoots automatically and any weapon which shoots
12 more than twelve shots semi-automatically without reloading.

13 59. A 1933 Texas law bans “machine guns” capable of firing “more than five
14 (5) shots or bullets.”

15 60. Finally, the Federal Firearms Act of 1934, which introduced a nationwide
16 system of taxes, fees, and registration requirements for the transfer of certain types
17 of guns, specifies in great detail the nature of the “firearms” covered by the statute,
18 including their barrel length and type of firing mechanisms: “(a) The term ‘firearm’
19 means a shotgun or rifle having a barrel of less than eighteen inches in length, or
20 any other weapon, except a pistol or revolver, from which a shot is discharged by
21 an explosive if such weapon is capable of being concealed on the person, or a
22 machine gun, and includes a muffler or silencer for any firearm whether or not such
23 firearm is included within the foregoing definition.”

24 61. The Act also provides a specific definition of “machine gun”: “(b) The
25 term ‘machine gun’ means any weapon which shoots, or is designed to shoot,
26 automatically or semiautomatically, more than one shot, without manual reloading,
27 by a single function of the trigger.” [48 Stat. 1236. 73rd Congress, 2nd Session, Ch.
28 757, HR 9741].

1 **V. CONCLUSION**

2 62. In effect, then, *accoutrements*, when it occurs alone, in a specifically
 3 military context, may function as a general term that includes *arms*, though it does
 4 not always include arms. In non-military contexts this does not apply: the
 5 *accoutrements* suitable for the clergy or the office worker *do not* normally include
 6 weaponry.

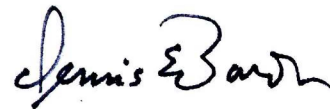
7 63. But there is no data that I have found showing that *arms* includes
 8 *accoutrements*, *magazines*, or any other *parts* of weapons.

9 64. In addition, ‘bullet holders,’ whether they are called *cartridge cases*,
 10 *magazines*, or simply, *machine guns*, both automatic and semi-automatic, regularly
 11 appear in legislation specifying or limiting their size or, in some cases, banning
 12 them outright.

13 65. To repeat, there is no data that I have found showing that *arms* includes
 14 *accoutrements*, *magazines*, or any other *parts* of weapons.

15
 16 I declare under penalty of perjury under the laws of the United States of
 17 America that the foregoing is true and correct.

18 Executed on November 7, 2022, at Champaign, IL.

19
 20
 21 

22 _____
 23 Dennis Baron
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