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9
10 **B&L PRODUCTIONS, INC., d/b/a**
CROSSROADS OF THE WEST, et
11 **al.,**

12 Plaintiffs,

13 v.

14 **GAVIN NEWSOM, et al.,**

15 Defendants.

8:22-cv-01518 JWH (JDEx)

DECLARATION OF SAUL CORNELL IN SUPPORT OF STATE DEFENDANTS' SECOND SUPPLEMENTAL BRIEF

Date: April 6, 2023
Time: 9:00 a.m.
Courtroom: 9D
Judge: The Honorable John W. Holcomb

Action Filed: August 12, 2022

17 I, Saul Cornell, declare under the penalty of perjury that the following is true
18 and correct:

19 1. I have been asked by the Office of the Attorney General for the State
20 of California to provide an expert opinion on the history of firearms regulation in
21 the Anglo-American legal tradition, with a particular focus on how the Founding
22 era understood the right to bear arms, as well as the understanding of the right to
23 bear arms held at the time of the ratification of the Fourteenth Amendment to the
24 United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*,
25 the U.S. Supreme Court underscored that text, history, and tradition are the
26 foundation of modern Second Amendment jurisprudence. This modality of
27 constitutional analysis requires that courts analyze history and evaluate the
28 connections between modern gun laws and earlier approaches to firearms regulation

1 in the American past. This declaration explores these issues in some detail. Finally,
2 I have been asked to evaluate the statutes at issue in this case, particularly regarding
3 its connection to the tradition of firearms regulation in American legal history.

4 2. This declaration is based on my own personal knowledge and
5 experience, and if I am called to testify as a witness, I could and would testify
6 competently to the truth of the matters discussed in this declaration.

7 **BACKGROUND AND QUALIFICATIONS**

8 3. I am the Paul and Diane Guenther Chair in American History at
9 Fordham University. The Guenther Chair is one of three endowed chairs in the
10 history department at Fordham and the only one in American history. In addition to
11 teaching constitutional history at Fordham University to undergraduates and
12 graduate students, I teach constitutional law at Fordham Law School. I have been a
13 Senior Visiting research scholar on the faculty of Yale Law School, the University
14 of Connecticut Law School, and Benjamin Cardozo Law School. I have given
15 invited lectures, presented papers at faculty workshops, and participated in
16 conferences on the topic of the Second Amendment and the history of gun
17 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA
18 Law School, the University of Pennsylvania Law School, Columbia Law School,
19 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,
20 Leiden University, and McGill University.¹

21 4. My writings on the Second Amendment and gun regulation have been
22 widely cited by state and federal courts, including the majority and dissenting
23 opinions in *Bruen*.² My scholarship on this topic has appeared in leading law
24 reviews and top peer-reviewed legal history journals. I authored the chapter on the
25 right to bear arms in *The Oxford Handbook of the U.S. Constitution* and co-

26 ¹ For a full *curriculum vitae* listing relevant invited and scholarly
27 presentations, see Exhibit 1.

28 ² *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

1 authored the chapter in *The Cambridge History of Law in America* on the Founding
2 era and the Marshall Court, the period that includes the adoption of the Constitution
3 and the Second Amendment.³ Thus, my expertise not only includes the history of
4 gun regulation and the right to keep and bear arms, but also extends to American
5 legal and constitutional history broadly defined. I have provided expert witness
6 testimony in *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No.
7 14-cv-02850 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo.
8 D. Ct., Boulder Cty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller v.*
9 *Smith*, No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D.
10 Cal.); *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, No. 21-
11 cv-1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.); and
12 *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.).

13 **RETENTION AND COMPENSATION**

14 5. I am being compensated for services performed in the above-entitled
15 case at an hourly rate of \$500 for reviewing materials, participating in meetings,
16 and preparing reports; \$750 per hour for depositions and court appearances; and an
17 additional \$100 per hour for travel time. My compensation is not contingent on the
18 results of my analysis or the substance of any testimony.

19 **BASIS FOR OPINION AND MATERIALS CONSIDERED**

20 6. The opinion I provide in this report is based on my review of the
21 amended complaint filed in this lawsuit, my review of the local ordinances at issue
22 in this lawsuit, my education, expertise, and research in the field of legal history.
23 The opinions contained herein are made pursuant to a reasonable degree of
24 professional certainty.

25
26 ³ Saul Cornell, *The Right to Bear Arms*, in *THE OXFORD HANDBOOK OF THE*
27 *U.S. CONSTITUTION* 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber
28 eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the*
Early Federal System, in *1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 518–544
(Christopher Tomlins & Michael Grossberg eds., 2008).

1 **SUMMARY OF OPINIONS**

2 7. Understanding text, history, and tradition require a sophisticated grasp
3 of historical context. One must canvass the relevant primary sources, secondary
4 literature, and jurisprudence to arrive at an understanding of the scope of
5 permissible regulation consistent with the Second Amendment’s original
6 understanding.

7 8. It is impossible to understand the meaning and scope of Second
8 Amendment protections without understanding the way Americans in the Founding
9 era approached legal questions and rights claims. In contrast to most modern
10 lawyers, the members of the First Congress who wrote the words of the Second
11 Amendment and the American people who enacted the text into law were well
12 schooled in English common law ideas. Not every feature of English common law
13 survived the American Revolution, but there were important continuities between
14 English law and the common law in America.⁴ Each of the new states, either by
15 statute or judicial decision, adopted multiple aspects of the common law, focusing
16 primarily on those features of English law that had been in effect in the English
17 colonies for generations.⁵ No legal principle was more important to the common
18 law than the concept of the peace.⁶ As one early American justice of the peace
19 manual noted: “the term peace, denotes the condition of the body politic in which
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21 _____
22 ⁴ William B. Stoebuck, *Reception of English Common Law in the American*
23 *Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776.
24 DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for*
25 *the Empire: The Common Law in Colonial America and the Problem of Legal*
26 *Diversity*, 89 CHI.-KENT L. REV. 937 (2014).

27 ⁵ 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.
28 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE
PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61
(Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

⁶ LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND*
THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH
(University of North Carolina Press, 2009).

1 no person suffers, or has just cause to fear any injury.”⁷ Blackstone, a leading
2 source of early American views about English law, opined that the common law
3 “hath ever had a special care and regard for the conservation of the peace; for peace
4 is the very end and foundation of civil society.”⁸

5 9. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of
6 Blackstone’s authority as a guide to how early Americans understood their
7 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous
8 terms that there was a “well established historical tradition of prohibiting the
9 carrying of dangerous and unusual weapons.”⁹ The dominant understanding of
10 the Second Amendment and its state constitutional analogues at the time of their
11 adoption in the Founding period forged an indissoluble link between the right to
12 keep and bear arms with the goal of preserving the peace.¹⁰

13 10. The right of the people to pass laws to promote public health and
14 safety is one of the most fundamental right in the pantheon of American rights. The

15 ⁷ JOSEPH BACKUS, THE JUSTICE OF THE PEACE 23 (1816).

16 ⁸ 1 WILLIAM BLACKSTONE, COMMENTARIES *349.

17 ⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.
18 Blackstone and Hawkins, two of the most influential English legal writers consulted
19 by the Founding generation, described these types of limits in slightly different
20 terms. The two different formulations related to weapons described as dangerous
21 and unusual in one case and sometimes as dangerous or unusual in the other
22 instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 FORDHAM URB. L.J. 1695134 (2012). It is also possible that the phrase was an example of an archaic grammatical and rhetorical form hendiadys; see Samuel Bray, ‘Necessary AND Proper’ and ‘Cruel AND Unusual’: *Hendiadys in the Constitution*, 102 VIRGINIA L. REV. 687 (2016).

23 ¹⁰ On Founding-era conceptions of liberty, see JOHN I. ZIURLY, THE LAW OF
24 LIBERTY (1775). The modern terminology to describe this concept is “ordered
25 liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent
26 elaboration of the concept, see generally JAMES F. FLEMING & LINDA C. MCCLEAIN,
27 ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (Harvard University
28 Press, 2013). On Justice Cardozo and the ideal of ordered liberty, see *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty: Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); Jud Campbell, *Judicial Review, and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL’Y 569 (2017).

1 idea of popular sovereignty, a core belief of the Founding generation, included a
2 right of legislatures to enact laws to promote the common good. Although modern
3 lawyers and jurists are accustomed to thinking of this concept under the rubric of
4 state police power, the Founding generation viewed it as a right, not a power.¹¹ The
5 first state constitutions clearly articulated such a right — including it alongside
6 more familiar rights such as the right to bear arms.¹² Pennsylvania’s Constitution
7 framed this estimable right succinctly: “That the people of this State have the sole,
8 exclusive and inherent right of governing and regulating the internal police of the
9 same.” “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined with
10 the scope they were thought to have when the people adopted them.”¹³ Included in
11 this right was the most basic right of all: the right of the people to regulate their
12 own internal police. Thus, if Justice Scalia’s rule applies to the scope of the right to
13 bear arms, it must also apply to the scope of the right of the people to regulate their
14 internal police, a point that Chief Justice Roberts and Justice Kavanaugh have each
15 asserted in their interpretations of *Heller* and subsequent jurisprudence. The history
16 of gun regulation in the decades after the right to bear arms was codified in both the
17 first state constitutions and the federal bill of rights underscores this important
18 point.

19 11. In the years following the adoption of the Second Amendment and its
20 state analogues, firearm regulation increased. Indeed, the individual states

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22 ¹¹ On the transformation of the Founding era’s ideas about a “police right”
23 into the more familiar concept of “police power,” *See generally* Aaron T. Knapp,
24 *The Judicialization of Police*, 2 CRITICAL ANALYSIS OF L. 64 (2015); *see also*
25 MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS*
26 *OF AMERICAN GOVERNMENT* (2005); Christopher Tomlins, *Necessities of State:*
Police, Sovereignty, and the Constitution, 20 J. OF POL’Y HIST. 47 (2008).

25 ¹² PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV
26 (1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF
RIGHTS, art. V (1777).

27 ¹³ *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*
28 *Origins of State Power in America*, 45 HASTINGS L.J. 1061, 1081–83 (1994);
Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*
Constitution, 20 J. POL’Y HIST. 47 (2008).

1 exercised their police powers to address longstanding issues and novel problems
2 created by firearms in American society. Over the eighteenth and nineteenth
3 centuries, American regulation increased as states grappled with advances in
4 firearm technology and changes in American society. Regulation touched every
5 aspect of guns from the manufacturing, storage, and sale of gunpowder, to
6 regulating where firearms and other dangerous weapons might be carried in public.

7 **I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND**
8 ***HELLER***

9 12. The United States Supreme Court’s decisions in *Heller*, *McDonald*,¹⁴
10 and *Bruen* have directed courts to look to text, history, and tradition when
11 evaluating the scope of permissible firearms regulation under the Second
12 Amendment. In another case involving historical determinations, Justice Thomas,
13 the author of the majority opinion in *Bruen*, has noted that judges must avoid
14 approaching history, text, and tradition with an “ahistorical literalism.”¹⁵ Legal
15 texts must not be read in a decontextualized fashion detached from the web of
16 historical meaning that made them comprehensible to Americans living in the past.
17 Similarly, a mechanistic strategy of digital searching for historical gun laws would
18 be incapable of answering the historical inquiries required under *Bruen*. Instead,
19 understanding the public meaning of constitutional texts requires a solid grasp of
20 the relevant historical contexts—how firearms technology has changed, how
21 consumer demand has waxed and waned, and how the people, acting through their
22 representatives, respond to societal ills created by those changes.¹⁶

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25 ¹⁴ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

26 ¹⁵ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019)
(Thomas, J.) (criticizing “ahistorical literalism”).

27 ¹⁶ See Jonathan Gienann, *Historicism and Holism: Failures of Originalist*
28 *Translation*, 84 *FORDHAM L. REV.* 935 (2015).

1 13. Moreover, as *Bruen* makes clear, history neither imposes “a regulatory
2 straightjacket nor a regulatory blank check.”¹⁷ The Court acknowledged that when
3 novel problems created by firearms are at issue, “a more nuanced approach” is
4 appropriate.¹⁸ *Bruen* differentiates between cases in which contested regulations
5 are responses to long standing problems and situations in which modern regulations
6 address novel problems with no clear historical analogues from the Founding era or
7 the era of the Fourteenth Amendment.

8 14. In the years between *Heller* and *Bruen*, historical scholarship has
9 expanded our understanding of the history of arms regulation in the Anglo-
10 American legal tradition, but much more work needs to be done to fill out this
11 picture.¹⁹ Indeed, such research is still ongoing: new materials continue to emerge;
12 and since *Bruen* was decided, additional evidence about the history of regulation
13 has surfaced and new scholarship interpreting it has appeared in leading law
14 reviews and other scholarly venues.²⁰

15 15. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated in
16 *Bruen*, the original Second Amendment was a result of interest balancing
17 undertaken by the people themselves in framing the federal Constitution and the
18 Bill of Rights.²¹ Although “free-standing balancing” by judges is precluded by
19 *Heller*, the plain meaning of the Second Amendment’s text recognizes a role for
20 regulation explicitly and further asserts that actions inimical to a free state fall
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22 ¹⁷ *Bruen*, 142 S. Ct. 2111, 2133.

23 ¹⁸ *Id.* at 2132.

24 ¹⁹ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of
Second Amendment Law & Policy*, 80 L. & CONTEMP. PROBS. 1 (2017).

25 ²⁰ *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of
26 History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495
(2022); *NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE
27 OF GUNS IN AMERICAN LAW AND SOCIETY* (Joseph Blocher, Jacob D. Charles &
Darrell A.H. Miller eds., forthcoming 2023).

28 ²¹ *Bruen*, 142 S. Ct. at 2131; *Heller*, 554 U.S. at 635.

1 outside of the scope of the right instantiated in the text.²² The Second Amendment
2 states: “A well regulated Militia, being necessary to the security of a free State, the
3 right of the people to keep and bear Arms, shall not be infringed.” U.S. Const.
4 amend. II. Thus, from its outset, the Second Amendment recognizes both the right
5 to keep and bear arms and the right of the people to regulate arms to promote the
6 goals of preserving a free state. Although rights and regulation are often cast as
7 antithetical in the modern gun debate, the Founding generation saw the two goals as
8 complimentary. Comparing the language of the Constitution’s first two
9 amendments and their different structures and word choice makes this point crystal
10 clear. The First Amendment prohibits “abridging” the rights it protects. In standard
11 American English in the Founding era, to “abridge” meant to “reduce.” Thus, the
12 First Amendment prohibits a diminishment of the rights it protects. The Second
13 Amendment’s language employs a very different term, requiring that the right to
14 bear arms not be “infringed.”²³ In Founding-era American English, the word
15 “infringement” meant to “violate” or “destroy.” In short, when read with the
16 Founding era’s interpretive assumptions and legal definitions in mind, the two
17 Amendments set up radically different frameworks for evaluating the rights they
18 enshrined in constitutional text. Members of the Founding generation would have
19 understood that the legislature could regulate the *conduct* protected by the Second
20 Amendment and comparable state arms bearing provisions as long as such
21 regulations did not destroy the underlying *right*. An exclusive focus on rights and a

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24 ²² *Heller*, 554 U.S. at 635.

25 ²³ The distinction emerges clearly in a discussion of natural law and the law
26 of nations in an influential treatise on international law much esteemed by the
27 Founding generation: “Princes who infringe the law of nations, commit as great a
28 crime as private people, who violate the law of nature,” J.J. BURLAMAQUI, THE
PRINCIPLES OF NATURAL LAW (Thomas Nugent trans., 1753) at 201. This book was
among those included in the list of important texts Congress needed to procure, *see*
Report on Books for Congress. [23 January] 1783.” *Founders Online*. National
Archives, <https://founders.archives.gov/documents/Madison/01-06-02-0031>.

1 disparagement of regulation is thus antithetical to the plain meaning of the text of
2 the Second Amendment.

3 16. John Burn, author of an influential eighteenth-century legal dictionary,
4 illustrated the concept of infringement in the context of his discussion of violations
5 of rights protected by the common law. Liberty, according to Burns, was not
6 identical to that “wild and savage liberty” of the state of nature. True liberty, by
7 contrast, only existed when individuals created civil society and enacted laws and
8 regulations that promoted *ordered* liberty. Regulation was the indispensable
9 correlate of rights in Founding era constitutionalism.²⁴

10 17. Burn’s conception of the close connection between liberty and
11 regulation was widely shared by others in the Anglo-American world. Similarly,
12 Nathan Bailey’s *Dictionarium Britannicum* (1730) defined “abridge” as to
13 “shorten,” while “infringe” was defined as to “break a law.”²⁵ And his 1763 *New*
14 *Universal Dictionary* repeats the definition of “abridge” as “shorten” and “infringe”
15 as “to break a law, custom, or privilege.”²⁶ Samuel Johnson’s *Dictionary of the*
16 *English Language* (1755) defines “infringe” as “to violate; to break laws or
17 contracts” or “to destroy; to hinder.”²⁷ Johnson’s definition of “abridge” was “to
18 shorten” and “to diminish” or “to deprive of.”²⁸ And Noah Webster’s *An*
19 *American Dictionary of the English Language* (1828) largely repeats Johnson’s
20 definitions of “infringe” and “abridge.”²⁹

22 ²⁴ *Liberty*, A NEW LAW DICTIONARY (1792); See also, Jud Campbell,
23 *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW &
CONTEMP. PROBS. 31, 32–33 (2020)

24 ²⁵ *Abridge*, DICTIONARIUM BRITANNICUM (1730).

25 ²⁶ *Abridge*, NEW UNIVERSAL DICTIONARY (1763).

26 ²⁷ *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

27 ²⁸ *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

28 ²⁹ *Abridge, Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
(1828).

1 18. For the framers, ratifiers, and other relevant legal actors in the
2 Founding era, regulation, including robust laws, was not understood to be an
3 “infringement” of the right to bear arms, but rather the necessary foundation for the
4 proper exercise of that right as required by the concept of ordered liberty.³⁰ As one
5 patriotic revolutionary era orator observed, almost a decade after the adoption of the
6 Constitution: “True liberty consists, not in having *no government*, not in a
7 *destitution of all law*, but in our having an equal voice in the formation and
8 execution of the laws, according as they effect [*sic*] our persons and property.”³¹
9 By allowing individuals to participate in politics and enact laws aimed at promoting
10 the health, safety, and well-being of the people, liberty flourished.³²

11 19. The key insight derived from taking the Founding era conception of
12 rights seriously and applying the original understanding of the Founding era’s
13 conception of liberty is the recognition that regulation and liberty are both hard
14 wired into the Amendment’s text. The inclusion of rights guarantees in
15 constitutional texts was not meant to place them beyond the scope of legislative
16 control. “The point of retaining natural rights,” originalist scholar Jud Campbell
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18 ³⁰ Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of*
19 *Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). *See generally*
20 GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY,*
21 *EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION, 1780s–1830s*, at 2;
22 Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001)
(discussing how the early modern language of rights incorporated aspects of natural
rights and other philosophical traditions); Joseph Postell, *Regulation During the*
American Founding: Achieving Liberalism and Republicanism, 5 AM. POL.
THOUGHT 80 (2016) (examining the importance of regulation to Founding political
and constitutional thought).

23 ³¹ Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*
24 *the Anniversary of American Independence, July 4, 1799*, at 7 (July 4, 1799), (text
available in the Evans Early American Imprint Collection) (emphasis in original).

25 ³² *See generally* QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998)
26 (examining neo-Roman theories of free citizens and how it impacted the
development of political theory in England); *THE NATURE OF RIGHTS AT THE*
27 *AMERICAN FOUNDING AND BEYOND* (Barry Alan Shain ed., 2007) (discussing how
the Founding generation approached rights, including the republican model of
28 protecting rights by representation).

1 reminds us “was not to make certain aspects of natural liberty immune from
2 governmental regulation. Rather, retained natural rights were aspects of natural
3 liberty that could be restricted only with just cause and only with consent of the
4 body politic.”³³ Rather than limit rights, regulation was the essential means of
5 preserving rights, including self-defense.³⁴ In fact, without robust regulation of
6 arms, it would have been impossible to implement the Second Amendment and its
7 state analogues. Mustering the militia required keeping track of who had weapons
8 and included the authority to inspect those weapons and fine individuals who failed
9 to store them safely and keep them in good working order.³⁵ The individual states
10 also imposed loyalty oaths, disarming those who refused to take such oaths. No
11 state imposed a similar oath as pre-requisite to the exercise of First Amendment-
12 type liberties. Thus, some forms of prior restraint, impermissible in the case of
13 expressive freedoms protected by the First Amendment or comparable state
14 provisions, were understood by the Founding generation to be perfectly consistent
15 with the constitutional right to keep and bear arms.³⁶

16 _____
17 ³³ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.
18 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*
19 *Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*
20 *Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206
21 (2016) (noting that the Second Amendment was not understood in terms of the
22 simple dichotomies that have shaped modern debate over the right to bear arms).

20 ³⁴ See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15
21 GEO. J.L. & PUB. POL’Y 569, 576–77 (2017). Campbell’s work is paradigm-
22 shifting, and it renders Justice Scalia’s unsubstantiated claim in *Heller* that the
23 inclusion of the Second Amendment in the Bill of Rights placed certain forms of
24 regulation out of bounds totally anachronistic. This claim has no foundation in
25 Founding-era constitutional thought, but reflects the contentious modern debate
26 between Justice Black and Justice Frankfurter over judicial balancing, on Scalia’s
27 debt to this modern debate, see generally SAUL CORNELL, *THE POLICE POWER AND*
28 *THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA* 1–2 (2021),
https://www.brennancenter.org/sites/default/files/2021-06/Cornell_final.pdf
[<https://perma.cc/J6QD-4YXG>] and Joseph Blocher, *Response: Rights as Trumps of*
What?, 132 HARV. L. REV. 120, 123 (2019).

26 ³⁵ H. RICHARD UVILLER & WILLIAM G. MERKEL, *THE MILITIA AND THE*
27 *RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT* 150 (2002).

27 ³⁶ Saul Cornell, *Commonplace or Anachronism: The Standard Model, the*
28 *Second Amendment, and the Problem of History in Contemporary Constitutional*

1 20. In keeping with the clear public meaning of the Second Amendment’s
2 text and comparable state provisions, early American governments enacted laws to
3 preserve the rights of law-abiding citizens to keep and bear arms and promote the
4 equally vital goals of promoting public safety. The proper metric for deciding if
5 such laws were constitutional was and remains the same today: whether a
6 regulation infringes on the right protected by the Second Amendment.³⁷

7 **II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY**
8 **AMERICAN FIREARMS REGULATION**

9 21. Guns have been regulated from the dawn of American history.³⁸ At the
10 time *Heller* was decided, there was little scholarship on the history of gun
11 regulation and a paucity of quality scholarship on early American gun culture.³⁹
12 Fortunately, a burgeoning body of scholarship has illuminated both topics,
13 deepening scholarly understanding of the relevant contexts needed to implement
14 *Bruen*’s framework.⁴⁰

15 22. The common law that Americans inherited from England always
16 acknowledged that the right of self-defense was not unlimited but existed within a
17 well-delineated jurisprudential framework. The entire body of the common law
18 was designed to preserve the peace and the right of self-defense existed within this
19 larger framework.⁴¹ Statutory law, both in England and America functioned to
20 further secure the peace and public safety. Given these indisputable facts, the
21 Supreme Court correctly noted, the right to keep and bear arms was never

22

Theory 16 CONSTITUTIONAL COMMENTARY 988 (1999).

23 ³⁷ Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early*
24 *American Origins of Gun Control*, 73 *FORDHAM L. REV.* 487 (2004).

25 ³⁸ Robert I. Snitzer, *Gun Law History in the United States and Second*
26 *Amendment Rights*, 80 *L. & CONTEMP. PROBS.* 55 (2017).

27 ³⁹ *Id.*

28 ⁴⁰ Ruben & Miller, *supra* note 19, at 1.

⁴¹ Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 *L. & CONTEMP. PROBS.* 11 (2017).

1 understood to prevent government from enacting a broad range of regulations to
2 promote the peace and maintain public safety.⁴² In keeping with this principle, the
3 Second Amendment and its state analogues were understood to enhance the concept
4 of ordered liberty, not undermine it.⁴³

5 23. *Bruen*'s methodology requires judges to distinguish between the
6 relevant history necessary to understand early American constitutional texts and a
7 series of myths about guns and regulation that were created by later generations to
8 sell novels, movies, and guns themselves.⁴⁴ Unfortunately, many of these myths
9 continue to cloud legal discussions of American gun policy and Second
10 Amendment jurisprudence.⁴⁵

11 24. Although it is hard for many modern Americans to grasp, there was no
12 comparable societal ill to the modern gun violence problem for Americans to solve
13 in the era of the Second Amendment. A combination of factors, including the
14 nature of firearms technology and the realities of living life in small, face-to-face,
15 and mostly homogenous rural communities that typified many parts of early
16 America, militated against the development of such a problem. In contrast to
17 modern America, homicide was not the problem that government firearm policy
18 needed to address at the time of the Second Amendment.⁴⁶

19 25. The surviving data from New England is particularly rich and has
20 allowed scholars to formulate a much better understanding of the dynamics of early

21 _____
22 ⁴² *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation
with reasonable firearms regulations will continue under the Second
Amendment”).

23 ⁴³ See generally Saul Cornell, *The Long Arc Of Arms Regulation In Public:
From Surety To Permitting*, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)

24 ⁴⁴ PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF
25 AMERICAN GUN CULTURE* (2016).

26 ⁴⁵ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN
TWENTIETH-CENTURY AMERICA* (1993); JOAN BURBICK, *GUN SHOW NATION: GUN
27 CULTURE AND AMERICAN DEMOCRACY* (2006).

28 ⁴⁶ RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

1 American gun policy and relate it to early American gun culture.⁴⁷ Levels of gun
2 violence among those of white European ancestry in the era of the Second
3 Amendment were relatively low compared to modern America. These low levels of
4 violence among persons of European ancestry contrasted with the high levels of
5 violence involving the tribal populations of the region. The data presented in
6 Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth.
7 It captures one of the essential facts necessary to understand what fears motivated
8 American gun policy in the era of the Second Amendment. The pressing problem
9 Americans faced at the time of the Second Amendment was that citizens were
10 reluctant to purchase military style weapons which were relatively expensive and
11 had little utility in a rural society. Americans were far better armed than their
12 British ancestors, but the guns most Americans owned and desired were those most
13 useful for life in an agrarian society: fowling pieces and light hunting muskets.⁴⁸
14 Killing pests and hunting birds were the main concern of farmers, and their choice
15 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols
16 were of limited utility for anyone outside of a small elite group of wealthy,
17 powerful, and influential men who needed these weapons if they were forced to
18 face an opponent on the field of honor in a duel, as the tragic fate of Alexander
19 Hamilton so vividly illustrates.⁴⁹

21 ⁴⁷ It is important to recognize that there were profound regional differences in
22 early America. See JACK P. GREENE, PURSUITS OF HAPPINESS: THE SOCIAL
23 DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF
24 AMERICAN CULTURE (1988). These differences also had important consequences
25 for the evolution of American law. See generally David Thomas Konig,
26 *Regionalism in Early American Law*, in 1 THE CAMBRIDGE HISTORY OF LAW IN
27 AMERICA 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

25 ⁴⁸ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and*
26 *Eighteenth Century England and America*, in A RIGHT TO BEAR ARMS?: THE
27 CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND
28 AMENDMENT (Jennifer Tucker et al. eds., 2019).

27 ⁴⁹ Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW*
28 *REPUBLIC* (2001).

1 26. Limits in Founding-era firearms technology also militated against the
2 use of guns as effective tools of interpersonal violence in this period. Eighteenth-
3 century muzzle-loading weapons, especially muskets, took too long to load and
4 were therefore seldom used to commit crimes. Nor was keeping guns loaded a
5 viable option because the black powder used in these weapons was not only
6 corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles
7 and muskets hung over the mantle place in early American homes was not primarily
8 a function of aesthetics or the potent symbolism of the hearth, as many today
9 assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it
10 corrodes your barrel, you can’t keep it loaded. Why do they always show the gun
11 over the fireplace? Because that’s the warmest, driest place in the house.”⁵⁰
12 Similar problems also limited the utility of muzzle-loading pistols as practical tools
13 for self-defense or criminal offenses. Indeed, at the time of the Second
14 Amendment, over 90% of the weapons owned by Americans were long guns, not
15 pistols.⁵¹

Figure 1

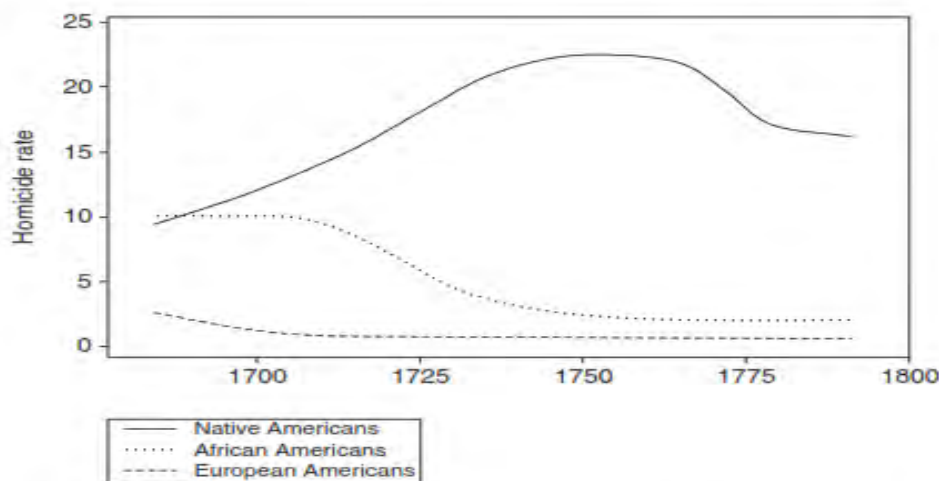


Figure 2.3 Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

26 ⁵⁰ Randolph Roth, Transcript: *Why is the United States the Most Homicidal in*
27 *the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013),
<https://nij.ojp.gov/media/video/24061#transcript--0>.

28 ⁵¹ Sweeney, *supra* note 48.

1 27. As Roth’s data makes clear, there was not a serious homicide problem
2 looming over debates about the Second Amendment. Nor were guns the primary
3 weapon of choice for those with evil intent during this period.⁵² The skill and time
4 required to load and fire flintlock muzzle loading black powder weapons meant that
5 these types of firearms were less likely to be used in crimes of passion. The
6 preference for storing them unloaded also meant they posed fewer dangers to
7 children from accidental discharge.

8 28. In short, the Founding generation did not confront a gun violence
9 problem similar in nature or scope to the ills that plague modern America.

10 29. The Founding generation faced a different, but no less serious
11 problem: American reluctance to purchase the type of weapons needed to
12 effectively arm their militias. Despite repeated efforts to exhort and legislate to
13 promote this goal, many states were failing to adequately equip the militia with
14 suitable firearms that could withstand the rigors of the type of close-quarters hand-
15 to-hand combat required by eighteenth-century military tactics. A gun had to be
16 able to receive a bayonet and serve as a bludgeon if necessary. The light-weight
17 guns favored by the overwhelmingly rural population of early America were well
18 designed to put food on the table and rid fields of vermin, but these weapons were
19 not well suited to eighteenth-century ground wars. When the U.S. government
20 surveyed the state of the militia’s preparedness shortly after President Jefferson
21 took office in 1800, the problem had not been solved. Although Massachusetts
22 boasted above 80% of its militia armed with military quality weapons, many of the
23 southern states lagged far behind, with Virginia and North Carolina hovering at
24 about less than half the militia properly armed.⁵³

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26
27 ⁵² HAAG, *supra* note 44.

28 ⁵³ Sweeney, *supra* note 48.

1 30. As a result, the government took an active role in encouraging the
2 manufacturing of arms and had a vested interest in determining what types of
3 weapons would be produced.⁵⁴ The American firearms industry in its infancy was
4 thus largely dependent on government contracts and subsidies.

5 31. In short, the market for firearms in early America shared very few
6 features with the contemporary world of firearms commerce. Gun shows, gun
7 supermarkets, and internet sales are just a few of the many ways Americans acquire
8 firearms today. Although estimates vary, there are now more guns than people in
9 contemporary America. Today's Americans are awash in sea of guns and have a
10 myriad of choices when they wish to acquire a firearm. Early America firearms
11 production in the era of the Second Amendment, in contrast, was dominated by
12 artisan production. Local gun smiths, not big box stores such as Walmart, were
13 responsible for selling firearms. Most sellers and buyers of firearms in early
14 America were members of the same community and needed to maintain an ongoing
15 relationship with their local gun smith to keep their guns in good working order.
16 These informal ties of kin and community that defined the close-knit communities
17 of early America meant that individuals were effectively vetted and monitored by
18 their neighbors in ways that share little with the largely anonymous world of
19 modern firearms commerce. In addition, early American firearms, in contrast with
20 modern weapons, needed frequent repair, so much so that many gunsmiths devoted
21 most of their time to repair, not the manufacture or assembly of arms.⁵⁵

22
23
24 ⁵⁴ Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*
25 *Regulation*, 46 HASTINGS CONST. L.O. 523, 524 (2019); Andrew I. B. Fagal,
American Arms Manufacturing and the Onset of the War of 1812, 87 NEW ENG. Q.
26 526, 526 (2014).

27 ⁵⁵ Scott Paul Gordon, *The Ambitions of William Henry*, 136 *Pennsylvania*
28 *Magazine of History and Biography* 253 (2012). Pennsylvania was one of the main
regions of early American gunsmithing, M.L. Brown, *Firearms in Colonial*
America: The Impact on History and Technology, 1492-1792 (1980).

1 32. Although much of the supervision of this market was achieved through
2 these informal means, governments in early America also regulated the sale of
3 firearms and ammunition in multiple ways.

4 33. One form of government regulation of the early American firearms
5 industry was through laws providing for the inspection of weapons.⁵⁶ The danger
6 posed by defective or poorly manufactured arms could be catastrophic. A burst
7 barrel of a musket or fowling piece could turn a firearm into a pipe bomb, maiming
8 or killing an unfortunate user. Indeed, without such regulation, the industry may
9 not have survived.

10 34. Other laws targeted arms and ammunition trafficking. For example,
11 Connecticut prohibited the sale of ammunition by its residents outside the colony.⁵⁷
12 Similarly, states regulated the sale of arms by taxation and permit schemes.⁵⁸

13 35. Gunpowder was extensively regulated, from manufacture to sale,
14 transportation, and storage. New Hampshire, for example, enacted a law in 1825
15 penalizing the sale or offer to sell “by retail any gunpowder in any highway, or in
16 any street, lane, or alley, or on any wharf, or on parade or common.”⁵⁹ The purpose
17 of this law and other similar laws was to promote public safety.

18
19
20 ⁵⁶ See, e.g., 1814 Mass. Acts 464, An Act In Addition To An Act, Entitled
21 “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This
22 Commonwealth,” ch. 192, § 1 (“All musket barrels and pistol barrels, manufactured
23 within this Commonwealth, shall, before the same shall be sold, and before the
24 same shall be stocked, be proved by the person appointed according to the
25 provisions of an act”); § 2 (“That if any person or persons, from and after the
26 passing of this act, shall manufacture, within this Commonwealth, any musket or
27 pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol,
28 without having the barrels first proved according to the provisions of the first
section of this act, marked and stamped according the provisions of the first section
of the act.”)

⁵⁷ 1 Trumbull, *Public Records of the Colony of Connecticut*, 79 (December 1, 1642), 138-139 (April 19, 1646), 145-146 (October 30, 1646).

⁵⁸ See, e.g., An Act Entitled Revenue, 1858 N.C. Sess. Laws 34, chap. 25, § 27, pt. 15; An Act to Tax Guns and Pistols in the County of Washington, 1867 Miss. Laws 327, § 1.

⁵⁹ 1825 N.H. Laws 74, ch. 61, § 5.

1 36. Examples of state laws delegating authority to local governments to
2 regulate the sale of gunpowder for public safety include:

- 3 • An Act to Incorporate and Establish the City of Dubuque, 1845 Iowa
4 Laws 119, chap 123, § 12 (delegating authority to cities “to regulate by
5 ordinance the keeping and sale of gunpowder within the city”);
6
- 7 • An Act Incorporating the Cities of Hartford, New Haven, New London,
8 Norwich and Middletown, 1836 Conn. Acts 105 (Reg. Sess.), chap. 1, §
9 20 (delegating authority to “prohibit[] and regulat[e] the bringing in, and
10 conveying out” of gunpowder); and
11
- 12 • An Act to Reduce the Law Incorporating the City of Madison, and the
13 Several Acts Amendatory thereto Into One Act, and to Amend the Same,
14 1847 Ind. Acts 93, chap 61, § 8, pt. 4 (delegating authority “[t]o regulate
15 and license, or provide by ordinance for regulating and licensing . . . the
16 keepers of gunpowder”).

17 37. Early American governments also regulated where shooting galleries
18 could be located—again, for the purpose of promoting public safety. For example,
19 governments required licenses to open shooting galleries and oftentimes set explicit
20 limits on locations. Historical examples include:

- 21 • Burlington, Iowa, in 1841, requiring an application for erecting a shooting
22 battery. *Ordinances of the City of Burlington, with Head Notes and an*
23 *Analytic Index*, § 1 (1841), at 149-150 (Chas. Ben. Darwin, Thompson &
24 Co. Printers, 1856) (listing other conditions);
25
- 26 • The East Feliciana Parish, Louisiana, in 1847, forbidding “shooting of
27 guns, pistols, or any other fire arms within the limits of the town of
28

1 Clinton” *Digest of the Laws and Ordinances of the Parish of East*
2 *Feliciana, Adopted by the Police Jury of the Parish*, sec. 1. (September
3 session, 1847), at 80 (John C. White, Whig Office, September 1, 1848);

- 4
- 5 • Rhode Island, in 1851, forbidding any pistol or rifle gallery in the
6 “compact part of the town of Newport” 1851 R.I. Pub. Laws 9, An
7 Act in Amendment of an Act Entitled an Act Relating to Theatrical
8 Exhibitions and Places of Amusement, §§ 1-2, in *The Revised Statutes of*
9 *the State of Rhode Island and Providence Plantations: To Which are*
10 *Prefixed, The Constitutions of the United States and of the State*, chp. 80,
11 section 2 (January Session 1857), at 204-205 (Samuel Ames, Chairman,
12 Sayles, Miller and Simons 1857) (same).

 - 13
 - 14 • San Francisco, California in 1853, requiring a license to keep a pistol or
15 rifle shooting gallery. *Ordinances and Joint Resolutions of the City of*
16 *San Francisco: Together with a List of the Officers of the City and*
17 *County, and Rules and Orders of the Common Council* 220, Ordinance
18 No. 498, section 13 (December 29, 1853), at 220 (Monson & Valentine
19 1854).

 - 20
 - 21 • Memphis, Tennessee, in 1863 requiring a license to set up a pistol gallery,
22 and prohibited such galleries “in the first story of any building in [the]
23 city[.]” *Digest of the Charters and Ordinances of the City of Memphis,*
24 *Together with the Acts of the Legislature Relating to the City, with an*
25 *Appendix Page*, Chp. 5, Art. VI., at 147-148 (October 7, 1863) (WM. H.
26 Bridges, Argus Book and Job Office 1863) (among other requirements);
27 and
28

- 1 • New Orleans, Louisiana, in 1870, prohibiting “any pistol or shooting
2 gallery within the limits of the city of New Orleans without having first
3 obtained the consent of” residents and common council. *The Laws and*
4 *General Ordinances of the City of New Orleans: Together with the Acts of*
5 *the Legislature, Decisions of the Supreme Court, and Constitutional*
6 *Provisions Relating to the City Government: Revised and Digested,*
7 *Pursuant to an Order of the Common Council*, Section 1, art. 636 (5), at
8 257 (Henry Jefferson Leovy, Simmons & Co. New Ed. 1870).

9 38. The calculus of individual self-defense changed dramatically in the
10 decades following the adoption of the Second Amendment.⁶⁰ The early decades of
11 the nineteenth century witnessed a revolution in the production and marketing of
12 guns.⁶¹ The same technological changes and economic forces that made wooden
13 clocks and other consumer goods such as Currier and Ives prints common items in
14 many homes also transformed American gun culture.⁶² These same changes also
15 made handguns and a gruesome assortment of deadly knives, including the dreaded
16 Bowie knife, more common. The culmination of this gradual evolution in both
17 firearms and ammunition technology was the development of Samuel Colt’s pistols
18 around the time of the Mexican-American War.⁶³ Economic transformation was
19 accompanied by a host of profound social changes that gave rise to America’s first
20 gun violence crisis. As cheaper, more dependable, and easily concealable handguns
21 proliferated in large numbers, Americans, particularly southerners, began sporting
22

23
24 ⁶⁰ Cornell, *supra* note 3, at 745.

25 ⁶¹ Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American*
Firearms Manufacturing and Antebellum Expansion, 93 BUS. HIST. REV. 57 (2018).

26 ⁶² Sean Wilentz, *Society, Politics, and the Market Revolution*, in THE NEW
AMERICAN HISTORY (Eric Foner ed., 1990).

27 ⁶³ WILLIAM N. HOSLEY, COLT: THE MAKING OF AN AMERICAN LEGEND (1st
28 ed. 1996).

1 them with alarming regularity. The change in behavior was most noticeable in the
2 case of handguns.⁶⁴

3 39. The response of states to the emergence of new firearms that
4 threatened the peace was more regulation. When faced with changes in technology
5 and consumer behavior, as well as novel threats to public safety, the individual
6 states enacted laws to address these problems. In every instance apart from a few
7 outlier cases in the Slave South, courts upheld such limits on the unfettered exercise
8 a right to keep and bear arms. The primary limit identified by courts in evaluating
9 such laws was the threshold question about infringement: whether the law negated
10 the ability to act in self-defense.⁶⁵ In keeping with the clear imperative hard-wired
11 into the Second Amendment, states singled out weapons that posed a particular
12 danger for regulation or prohibition. Responding in this fashion was entirely
13 consistent with Founding-era conceptions of ordered liberty and the Second
14 Amendment.

15 **III. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO**
16 **REGULATE FIREARMS (1863-1877)**

17 40. Founding-era constitutions treated the right of the people to regulate
18 their internal police separately from the equally important right of the people to
19 bear arms. These two rights were separate in the Founding era but were mutually
20 reinforcing: both rights were exercised in a manner that furthered the goal of
21 ordered liberty. Reconstruction-era constitutions adopted a new textual formulation
22 of the connection between these two formerly distinct rights, fusing the two
23 together as one single constitutional principle. This change reflected two profound
24 transformations in American politics and law between 1776 and 1868. First, the
25 judicial concept of police power gradually usurped the older notion of a police right

26 ⁶⁴ Cornell, *supra* note 9, at 716.

27 ⁶⁵ On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell,
28 *Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law*
in Context, 125 YALE L.J. F. 121, 128 (2015).

1 grounded in the idea of popular sovereignty. As a result, state constitutions no
2 longer included positive affirmations of a police right. Secondly, the constitutional
3 “mischief to be remedied” had changed as well.⁶⁶ Constitution writers in the era of
4 the American Revolution feared powerful standing armies and sought to entrench
5 civilian control of the military. By contrast, constitution writers in the era of the
6 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart
7 Kings using their standing army to oppress American colonists. In place of these
8 ancient fears, a new apprehension stalked Americans: the proliferation of
9 especially dangerous weapons and the societal harms they caused.⁶⁷

10 41. The new language state constitutions employed to describe the right to
11 bear arms enacted during Reconstruction responded to these changed circumstances
12 by adopting a new formulation of the venerable right codified in 1776, linking the
13 right to bear arms inextricably with the states broad police power to regulate
14 conduct to promote health and public safety.⁶⁸ For example, the 1868 Texas
15 Constitution included new language that underscored the indissoluble connection
16 that Anglo-American law had long recognized between the right to keep and bear
17 arms and regulation of guns. “Every person shall have the right to keep and bear
18 arms, in the lawful defence of himself or the government, under such regulations as

19 ⁶⁶ The mischief rule was first advanced in *Heydon’s Case*. (1584) 76 Eng.
20 Rep. 637 (KB) — the legal principle that the meaning of a legal text was shaped by
21 an understanding of the state of the common law prior to its enactment and the
22 mischief that the common law had failed to address and legislation had intended to
23 remedy — continued to shape Anglo-American views of statutory construction, and
24 legal interpretation more generally, well into the nineteenth century. For
25 Blackstone’s articulation of the rule, see 1 BLACKSTONE, *supra* note 8, at *61. The
26 relevance of common law modes of statutory construction to interpreting
27 antebellum law, including the mischief rule, is clearly articulated in 1 ZEPHANIAH
28 SWIFT, *A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT* 11 (New Haven, S.
Converse 1822). For a modern scholarly discussion of the rule, see Samuel L.
Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

⁶⁷ See *McDonald*, 561 U.S. at 767–68

⁶⁸ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. DAVIS L. REV. 65 (2022).

1 the Legislature may prescribe.”⁶⁹ Nor was Texas an outlier in this regard. Sixteen
2 state constitutions adopted during this period employed similarly expansive
3 language.⁷⁰ Millions of Americans living in the newly organized western states and
4 newly reconstructed states of the former confederacy adopted constitutional
5 provisions that reflected this new formulation of the right to bear arms. Thus,
6 millions of Americans were living under constitutional regimes that acknowledged
7 that the individual states’ police power authority over firearms was at its apogee
8 when regulating guns.⁷¹

9 42. This expansion of regulation was entirely consistent with the
10 Fourteenth Amendment’s emphasis on the protection of rights and the need to
11 regulate conduct that threatened the hard-won freedoms of recently free people of
12 the South and their Republican allies. The goals of Reconstruction were therefore
13 intimately tied to the passage and enforcement of racially neutral gun regulations.⁷²

14 43. Reconstruction ushered in profound changes in American law, but it
15 did not fundamentally alter the antebellum legal view that a states’ police powers
16 were rooted in the people’s right to make laws to protect the peace and promote
17 public safety. Nor did Reconstruction challenge the notion that these powers were
18 at their zenith when dealing with guns and gun powder. In fact, the Republicans
19 who wrote the Fourteenth Amendment were among the most ardent champions of
20 an expansive view of state police power. As heirs to the antebellum Whig vision of

21 ⁶⁹ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional
22 provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 (“The
23 people have the right to bear arms for their security and defense; but the legislature
24 shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6
25 (“[T]he people have the right to bear arms for their security and defense, but the
26 legislature may regulate the exercise of this right by law.”).

27 ⁷⁰ Cornell, *supra* note 68, at 75–76.

28 ⁷¹ *Id.*

⁷² ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND
RECONSTRUCTION REMADE THE CONSTITUTION (2019); Brennan Gardner Rivas,
Enforcement of Public Carry Restrictions: Texas as a Case Study, 55 U.C. DAVIS L.
REV. 2603 (2022).

1 a well-regulated society, Reconstruction-era Republicans used government power
2 aggressively to protect the rights of recently freed slaves and promote their vision
3 of ordered liberty.⁷³

4 44. Indeed, the passage of the Fourteenth Amendment was premised on the
5 notion that the individual states would not cede their police power authority to the
6 federal government. The author of Section One of the Fourteenth Amendment,
7 John Bingham, reassured voters that the states would continue to bear the primary
8 responsibility for “local administration and personal security.”⁷⁴ As long as state
9 and local laws were racially neutral and favored no person over any other, the
10 people themselves, acting through their representatives, were free to enact
11 reasonable measures necessary to promote public safety and further the common
12 good.⁷⁵

13 45. It would be difficult to understate the impact of this new paradigm for
14 gun regulation on post-Civil War legislation. Across the nation legislatures took
15 advantage of the new formulation of the right to bear arms included in state
16 constitutions and enacted a staggering range of new laws to regulate arms. Indeed,
17 the number of laws enacted skyrocketed, increasing by over four hundred percent
18
19
20

21 ⁷³ Robert J. Kaczorowski. *Congress’s Power to Enforce Fourteenth*
22 *Amendment Rights: Lessons from Federal Remedies the Framers Enacted*. 42
23 *HARV. J. ON LEGIS.* 187 (2005); Christopher Tomlins. *To Improve the State and*
Condition of Man: The Power to Police and the History of American Governance
53 *BUFFALO L. REV.* 1215 (2005/2006).

24 ⁷⁴ John Bingham. *Speech*. *CINCINNATI DAILY GAZETTE* (Sept. 2, 1867), as
25 quoted in Saul Cornell and Justin Florence. *The Right to Bear Arms in the Era of*
the Fourteenth Amendment: Gun Rights or Gun Regulation, 50 *SANTA CLARA L.*
26 *REV.* 1043, 1058 (2010).

27 ⁷⁵ For a discussion of how the courts wrestled with the meaning of the
28 Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM*
POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1998).

1 from antebellum levels.⁷⁶ Not only did the number of laws increase, but the
2 number of states and localities passing such laws also expanded.⁷⁷

3 46. Henry Campbell Black, the author of *Black's Law Dictionary*,
4 described the police power as “inalienable” and echoed the view of a long line of
5 jurists who noted that the scope of the power was not easily defined and the
6 determination of its limits was best left to courts on a case-by-case basis.⁷⁸ Indeed,
7 even the most ardent critics of the police power, such as conservative legal scholar
8 Christopher G. Tiedeman, acknowledged that “police power of the State extends to
9 the protection of the lives, limbs, health, comfort and quiet of all persons, and the
10 protection of all property within the State.”⁷⁹

11 47. In keeping with the larger goals of Reconstruction, Republicans sought
12 to protect the rights of African Americans to bear arms but were equally insistent on
13 enacting strong racially neutral regulations aimed at public safety. Violence
14 directed against African Americans, particularly the campaign of terror orchestrated
15 by white supremacist para-military groups prompted Republican dominated
16 legislatures in the Reconstruction South to pass a range of racially neutral gun
17 regulations.⁸⁰ The racially neutral gun laws enacted by Republicans were in part a
18 reaction to the discriminatory black codes passed by neo-confederate legislatures
19 earlier in Reconstruction. The Black Codes violated the Second Amendment, but
20 the wave of firearms legislation passed by Republican controlled state legislatures

21 ⁷⁶ See Spitzer, *supra* note 38, at 59–61 tbl. 1.

22 ⁷⁷ *Id.*

23 ⁷⁸ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344
(2d ed., 1897).

24 ⁷⁹ CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE
25 POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27
Vt. 140, 149–50 (1854)).

26 ⁸⁰ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*
27 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,
28 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*
Texas, 1836–1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

1 in the South were consciously crafted to honor the Second Amendment and protect
2 individuals from gun violence.⁸¹

3 48. The laws enacted during Reconstruction underscore the fact that robust
4 regulation of firearms during Reconstruction was not a novel application of the
5 police power, but an expansion and continuation of antebellum practices.
6 Moreover, these efforts illustrated a point beyond dispute: the flexibility inherent in
7 police power regulations of guns. American states had regulated arms since the
8 dawn of the republic and Reconstruction simply renewed America's commitment to
9 the idea of well-regulated liberty.

10 49. Laws aimed at limiting arms in important public venues where people
11 gathered were also enacted by Reconstruction-era governments to preserve the
12 peace and enable civil society to flourish.⁸² Some examples include laws banning
13 firearms in churches, schools, and other public places in which people gathered in
14 significant numbers.⁸³ Such laws were rooted in practices dating back centuries.
15 Indeed, the Statute of Northampton (1328) prohibited guns in fairs and markets—
16 places where people gathered in large numbers to engage in commerce,

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18 ⁸¹ See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*
19 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.
20 Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights:*
Lessons from Federal Remedies the Framers Enacted, 42 HARV. J. ON LEGIS. 187,
205 (2005) (discussing Republican use of federal power to further their aims,
including to enforce the Fourteenth Amendment).

21 ⁸² See, e.g., 1890 Okla. Laws 495, art. 47, sec. 7 (“It shall be unlawful for any
22 person, except a peace officer, to carry into any church or religious assembly, any
23 school room or other place where persons are assembled for public worship, for
24 amusement, or for educational or scientific purposes, or into any circus, show or
public exhibition of any kind, or into any ball room, or to any social party or social
gathering, or to any election, or to any place where intoxicating liquors are sold, or
to any political convention, or to any other public assembly, any of the weapons
designated in sections one and two of this article.”)

25 ⁸³ For a good illustration of the colonial policy, see An Act for the Better
26 Security of the Inhabitants by Obliging the Male White Persons to Carry Fire Arms
27 to Places of Public Worship, 1770, reprinted in GEORGIA COLONIAL LAWS 471
(1932). For a good example of the restrictive approach taken during
28 Reconstruction, see J. Hockaday, REVISED STATUTES OF THE STATE OF MISSOURI
(1879) at 224.

1 entertainment, and politics. Americans in the Founding era copied elements of this
2 ancient law and included these prohibitions in laws enacted after the American
3 Revolution.⁸⁴

4 50. One location that required additional regulation was public parks. The
5 creation of large urban public parks in the 1850s posed new challenges for
6 preserving the peace and public safety. Statutes prohibited possession of arms in
7 these important public spaces in major urban areas of every region of the nation.⁸⁵

8 51. The federal government also passed laws limiting firearms in its parks.
9 Such regulations are especially important because federal lands were indisputably
10 governed by the Second Amendment, irrespective of the incorporation doctrine.⁸⁶
11 The Secretary of the Interior underscored the danger posed by firearms in parks
12 when he wrote that, in Yellowstone, an “[a]bsolute prohibition of firearms in the
13 park is recommended.⁸⁷

14 _____
15 ⁸⁴ Statute of Northampton 1328, 2 Edw. 3, c. 3 (Eng.), *reprinted in* 1 THE
16 STATUTES OF THE REALM 258 (London, John Raithby ed., 1235–1377). On the
17 importance of the Statute of Northampton to maintain the peace, see generally A.J.
18 Musson, *Sub-Keepers and Constables: The Role of Local Officials in Keeping the*
19 *Peace in Fourteenth-century England*, 117 ENG. HIST. REV. 1 (2002). On the
20 continuities between this feature of English law and early American gun laws, see
21 Cornell, *supra* note 43.

22 ⁸⁵ *San Francisco Municipal Reports*, 499 (1874); *Law and Ordinances*
23 *Governing the Village of Hyde Park* (1875); *The Municipal Code of Chicago*, 391
24 (1881); *Ordinances of the City of Boulder* 157 (1899); *The Revised Ordinances of*
25 *the City of Danville* (1883); *A Digest of the Laws and Ordinances of the City of*
26 *Philadelphia from the Year 1701 to the 21 Day of June, 1887*, at 513 (1887); *The*
27 *Revised Municipal Code of Ohio*, 196 (1899); *Report of the Board of Park*
28 *Commissioners of the City of Rochester, N.Y.: 1888 to 1898*, 98 (1898); *The*
Municipal Code of the City of Spokane, Washington: Comprising the Ordinances of
the City ... Revised to October 22, 1896, 316 (1896); *Proceedings of the Common*
Council of the City of Saint Paul 133 (1892); *Annual Report of the Park*
Commissioners of the City of Lynn for the Year Ending 1893, at 45 (1893); *Charter*
and Ordinances of the City of New Haven: Together with Legislative Acts Affecting
Said City 293 (1898); *A Digest of the Acts of Assembly Relating to and the General*
Ordinances of the City Pittsburgh 496 (1897).

⁸⁶ Report of the Department of the Interior ... [with Accompanying
Documents] 499 (1899); Report of the Secretary of the Interior for the Fiscal Year,
125 (1900).

⁸⁷ *The Abridgment: Containing Messages of the President of the United*
States to the Two Houses of Congress with Reports of Departments and Selections

1 **IV. BRUEN’S FRAMEWORK AND THE SCOPE OF PERMISSIBLE REGULATION**

2 52. The power to regulate and in some cases prohibit dangerous or unusual
3 weapons has always been central to the police power authority of states and
4 localities.⁸⁸

5 53. Political scientist Robert Spitzer’s overview of the history of firearms
6 regulation underscores a basic point about American law: “The lesson of gun
7 regulation history here is that new technologies bred new laws when circumstances
8 warranted.”⁸⁹ States and localities have regulated arms and ammunition since the
9 earliest days of the American Republic. The statutes at issue in this case are
10 analogous to a long-established tradition of firearms regulation in America,
11 beginning in the colonial period and stretching across time to the present. This
12 venerable tradition of using police power authority to craft specific laws to meet
13 shifting challenges has continued to the present day.⁹⁰ The adaptability of state and
14 local police power provided the flexibility governments needed to deal with the
15 problems created by changes in firearms technology and gun culture.

16 54. Sales of weapons have been subject to regulation since before the
17 Founding. In addition, carrying of weapons in sensitive places, including places
18 where large gatherings occur, has been regulated by localities, states, and the
19 federal government over the course of American history.

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from Accompanying Papers 618 (1893).

26 ⁸⁸ Spitzer, *supra* note 38.

27 ⁸⁹ *Id.*

28 ⁹⁰ Gary Gerstle, *Liberty and Coercion: The Paradox of American Government, from the Founding to the Present* (Princeton Univ. Press, 2015).

1 Executed on February 15, 2023 at Redding, CT.

2 *Saul Cornell*

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4 Saul Cornell

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EXHIBIT A

Saul Cornell

Paul and Diane Guenther Chair in American History
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Education			
1989	University of Pennsylvania	Ph.D.	Dissertation: “The Political Thought and Culture of the Anti-Federalists”
1985	University of Pennsylvania	MA	History
1982	Amherst College	BA	History - Magna Cum Laude
1980-81	University of Sussex, Brighton, England		

Teaching Experience		
2009-2020	Guenther Chair in American History	Fordham University
2011-2022	Adjunct Professor of Law	Fordham Law School
2005-2008	Professor of History	The Ohio State University
1997-2005	Associate Professor, History	The Ohio State University
1995	Thomas Jefferson Chair	University of Leiden, The Netherlands
1991-1997	Assistant Professor, History	The Ohio State University
1989-1991	Assistant Professor, History	College of William and Mary

Fellowships and Grants

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

Prizes and Awards

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

Book Publications

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution *New Histories of American Law*, series eds., Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2019) [With Gerald Leonard]

The Second Amendment On Trial: Critical Essays on District of Columbia v. Heller (University of Massachusetts Press, 2013) [with Nathan Kozuskanich]

Visions of America: A History of the United States [co-authored with Jennifer Keene and Ed O'Donnell] (First edition, 2009),(second edition 2013) (third edition, 2016)

"A Well Regulated Militia": The Founding Fathers and the Origins of Gun Control (Oxford University Press, 2006) (paperback edition 2008)

Whose Right to Bear Arms Did the Second Amendment Protect? (Bedford/St. Martins Press, 2000) (Paperback 2000)

The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828 (Institute of Early American History and Culture, University of North Carolina Press, 1999) (paperback edition 2001)

Editor, Retrieving the American Past: Documents and Essays on American History, (Pearson, 1994-2008)

Scholarly Articles, Book Chapters, and Essays:

“History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in *NYSRPA v. Bruen?*,” 49 *Hastings Constitutional Law Quarterly* (2022): 145-177.

“The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328–1928,” 55 *University of California, Davis Law Review* (2022): 2545-2602

“‘Infants’ and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record,” 40 *Yale Law & Policy Review Inter Alia* 1 (2021)

“The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America” 55 *University of California, Davis Law Review Online* (2021): 65-90.

- “President Madison's Living Constitution: Fixation, Liquidation, and Constitutional Politics in the Jeffersonian Era”, 89 Fordham Law Review (2021): 1761-1781.
- “History, Text, Tradition, and the Future of Second Amendment Jurisprudence: Limits on Armed Travel Under Anglo-American Law, 1688–1868,” 83 Law and Contemporary Problems (2020): 73-95
- “Reading the Constitution, 1787–91: History, Originalism, and Constitutional Meaning.” Law and History Review 37 (2019): 821–45
- “Constitutional Mythology and the Future of Second Amendment Jurisprudence after *Heller*,” in Firearms and Freedom: The Second Amendment in the Twenty-First Century Controversies in American Constitutional Law Series (Routledge, 2017): 8-24
- “The Right to Keep and Carry Arms in Anglo-American Law, Preserving Liberty and Keeping the Peace,” 80 Law and Contemporary Problems (2017): 11-54
- “Half Cocked’: The Persistence of Anachronism and Presentism in the Academic Debate over the Second Amendment,” 107 Northwestern Journal of Criminal Law 107 (2017): 203-218
- “The 1790 Naturalization Act and the Original Meaning of the Natural Born Citizen Clause: A Short Primer on Historical Method and the Limits of Originalism,” Wisconsin Law Review Forward 92 (2016)
- “Constitutional Meaning and Semantic Instability: Federalists and Anti-Federalists on the Nature of Constitutional Language,” in special issue on “The Future of Legal History,” American Journal of Legal History 56 (2016): 21-29
- “Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context,” Yale Law Journal Forum 125(2015-16):121-135 [with Eric Ruben]
- “Originalism As Thin Description: An Interdisciplinary Critique” Fordham Law Review Res Gestae 84 (2015): 1-10
- “The Right to Bear Arms,” The Oxford Handbook of the US Constitution, eds., Mark Tushnet, Sanford Levinson, and Mark Graber (2015): 739-759
- “Conflict, Consensus & Constitutional Meaning: The Enduring Legacy of Charles Beard” Constitutional Commentary 29(2014): 383-409
- “Meaning and Understanding in the History of Constitutional Ideas: the Intellectual History Alternative to Originalism” Fordham Law Review 82 (2013): 721-755
- “The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities” Fordham Urban Law Journal 39 (2012): 1695-1726
- “Evidence, Explanation, and the Ghost of Charles Beard” William & Mary Quarterly 69 (2012): 393-4
- “Idiocy, Illiteracy, and the Forgotten Voices of Popular Constitutionalism: Ratification and the Ideology of Originalism” William & Mary Quarterly 69 (2012): 365-368
- “The People’s Constitution v. The Lawyer’s Constitution: Popular Constitutionalism and the Original Debate Over Originalism,” Yale Journal of Law and the Humanities 23 (2011): 295-337
- “St. George Tucker's Lecture Notes, The Second Amendment, and Originalist Methodology: A Critical Comment,” Northwestern University Law Review 103 (2009): 406-416

- “Heller, New Originalism, and Law Office History: ‘Meet the New Boss, Same as the Old Boss’” UCLA Law Journal 56 (2009): 1095 -1125
- “Originalism on Trial: The Use and Abuse of History in *District of Columbia v. Heller*” Ohio-State Law Journal 69 (2008): 625-640
- “Consolidation of the Early Federal System,” Chapter 10 of the Cambridge History of American Law (Cambridge University Press, 2008) [With Gerry Leonard]
- “The Ironic Second Amendment” Albany Government Law Review 2 (2008): 292-311.
- “The Original Meaning of Original Understanding: A Neo-Blackstonian Critique,” Maryland Law Review (2008): 101-115
- “Mobs, Militias, and Magistrates: Popular Constitutionalism During the Whiskey Rebellion,” Chicago-Kent Law Review (2007): 883-903
- “The Second Amendment and Early American Gun Regulation: a Closer Look at the Evidence,” Law and History Review (2007): 197-204
- “St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings,” William and Mary Law Review 47 (2006): 1123-55
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, the Lessons of History,” Stanford Law and Policy Review (2006): 571-596
- “Well Regulated: The Early American Origins of Gun Control,” Fordham Law Review 73 (2004): 487-528 [With Nathan DeDino]
- “Beyond the Myth of Consensus: The Struggle to Define the Right to Bear Arms in the Early Republic,” in Beyond the Founders: New Essays on the Political History of the Early Republic (UNC Press, 2005)
- “A New Paradigm for the Second Amendment,” Law and History Review 22 (2004): 161-7
- “Gun Laws and Policies: A Dialogue,” Focus on Law Studies: Teaching about Law in the Liberal Arts (American Bar Association, 2003)
- “The Militia Movement,” Oxford Companion to American Law (Oxford University Press, 2002)
- “Don’t Know Much About History: The Current Crisis in Second Amendment Scholarship,” Northern Kentucky Law Review (2003)
- “A Right to Bear Quills or Kill Bears? A Critical Commentary on the Linkage between the 1st and 2nd Amendment in Recent Constitutional Theory,” in The Limits of Freedom in A Democratic Society (Kent State University Press, 2001)
- “The Irony of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional History,” in American Law Ways and Folkways (Odense University Press, Denmark 2001)
- “Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory,” Constitutional Commentary (1999): 221-246
- “Mere Parchment Barriers? Anti-Federalists, the Bill of Rights, and the Question of Rights Consciousness,” in Government Proscribed: The Bill of Rights (University of Virginia Press, 1998): 175-208

- “Moving Beyond the Great Story: Post-Modern Prospects, Post-Modern Problems, A Forum on Robert Berkhofer, Jr. Beyond the Great Story” American Quarterly (1998): 349-357
- “The Anti-Federalists,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “The Bill of Rights,” in The Blackwell Companion to American Thought, eds., James Kloppenberg (London, 1995)
- “Splitting the Difference: Textualism, Contextualism, and Post-Modern History,” American Studies (1995): 57-80
- “Canon Wars II: The Return of the Founders,” Reviews in American History 22 (1994): 413-417
- “Moving Beyond the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights and the Promise of Post-Modern Historiography,” Law and History Review (1994): 1-28
- “Early American History in a Post-Modern Age,” William and Mary Quarterly 50 (1993): 329-341
- “Liberal Republicans, Republican Liberals?: The Political Thought of the Founders Reconsidered,” Reviews in American History 21 (1993): 26-30
- “Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists,” in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- “Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology,” Journal of American History (1990): 1148-1172
- “The Changing Historical Fortunes of the Anti-Federalists,” Northwestern University Law Review (1989): 39-73
- “Reflections on the ‘Late Remarkable Revolution in Government,’ Aedanus Burke and Samuel Bryan’s Unpublished History of the Ratification of the Federal Constitution,” The Pennsylvania Magazine of History and Biography (1988): 103-130

Book Reviews:

- Journal of American History
- William and Mary Quarterly
- American Studies Journal of the Early Republic
- Pennsylvania Magazine of History and Biography
- American Quarterly
- American Journal of Legal History
- Law and History Review

Journal Manuscript Referee:

- Journal of American History
- William and Mary Quarterly
- Diplomatic History
- Pennsylvania Magazine of History and Biography
- Law and History Review
- Harvard Law Review

- Stanford Law Review
- Yale Law Journal

Book Manuscript Reviewer:

- University Press of Virginia
- University of North Carolina Press
- Stanford University Press
- University of Massachusetts Press
- Oxford University Press
- Cambridge University Press
- University of Michigan Press
- Harvard University Press

Invited Lectures:

“Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment,”
Haber/Edelman Lecture: University of Vermont, Fall 2021

“Second Amendment Myths and Realities,” University of Tampa, Honors College Symposium,
November 30, 2018.

“The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate,” Guns
in Law, Amherst College, Law Justice and Society (2016)

“The New Movement to End Gun Violence.” UCLA Hammer Museum (2016)

“No Person May Go Armed”: A Forgotten Chapter in the History of Gun Regulation” The Elizabeth
Battelle Clark Legal History Series, Boston University College of Law, 2016

Legacy Speaker Series: “Guns in the United States,” University of Connecticut (2016) “How does the
Second Amendment Apply to Today?”

American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)

“The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History,”
Constitution Day Lecture, Goucher College, (2015)

Keynote Lecture: “The Second Amendment and American Cultural Anxieties: From Standing Armies to
the Zombie Apocalypse” Firearms and Freedom: The Relevance of the Second Amendment in the
Twenty First Century, Eccles Center, British Library (Spring 2015)

“Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment,”
Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)

“History and Mythology in the Second Amendment Debate,” Kollman Memorial Lecture, Cornell
College, Iowa (Spring, 2013)

“Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists”
Constitution Day Lecture, Lehman College, Fall 2011

“Lawyers, Guns, and Historians: The Second Amendment Goes to Court,” SHEAR/HSP Public Lecture,
Philadelphia, July, 2008

- The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, “The Early American Origins of Gun Control” (2006)
- “Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era,” Bill of Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)
- “A New Paradigm for the Second Amendment,” Finlay Memorial Lecture, George Mason University, (2001)
- “Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate,” Cadenhead Memorial Lecture, University of Tulsa, (2000)
- “Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years,” Thomas Jefferson Inaugural Lecture, University of Leiden, Netherlands, (1995)

Presentations:

- “From Ideology to Empiricism: Second Amendment Scholarship After Heller, “ Hastings Constitutional Law Quarterly Symposium, Heller at Ten, January 18, 2019
- “Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC (2016)
- “The Original Debate over Original Meaning Revisited, ” British Group in Early American History, Annual Meeting, Cambridge, England (2016)
- “Second Amendment Historicism and Philosophy” The Second Generation of Second Amendment Scholarship” Brennan Center, NYU 2016
- “The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of Common Law Constitutionalism” OIEAHC and the USC/Huntington Library Early Modern Studies Institute May 29–30, 2015
- “The Right to Travel Armed in Early America: From English Restrictions to Southern Rights,” British Group in Early American History, Annual Conference Edinburgh, Scotland (2014)
- “Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring Legacy of Charles Beard,” Charles Beard, Economic Interpretation and History, Rothmere Center, Oxford University (2012)
- CUNY Early American Seminar, “The People’s Constitution v. the Lawyer’s Constitution,” 2011 Roundtable : “The Work of J.R. Pole,” SHEAR , Philadelphia, Pennsylvania 2011)
- “The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?” Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)
- “Re-envisioning Early American History,” American Historical Association Annual Meeting, San Diego (2010)
- “The Ironic Second Amendment” Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School (2007)
- “*District of Columbia v. Heller* and the Problem of Originalism,” University of Pennsylvania Constitutional Law Workshop, Philadelphia (2007)

- “Progressives and the Gun Control Debate,” American Constitution Society, Harvard Law School, (2006)
- “The Problem of Popular Constitutionalism in Early American Constitutional Theory,” American Association of Law Schools, Annual Conference (2006)
- “Popular Constitutionalism and the Whiskey Rebellion,” Symposium on Larry Kramer’s The People Themselves, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student’s For the Second Amendment Symposium (2005)
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History,” Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- “Original Rules for Originalists?” University of Minnesota Law School (2005)
- “The Fourteenth Amendment and the Origins of the Modern Gun Debate,” UCLA, Legal History Workshop (2004)
- “Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate,” American Society of Legal History, Austin, TX (2004)
- “Armed in the Holy Cause of Liberty: Guns and the American Constitution,” NYU Legal History Colloquium (2004)
- “Digital Searches and Early American History,” SHEAR Brown University (2004)
- “Well Regulated: The Early American Origins of Gun Control,” The Second Amendment and the Future of Gun Regulation,” Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- “Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment,” Department of History, University of California Berkeley (2003)
- “History vs. Originalism in the Second Amendment Debate,” Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- “Self-defense, Public Defense, and the Politics of Honor in the Early Republic,” Lake Champlain Early American Seminar, Montreal (2003)
- “The Ironic Second Amendment” “Gun Control: Controversy, Social Values, and Policy,” University of Delaware Legal Studies Conference, Newark, Delaware (2003)
- “Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns,” Institute for Legal Studies, University of Wisconsin School of Law (2004)
- “Guns in the British Atlantic World: New Research, New Directions” Society for the Historians of the Early American Republic, Ohio State University (2003)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” American Bar Foundation, Chicago (2003)
- “The Changing Meaning of the Armed Citizen in American History,” “Americanism Conference,” Georgetown University (2003)

- “A New Paradigm for the Second Amendment?” Supreme Court Historical Society, Washington, D.C. (2002)
- “Constitutional History as Cultural History: The Case of the Second Amendment” European American Studies Association, Bordeaux, France (2002)
- “Don’t Know Much About History: The Current Crises in Second Amendment Scholarship,” Salmon P. Chase College of Law, Symposium, “The Second Amendment Today,” (2002)
- “History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision,” Sanford Institute of Public Policy, Duke University (2002)
- “Constitutional History After the New Cultural History: The Curious Case of the Second Amendment,” Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, “The State of Second Amendment Scholarship,” American Historical Association (2001)
- “Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate,” Vanderbilt University Law School (2001)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” Boston University Law School, (2000)
- “The Current State of Second Amendment Scholarship,” National Press Club Washington, D.C. American Bar Association, (2000)
- “Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Be Doing for us on the Web,” OAH St. Louis, Missouri (1999)
- “The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory,” European American Studies Association, Lisbon, Portugal (1998)
- “Deconstructing the Canon of American Constitutional History” American Society of Legal History, Seattle, Washington (1998)
- “Beyond Meta-narrative: The Promise of Hypertext,” American Studies Association, Seattle, Washington (1998)
- “Text, Context, Hypertext,” American Historical Association, Washington D.C. (1998)
- “Jefferson and Enlightenment,” International Center for Jefferson Studies, Charlottesville, VA, (1998)
- “Copley’s Watson and the Shark: Interpreting Visual Texts with Multi-media Technology,” American Studies Association, Washington, D.C. (1997)
- “Multi-Media and Post-Modernism,” H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove’s Original Meanings, Society of the Historians of the Early Republic, State College, PA (1997)
- “Teaching with Multi-Media Technology,” Indiana University, spring 1997 “Constitutional History from the Bottom Up: The Second Amendment as a Test Case,” McGill University, Montreal, Canada (1996)

- “Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania,” University of Pennsylvania (1995)
- “Multi-Media and Post-Modernism: The Future of American Studies?” Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- “Post-Modern American History? Ratification as a Test Case,” St. Cross College, Oxford University, Oxford, England (1994)
- “The Other Founders,” NYU Legal History Seminar,” NYU Law School (1994)
- “Reading the Rhetoric of Ratification,” paper presented at “Possible Pasts: Critical Encounters in Early America,” Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- “American Historiography and Post-Modernism,” Organization of American Historians, Atlanta, GA (1994)
- “The Anti-Federalist Origins of Jeffersonianism,” Columbia Seminar on Early American History (1994)
- “American History in a Post-Modern Age?” American Historical Association, San Francisco, CA (1994)
- “Post-Modern Constitutional History?” Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, “New Approaches to Early American History,” Williamsburg, VA (1992)
- “Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness,” American Studies Association, Baltimore, MD (1991)
- “James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz,” Organization of American Historians and Center for the Study of the Presidency Conference, “America's Bill of Rights at 200 Years,” Richmond, VA, (1991)
- Symposium participant, “Algernon Sidney and John Locke: Brothers in Liberty?” Liberty Fund Conference, Houston, TX (1991)
- “Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness,” Capitol Historical Society, Washington, D.C. (1991)
- “Anti-Federalism and the American Political Tradition,” Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

Interviews, Editorials, Essays, Podcasts:

- “Clarence Thomas’ Latest Guns Decision Is Ahistorical and Anti-Originalist”
SLATE June 24, 2022

- Cherry-picked history and ideology-driven outcomes: Bruen’s originalist distortions,” SCOTUSblog (Jun. 27, 2022, 5:05 PM),
- “The Right Found a New Way to Not Talk About a School Shooting,” SLATE May 25, 2022
- “The Horror in New York Shows the Madness of the Supreme Court’s Looming Gun Decision,” *Slate* May 19, 2022
- “Guns, Guns Everywhere: Last week’s subway Shooting was Horrifying. If the Supreme Court Creates a National Right to Carry, the Future will be Worse,” *New York Daily News* Apr 17, 2022
- “The Supreme Court’s Latest Gun Case Made a Mockery of Originalism” *Slate* November 10, 2021
- “‘Originalism’ Only Gives the Conservative Justices One Option On a Key Gun Case,” *Washington Post*, November 3, 2021
- “Neither British Nor Early American History Support the Nearly Unfettered Right to Carry Arms,” *Slate* November 02, 2021
- “Will the Supreme Court Create Universal Concealed Carry Based on Fantasy Originalism?” *Slate* November 1, 2021
- “Biden was Wrong About Cannons, but Right About the Second Amendment,” *Slate* June 29, 2021
- “Barrett and Gorsuch Have to Choose Between Originalism and Expanding Gun Rights,” *Slate* April 29, 2021 *Slate*
- “What Today’s Second Amendment Gun Activists Forget: The Right Not to Bear Arms,” *Washington Post*, January 18, 2021
- “Could America’s Founders Have Imagined This?” *The New Republic*, December 20, 2019
- “Don’t Embrace Originalism to Defend Trump’s Impeachment” *The New Republic*, December 5, 2019
- “The Second-Amendment Case for Gun Control” *The New Republic*, August 4, 2019
- “The Lessons of a School Shooting—in 1853” *Politico*, March 24, 2018.
- “Originalism and the Second Amendment in *District of Columbia v. Heller*,” *University of Chicago Law Review*, Podcast, Briefly 1.9, Wed, 04/11/2018
- “Sandy Hook and the Original Meaning of the Second Amendment,” *Time* December, 2017
- “The State of the Second Amendment,” National Constitution Center, Podcast October, 2017
- “Gun Anarchy and the Unfree State: The Real History of the Second Amendment,” *The Baffler On-line* October 2017
- “Five Types of Gun Laws the Founding Fathers Loved” *Salon* October 22, 2017
- “Half Cocked,” *Book Forum* April 2016
- “Let’s Make an Honest Man of Ted Cruz. Here’s how we Resolve his “Birther” Dilemma with Integrity” *Salon* January 23, 2016
- “Guns Have Always Been Regulated,” *The Atlantic Online* December 17, 2015
- “The Slave-State Origins of Modern Gun Rights” *The Atlantic Online* 30, 2015 [with Eric Ruben]
- PBS, “Need to Know: ‘Debating the Second Amendment: Roundtable’” April 26, 2013
- “All Guns are not Created Equal” Jan 28, 2013 *Chronicle of Higher Education* [with Kevin Sweeney]

- “What the ‘Right to Bear Arms’ Really Means” *Salon* January 15, 2011 “Elena Kagan and the Case for an Elitist Supreme Court,” *Christian Science Monitor* May 20, 2010
- “Gun Points,” *Slate*, March 8, 2010 (With Justin Florence, and Matt Shors)
- “What’s Happening to Gun Control,” *To the Point*, NPR. March 11, 2010
- “Getting History Right,” *National Law Journal*, March 1, 2010
- “History and the Second Amendment,” *The Kojo Nnamdi Show* , WAMU (NPR) March 17, 2008
- “The Court and the Second Amendment,” *On Point* with Tom Ashbrook, WBUR (NPR) March 17, 2008
- “Aim for Sensible Improvements to Gun Regulations,” *Detroit Free Press*, April 29, 2007
- “A Well Regulated Militia,” *The Diane Rehm Show*, WAMU (NPR) Broadcast on Book TV (2006)
- “Taking a Bite out of the Second Amendment,” *History News Network*, January 30, 2005
- “Gun Control,” *Odyssey*, Chicago NPR September 8, 2004
- “Loaded Questions,” *Washington Post Book World* February 2, 2003
- “The Right to Bear Arms,” Interview *The Newshour*, PBS May 8, 2002
- “Real and Imagined,” *New York Times*, June 24, 1999

Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)
- Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
- Editorial Board, American Quarterly (2004-2007)
- Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002- 2007
- Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001- 2004
- Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
- Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
- Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
- Co-Founder Ohio Early American Studies Seminar
- NEH Fellowship Evaluator, New Media Projects, Television Projects
- Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

Court Citations, Amicus Briefs and Expert Witness Reports

US Supreme Court:

N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. ___, 50 2022 U.S. Lexis 3055 (2022)

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 26, 28, 45, 47 2022 U.S. Lexis 3055 (2022) (Breyer, J. dissenting)

McDonald v. City of Chicago, Ill., 561 U.S. 742, 900, 901 n.44 (2010) (Stevens, J., dissenting).

McDonald v. City of Chicago, Ill., 561 U.S. 742, 914, 933 (2010) (Breyer, J., dissenting).

D.C. v. Heller, 554 U.S. 570, 666 n.32, 671, 685 (2008) (Stevens, J., dissenting).

Federal Courts:

Jones v. Bonta, United States Court of Appeals, Ninth Circuit. May 11, 2022 --- F.4th ---- 2022 WL 1485187.

Duncan v. Bonta, United States Court of Appeals, Ninth Circuit. November 30, 2021 19 F.4th 1087 2021

Young v. Hawaii, 992 F.3d 765, 785-86 (9th Cir. 2021) (en banc).

Kanter v. Barr, 919 F.3d 437, 446 n.6, 457, 462, 464 (7th Cir. 2019) (Barrett, J., dissenting).

Medina v. Whitaker, 913 F.3d 152, 159 (D.C. Cir.), cert. denied sub nom. Medina v. Barr, 140 S. Ct. 645 (2019).

Young v. Hawaii, 896 F.3d 1044, 1066 (9th Cir. 2018), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Young v. Hawaii, 896 F.3d 1044, 1077 (9th Cir. 2018) (Clifton, J., dissenting), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Teixeira v. Cty. of Alameda, 873 F.3d 670, 684–85 (9th Cir. 2017).

Kolbe v. Hogan, 813 F.3d 160, 175 (4th Cir. 2016), on reh'g en banc, 849 F.3d 114 (4th Cir. 2017).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 348 (3d Cir. 2016).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 370–71, 371 n.17, 372 n.19 (3d Cir. 2016) (Hardiman, J., concurring).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 389 n.85, 405 n.187 (3d Cir. 2016) (Fuentes, J., concurring).

Peruta v. Cty. of San Diego, 824 F.3d 919, 935 (9th Cir. 2016).

Peruta v. Cty. of San Diego, 742 F.3d 1144, 1185, 1188 (9th Cir. 2014) (Thomas, J., dissenting).

Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 714 F.3d 334, 342 n.19, 343 n.23 (5th Cir. 2013) (Jones, J., dissenting).

Kachalsky v. Cty. of Westchester, 701 F.3d 81, 95 & n.21 (2d Cir. 2012).

Moore v. Madigan, 702 F.3d 933, 935 (7th Cir. 2012).

Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 200, 202–03 (5th Cir. 2012).

United States v. Carpio-Leon, 701 F.3d 974, 980 (4th Cir. 2012).

United States v. Greeno, 679 F.3d 510, 519 (6th Cir. 2012).
United States v. Yancey, 621 F.3d 681, 684 (7th Cir. 2010).
United States v. Rene E., 583 F.3d 8, 12, 15–16 (1st Cir. 2009).
Miller v. Sessions, 356 F. Supp. 3d 472, 481 (E.D. Pa. 2019).
Grace v. D.C., 187 F. Supp. 3d 124, 138 n.11 (D.D.C. 2016).
Powell v. Tompkins, 926 F. Supp. 2d 367, 386 (D. Mass. 2013), aff'd, 783 F.3d 332 (1st Cir. 2015).
United States v. Tooley, 717 F. Supp. 2d 580, 589–591 (S.D.W. Va. 2010), aff'd, 468 F. App'x 357 (4th Cir. 2012).
United States v. Boffil-Rivera, No. 08-20437-CR, 2008 WL 8853354, 6 (S.D. Fla. Aug. 12, 2008), report and recommendation adopted sub nom.
United States v. Gonzales-Rodriguez, No. 08-20437-CR, 2008 WL 11409410 (S.D. Fla. Sept. 22, 2008), aff'd sub nom.
United States v. Boffil-Rivera, 607 F.3d 736 (11th Cir. 2010).

State Courts:

Norman v. State, 215 So. 3d 18, 30 & nn.11–12 (Fla. 2017).
Posey v. Com., 185 S.W.3d 170, 179–180 (Ky. 2006).
Posey v. Com., 185 S.W.3d 170, 185 n.3 (Ky. 2006) (Scott, J., concurring).
State v. Craig, 826 N.W.2d 789, 796 (Minn. 2013).
People v. Handsome, 846 N.Y.S.2d 852, 858 (N.Y. Crim. Ct. 2007).
Zaatari v. City of Austin, No. 03-17-00812-CV, 2019 WL 6336186, 22 (Tex. App. Nov. 27, 2019) (Kelly, J., dissenting).
State v. Roundtree, 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765
State v. Christen, 2021 WI 39, 958 N.W.2d 746

Amicus Briefs:

Amicus Brief, *Harper v. Moore*, No. 21-1271 (U.S. Supreme Court, 2022) [ISLT and Gerrymandering]
Amicus Brief *KOX V. STATE OF GEORGIA, SUPREME COURT STATE OF GEORGIA* Case No. S23A0167 [Second Amendment and Campus Carry]
Amicus Brief, *NYSRPA v. Bruen*, No. 20-843 (U.S. Supreme Court, 2021) [2nd Amendment]
Amicus Brief, *Young v. State of Hawaii* N O . 12-17808 (9th Cir. 2020) [2nd Amendment]
Amicus Brief, *Gould v. Morgan*, No. 17-2202 (1st Cir. 2018) [2nd Amendment]
Amicus Brief, *Flanagan vs. Becerra*, Central District of California Case (2018) [2nd Amendment]
Amicus Brief, *Gill v. Whitford* (US Supreme Court, 2017) [Partisan Gerrymandering]
Amicus Brief, *Woollard v Gallagher*, (4th Cir. 2013) [Second Amendment]

Amicus Brief *Heller v. District of Columbia* [Heller II] (US Court of Appeals for D.C.) (2010) [2nd Amendment]
Amicus Brief, *McDonald v. City of Chicago* (US Supreme Court, 2010) [14th Amendment]
Amicus Brief, *District of Columbia v. Heller* (US Supreme Court 2008) [2nd Amendment]
Amicus Brief, *Silvera v. Lockyer*, case on appeal (9th Circuit 2003) [2nd Amendment]
Amicus Brief, *Emerson v. U.S.* case on appeal (5th Circuit 1999) [2nd Amendment]
Pro-bono Historical Consultant State of Ohio, *McIntyre v. Ohio*, (U.S. Supreme Court, 1995) [1st Amendment]

Expert Witness Reports

Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper, 14-cv-02850 (D. Colo.).
Chambers, et al., v. City of Boulder, 2018 CV 30581 (Colo. D. Ct. City of Boulder, filed June 14, 2018).
Zeleny v. Newsom, 14-cv-02850 (N.D. Cal.).
Miller, et al v. Smith, et al., 2018 cv 3085 (C.D. Ill.).
Jones v. Bonta United States Court of Appeals, --- F.4th ---- , 2022 WL 1485187 (9th Cir., May 11, 2022).
Baird v. Bonta, No. 2:19-cv-00617 (E.D. Cal.).
Worth v. Harrington, 21-cv-1348 (D. Minn.).

Law Review Symposia Organized

Second Amendment:

“The Second Amendment and the Future of Gun Regulation: Historical, Legal, Policy, and Cultural Perspectives,” 73 *Fordham L. Rev.* 487 (2004).
“Gun Control: Old Problems, New Paradigms” 17 *Stan. L. & Pol’y Rev.* 671 (2006).
“A Symposium on Firearms, the Militia and Safe Cities: Merging History, Constitutional Law and Public Policy,” 1 *Alb. Gov’t L. Rev.* 292 (2008).
”The 2nd Amendment at the Supreme Court: “700 Years of History” and the Modern Effects of Guns in Public,” 55 *U.C. Davis L. Rev.* 2545 (2022).

New Originalism:

“The New Originalism” 82 *Fordham L. Rev.* 721 (2013).
“Historians and the New Originalism: Contextualism, Historicism, and Constitutional Meaning” 84 *Fordham L. Rev.* 915 (2015).

CERTIFICATE OF SERVICE

Case **B&L Productions, Inc., et al. v.** No. **8:22-cv-01518 JWH (JDEx)**
Name: **Gavin Newsom, et al.**

I hereby certify that on February 24, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF SAUL CORNELL IN SUPPORT OF STATE DEFENDANTS’ SECOND SUPPLEMENTAL BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 24, 2023, at Los Angeles, California.

Carol Chow
Declarant

/s/Carol Chow
Signature

SA2022303648