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California Rifle & Pistol Association,
Incorporated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LANCE BOLAND, an individual;
MARIO SANTELLAN, an individual;
RENO MAY, an individual; JEROME
SCHAMMEL, an individual;
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED, a
California corporation;

Plaintiff,

v.

ROBERT BONTA, in his official capacity
as Attorney General of the State of
California; and DOES 1-10

Defendants.

Case No. 8:22-cv-01421-CJC(ADSx)

**DECLARATION OF ALEXANDER
A. FRANK IN SUPPORT OF
PLAINTIFFS' COURT-ORDERED
SUPPLEMENTAL BRIEFING IN
SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

DECLARATION OF ALEXANDER A. FRANK

I, Alexander A. Frank, declare:

1. I am a member of the bars of the State of California. I am an attorney at law, duly licensed to practice in the State of California and before the United States District Court for the Central District of California. My law firm, Michel & Associates, P.C., is counsel of record for Plaintiffs in this action. I submit this declaration in support of Plaintiffs' court ordered post MPI supplemental briefing.

2. Attached as **Exhibit 1** is a true and correct copy of a research study conducted by academic researchers affiliated with University of California, Davis, which found that for the period of 2005-2015, non-fatal firearm injuries in California remained "relatively" stable. Spitzer, et al., Incidence, Distribution, and Lethality of Firearm Injuries in California From 2005 to 2015, JAMA Network Open 1 (2020) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769831?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=082620>. (Last visited February 14, 2023).

3. Attached as **Exhibit 2** is a true and correct copy of Senator Skinner's Senate Bill 377.

4. Attached as **Exhibit 3** is a true and correct copy of Mr. Cornell's declaration submitted in the *Renna v. Bonta* matter.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed within the United States on February 24, 2023.

s/Alexander A. Frank

Alexander A. Frank, declarant

EXHIBIT “1”



Original Investigation | Public Health

Incidence, Distribution, and Lethality of Firearm Injuries in California From 2005 to 2015

Sarabeth A. Spitzer, MD; Veronica A. Pear, MPH; Christopher D. McCort, MS; Garen J. Wintemute, MD, MPH

Abstract

IMPORTANCE Little is known about nonfatal firearm injuries in the United States, and national estimates based on emergency department samples may not be accurate.

OBJECTIVE To describe the incidence and distribution of nonfatal firearm injuries and estimate case fatality ratios (CFRs) for firearm injuries by external cause of injury code within California overall and by race/ethnicity, including an assessment of trends over time and geographic variation within the state.

DESIGN, SETTING, AND PARTICIPANTS This serial cross-sectional study used complete statewide data for firearm-related mortality, emergency department visits, and hospitalizations among California residents from January 1, 2005, through December 31, 2015, to analyze incidence, distribution, and CFRs of firearm injury. Data were analyzed from 2018 to 2019.

EXPOSURES All individuals in California with a firearm injury based on *International Classification of Diseases, Ninth Revision* or *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision* codes were included.

MAIN OUTCOMES AND MEASURES Counts and rates of nonfatal firearm injuries overall and stratified by external cause, sex, and race/ethnicity; total and clinical CFRs. Clinical CFR was calculated based on individuals treated in emergency departments or hospitals.

RESULTS Over the study period, there were 81 085 firearm-related emergency department visits and hospitalizations among individuals with a mean (SD) age of 27.5 (11.9) years, 72 567 (89.6%) of whom were men. Nonfatal firearm injuries in California decreased by 38.1% between 2005 and 2015, driven by a 46.4% decrease in assaultive injuries. Self-inflicted injuries and unintentional injuries remained relatively stable. The overall CFR for firearm injuries increased from 27.6% in 2005 to 32.2% in 2015 for a relative increase of 20.7%, while the clinical CFR remained stable between 7.0% and 9.0%.

CONCLUSIONS AND RELEVANCE These findings suggest that although the number of firearm injuries has decreased in California, the lethality of these injuries has not. Similar studies from other states could provide more information about these trends nationwide.

JAMA Network Open. 2020;3(8):e2014736. doi:10.1001/jamanetworkopen.2020.14736

Key Points

Question What were the trends and distributions of nonfatal firearm injuries and how lethal were firearm injuries in California from 2005 to 2015?

Findings This serial cross-sectional study including 81 085 firearm-related emergency department visits and hospitalizations found that nonfatal firearm injuries decreased by 38.1% between 2005 and 2015, driven by a 46.4% decrease in assaultive injuries; self-inflicted injuries decreased by 13.4% and unintentional injuries decreased by 12.7%. However, the overall case fatality ratio increased a relative 20.7%, while the clinical case fatality ratio remained stable.

Meaning These findings suggest that although the number of firearm injuries has decreased in California, the lethality of these injuries has not; studies from other states could help clarify national trends.

+ Supplemental content

Author affiliations and article information are listed at the end of this article.

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JAMA Network Open. 2020;3(8):e2014736. doi:10.1001/jamanetworkopen.2020.14736

August 26, 2020 1/11

Introduction

Firearm injury is a significant cause of morbidity and mortality in the United States, resulting in more than 350 000 deaths and a far larger number of nonfatal injuries nationwide from 2005 through 2015.¹ In 2018, firearm-related deaths in the US exceeded those from motor vehicle crashes.¹ For individuals who survive firearm injuries, the long-term physical and psychological effects can be devastating.² Survivors and their families may face large costs as a result of their injuries, both economically and socially. Total societal costs have been previously estimated to be as high as \$229 billion annually and have likely increased.³

There are currently only imprecise estimates of the number of annual nonfatal firearm injuries in the US. The accuracy of nonfatal firearm injury estimates by the Centers for Disease Control and Prevention (CDC) have come under scrutiny, sparked by a surprising 37% reported increase in nonfatal injuries from 2015 to 2016, when fatal injuries increased by only 6.6%.¹ The contrast motivated several research reports regarding the case fatality ratio (CFR) of firearm injury.⁴⁻⁹ The CDC data, if accurate, would suggest that the lethality of firearm injury is decreasing.³ However, this suggestion has been contested by clinicians and researchers alike.⁴⁻⁸ The CDC no longer provides estimates of nonfatal firearm assaults for the years 2007 and 2013 to 2018 or of nonfatal self-harm with a firearm for 2001 to 2011 and 2013 to 2018, stating that the estimates are unstable.¹

California's statewide enumeration of emergency department (ED) visits and hospitalizations for firearm injuries, coupled with mortality data, offers a unique opportunity to explore the incidence and distribution of nonfatal firearm injury and estimate trends in the CFR over time overall and by external cause of injury (ie, assault, self-inflicted, unintended, and undetermined) codes. A study by Pear and colleagues¹⁰ previously described the incidence and distribution of firearm mortality in California, but to our knowledge, there are no peer-reviewed studies that explore the incidence and distribution of nonfatal firearm injury in the state. This report complements our previous mortality study¹⁰; together, given California's size as well as its demographic and geographic diversity, these studies advance our understanding of the incidence, distribution, and lethality of firearm injuries.

Methods

This study was approved by the University of California, Davis, institutional review board and the California Committee for the Protection of Human Subjects (CPHS). Informed consent was waived per CPHS policy because this study involved no more than minimal risk to participants and data were not identified. This study is reported following the Strengthening the Reporting of Observational Studies in Epidemiology (STROBE) reporting guideline.

This serial cross-sectional study used state-wide data from California's Office of Statewide Health Planning and Development (OSHPD) for individuals treated in an ED or discharged from a hospital between January 1, 2005, and December 31, 2015. These databases contain all ED and inpatient records from California-licensed hospitals. Additionally, CDC WISQARS data were used for fatal firearm injury data.

We used *International Classification of Diseases, Ninth Revision (ICD-9)*¹¹ codes E922 (0.0-.3, 0.8, 0.9), E955 (0.0-.4), E965 (0.0-.4), E979.4, E985 (0.0-.4), and E970 to identify all admissions for firearm injuries from 2005 through 2015. Reporting changed from ICD-9 to *International Statistical Classification of Diseases and Related Health Problems, Tenth Revision (ICD-10)*¹² codes in October 2015. Therefore, for the last quarter of 2015, we used initial encounter (A) ICD-10 codes W32-33, W34 (0.00, 0.09, 0.10, 0.19), X72, X73, X74 (0.8, 0.9), X93, X94, X95 (0.8, 0.9), Y22-3, Y24 (0.8, 0.9), Y35.0, and Y38.4. External cause of injury codes are used to identify admissions related to injury, and these codes correspond to firearm injuries of all causes (eg, assault, self-harm) and all weapon types (eg, handguns, rifles). Owing to small numbers, we grouped codes for terrorism or legal intervention with assaults. We used admission dates to identify firearm injuries; results for 2015 represent a slight undercount because our data did not include injuries for which patients were

admitted in 2015 but discharged in 2016. However, we explored the spillover rates for years with complete data and found that less than 1% of patients were admitted in one year and discharged the following year.

To capture only nonfatal injuries, we excluded records with a discharge disposition of death. To avoid double-counting injuries, we excluded records for non-acute care hospitalizations, as these were unlikely to be for new injuries. We also fit a predictive model using Super Learner¹³ to distinguish between acute care cases that were for a new injury and those that were related to a previous injury. Super Learner uses cross-validation to create a single predictive model that minimizes bias by weighting several potential models that are provided by the user.¹³ Model development is described in detail elsewhere.¹⁴ We excluded records for visits with an Injury Severity Score (ISS) of 0, as this is unlikely to be an acute firearm injury, and those for individuals who were not residents of California. To prevent patient reidentification and in accordance with California state regulations, we removed from our reported results the findings for any study subgroup with fewer than 15 patients.

Other data available from OSHPD included age, sex, payer status, disposition, race/ethnicity, and hospital length of stay. Race/ethnicity was reported as non-Hispanic White, non-Hispanic Black, Hispanic, American Indian, Asian or Pacific Islander, and other. Race and ethnicity were defined by OSHPD and assessed to evaluate epidemiological trends. Standardization of disposition codes across ED and inpatient data can be seen in the eTable in the [Supplement](#).

The US Department of Agriculture Rural-Urban Continuum Codes data were used to determine the urban-rural status of each county. Rural-Urban Continuum Code data distinguish counties based on population and adjacency to metropolitan areas; we collapsed the 9 categories of Rural-Urban Continuum Codes into 2 broader categories of metropolitan (urban) and nonmetropolitan (rural) counties.¹⁵ We linked this to our OSHPD data by patient county of residency. American Community Survey data were used to determine the median income of zip codes, which we categorized into quartiles. We linked this to patient residential zip codes.

The CDC WISQARS and CDC WONDER databases were used to determine yearly county-level population data, race/ethnicity subpopulation data, and fatal firearm injury data.^{1,16} These values were used as the denominators to create population injury rates and overall CFRs. A verified Stata module (StataCorp), ICD-PIC, was used to translate *ICD-9* codes into standard Injury Severity Scores (ISSs).¹⁷ ICDPICR, a tool translating ICD-PIC into an R package (R Project for Statistical Computing), was used to translate *ICD-10* codes into standard ISS.¹⁸

The primary outcome measures were counts and rates of nonfatal firearm injuries and the overall and clinical CFRs of firearm injuries in California. Counts and rates were described over time and grouped by external cause.

Statistical Analysis

The overall CFR was calculated by dividing all firearm deaths in California as measured by WISQARS by the total number of firearm injuries (WISQARS fatal + OSHPD nonfatal) per year. The clinical CFR was calculated by dividing the number of firearm fatalities in the OSHPD data (both ED and hospital inpatients) by the total number of firearm injuries (fatal + nonfatal) in the OSHPD data.

County-level rates of nonfatal injury in California were mapped to show the geographic distribution of firearm morbidity. To account for the small numbers and concomitant unstable rates in some counties, we used a random-intercept Poisson mixed-effects model to smooth the rates, with random effects for year and county, as well as an offset for the log-population. These smoothed rates were then used to map the geographic distribution of nonfatal firearm injuries in California by county. Negative binomial regressions that included the counts of firearm injuries per county per year and a binary urban-rural variable were used to determine the significance of urbanicity on firearm injuries.

All rates of change and percentage changes over the study period were calculated using generalized linear (Poisson for injury rates, binomial for CFR) mixed-effects models with a linear fixed

effect for time incorporated into each to more robustly estimate significant changes over our study years, reported as percentage change in model mean, instead of merely reporting the end points. All rates are reported per 100 000 residents of the relevant population.

We used *t* tests for continuous data and χ^2 tests to compare categorical variables. We considered 2-sided *P* < .05 to be significant. R version 3.4.4 with R Studio version 1.1.453 (RStudio) and Stata SE version 14.1 were used for analyses. Data were analyzed from 2018 to 2019.

Results

A total of 81 085 nonfatal firearm injuries were identified from 2005 through 2015, including 56 367 assaultive injuries (69.7%), 19 316 unintentional injuries (23.6%), 1372 self-inflicted injuries (1.7%), and 4030 injuries of undetermined intent (5.0%) (**Table**). The mean (SD) age of individuals with firearm injuries was 27.5 (11.9) years, and 72 567 (89.6%) were men. A total of 45 570 injuries (56.2%) were treated within the ED and did not include hospital admission, while 35 515 injuries (43.8%) included admission to an inpatient facility. Those with assaultive injuries tended to be younger (mean [SD] age, 26.8 [10.7] years) and Black (18 355 patients [33.3%]) or Hispanic (25 423 patients [46.1%]), while those with self-inflicted injuries were more likely to be older (mean (SD) age, 42.3 [18.6] years) and White (817 patients [62.2%]). There were differences in income and payment source by cause of injury as well: individuals with assaultive injuries, compared with those with self-inflicted injuries, were more likely to be within the lowest income quartile (16 081 patients [29.5%] vs 225 patients [16.4%]) and have self-pay (18 553 patients [32.9%] vs 300 patients [21.9%]) or government (20 852 patients [37.0%] vs 322 patients [23.5%]) payer status. Individuals with injuries from self-inflicted gunshot wounds had worse markers for increased severity compared with other injury causes, including higher median (interquartile range) ISS (self-inflicted: 9 [1-16]; assaultive: 4.0 [2-9]; unintentional: 4.0 [1-7]; undetermined: 3.0 [1-7]; *P* < .001), longer median (interquartile range) length of stay (self-inflicted: 8.0 [3-17] days; assaultive: 4.0 [2-9] days; unintentional: 4.0 [1-7] days; undetermined: 3.0 [1-7] days; *P* < .001), and a smaller proportion of routine discharges to home (self-inflicted: 502 patients [36.6%]; assaultive: 46 034 patients [81.7%]; unintentional: 15 830 patients [82.0%]; undetermined: 3212 patients [79.7%]; *P* < .001).

The overall rate of nonfatal firearm injuries decreased by 38.1% from 2005 through 2015, driven primarily by a 46.4% decrease in assaults (**Figure 1**). Self-inflicted and unintentional injuries remained stable.

Among men, the overall rate of nonfatal firearm injuries decreased from 45.2 per 100 000 people to 30.2 per 100 000 people from 2005 through 2015, driven primarily by a decrease in assaults of nearly 50%. The rate of self-inflicted and unintentional injuries among men remained stable over the period. Similar trends can be seen for women, although on a much smaller scale; firearm injury rates among women were significantly lower than among men (eFigure 1 in the [Supplement](#)). This makes it difficult to assess subcategories of firearm injury among women, such as by race/ethnicity.

Overall, Black men had an annual firearm assault injury rate of 126.5 per 100 000 people, 4-fold that of Hispanic men, the racial/ethnic group with the next highest rate (30.6 per 100 000 people). Assaultive firearm injuries among Black men decreased from 161.1 per 100 000 people to 94.2 per 100 000 people over the study period. The rate among Hispanic men decreased from 42.0 per 100 000 people to 23.4 per 100 000 people, for a relative decrease of 52.9% (**Figure 2**).

Black men had the highest rate of unintentional nonfatal firearm injuries, with a slight increase over the study period from 30.2 per 100 000 people to 34.6 per 100 000 people. In contrast, Hispanic men had an 18.8% modeled relative decrease in unintentional firearm injuries. The rate among White men was stable. (eFigure 2 in the [Supplement](#)).

Native American data are reported where appropriate per our methods and otherwise suppressed. Trends for women and for both sexes were similar as those presented for men but on a much smaller scale (eFigure 3 in the [Supplement](#)).

CFRs

The model-smoothed overall CFR increased from 27.6% in 2005 to 32.2% in 2015, for a relative increase of 20.7% (eFigure 4 in the [Supplement](#)). The overall CFR for assaultive firearm injuries increased from 23.3% to 26.6%, while that for self-inflicted injuries was stable and remained greater than 90% each year in the study period. The overall CFR for unintentional injuries decreased from 5.3% to 1.1% (modeled relative decrease, 77.0%).

While the clinical CFR did not change significantly over the study period for all injuries combined, there was a significant decrease in the clinical CFR for assault injuries by 1.5%. (**Figure 3**).

Table. Demographic Characteristics Among Survivors of Nonfatal Firearm Injuries by e-Coded External Cause From 2005 to 2015

Characteristic	Assault (n = 56 367)	Self-inflicted (n = 1372)	Unintentional (n = 19 316)	Undetermined (n = 4030)	Total (N = 81 085)	P value
Age, y ^a						
Mean (SD)	26.8 (10.7)	42.3 (18.6)	28.9 (13.8)	26.5 (11.1)	27.5 (11.9)	<.001
Median (IQR)	24.0 (19-32)	41.0 (26-55)	24.0 (19-35)	23.0 (19-32)	24.0 (19-33)	
Sex						
Women	5513 (9.8)	248 (18.1)	2217 (11.5)	416 (10.4)	8394 (10.4)	<.001
Men	50 753 (90.2)	1124 (81.9)	17 087 (88.5)	3603 (89.6)	72 567 (89.6)	
Payer status						
Medicare	1383 (2.5)	213 (15.5)	825 (4.3)	115 (2.9)	2536 (3.1)	<.001
Government—low income	20 852 (37.0)	322 (23.5)	5263 (27.2)	1263 (31.3)	27 700 (34.2)	
Private or work-based	14 752 (26.2)	519 (37.8)	6406 (33.2)	1015 (25.2)	22 692 (28)	
Self-pay	18 553 (32.9)	300 (21.9)	6563 (34)	1563 (38.8)	26 979 (33.3)	
Other, not reported, or invalid	826 (1.5)	18 (1.3)	259 (1.3)	74 (1.8)	1177 (1.5)	
Disposition						
Routine	46 034 (81.7)	502 (36.6)	15 830 (82.0)	3212 (79.7)	65 578 (80.9)	<.001
Inpatient care transfer	5089 (9)	573 (41.8)	2043 (10.6)	502 (12.5)	8207 (10.1)	
Skilled nursing or resident care facility	397 (0.7)	56 (4.1)	106 (0.5)	23 (0.6)	582 (0.7)	
Intermediate care	139 (0.2)	5 (0.4)	35 (0.2)	6 (0.1)	185 (0.2)	
Children's hospital or cancer center	65 (0.1)	7 (0.5)	42 (0.2)	4 (0.1)	118 (0.1)	
Against medical advice	1004 (1.8)	10 (0.7)	363 (1.9)	82 (2)	1459 (1.8)	
Law enforcement or prison	1651 (2.9)	36 (2.6)	291 (1.5)	72 (1.8)	2050 (2.5)	
Other	1988 (3.5)	183 (13.3)	606 (3.1)	129 (3.2)	2906 (3.6)	
Race/ethnicity						
White	7456 (13.5)	817 (62.2)	4991 (26.8)	645 (16.6)	13 909 (17.6)	<.001
Black	18 355 (33.3)	85 (6.5)	4623 (24.8)	1258 (32.5)	24 321 (30.8)	
Hispanic	25 423 (46.1)	316 (24.1)	7657 (41.2)	1662 (42.9)	35 058 (44.4)	
Asian or Pacific Islander	1665 (3)	36 (2.7)	595 (3.2)	145 (3.7)	2441 (3.1)	
Native American, Alaska Native	145 (0.3)	4 (0.3)	90 (0.5)	18 (0.5)	257 (0.3)	
Other	2099 (3.8)	55 (4.2)	651 (3.5)	147 (3.8)	2952 (3.7)	
Unspecified weapon type	38 260 (67.9)	548 (39.9)	13 765 (71.3)	3319 (82.4)	55 892 (68.9)	<.001
Income quartile						
0-25th	16 081 (28.5)	225 (16.4)	4361 (22.6)	887 (22)	21 554 (26.6)	<.001
25-50th	14 947 (26.5)	278 (20.3)	4910 (25.4)	1183 (29.4)	21 318 (26.3)	
50-75th	14 573 (25.9)	382 (27.8)	5331 (27.6)	1106 (27.4)	21 392 (26.4)	
75-100th	10 759 (19.1)	487 (35.5)	4700 (24.3)	854 (21.2)	16 800 (20.7)	
Residence						
Metropolitan	55 992 (99.3)	1279 (93.2)	18 712 (96.9)	3970 (98.5)	79 953 (98.6)	<.001
Nonmetropolitan	375 (0.7)	93 (6.8)	604 (3.1)	60 (1.5)	1132 (1.4)	
Length of stay, median (IQR), d ^b	4.0 (2-9)	8.0 (3-17)	4.0 (1-7)	3.0 (1-7)	4.0 (2-8)	<.001
Injury Severity Score, median (IQR)	4 (1-9)	9 (1-16)	1 (1-4)	5 (1-5)	6 (1-9)	<.001

Abbreviation: IQR, interquartile range.

^a Does not include individuals aged 100 years or older.

^b Measured only for those individuals who were admitted, not those released from the emergency department.

Geographic Variation

The smoothed rates of nonfatal injury by county varied substantially in 2015, from a high of 39.7 injuries per 100 000 people in San Joaquin County to a low of 3.6 injuries per 100 000 people in Sonoma County (**Figure 4A**). Alpine County was suppressed owing to small population and insignificant trends. We also found a significantly increased rate of nonfatal firearm injury in urban relative to rural counties (incidence rate ratio, 1.40; 95% CI, 1.00-1.95).

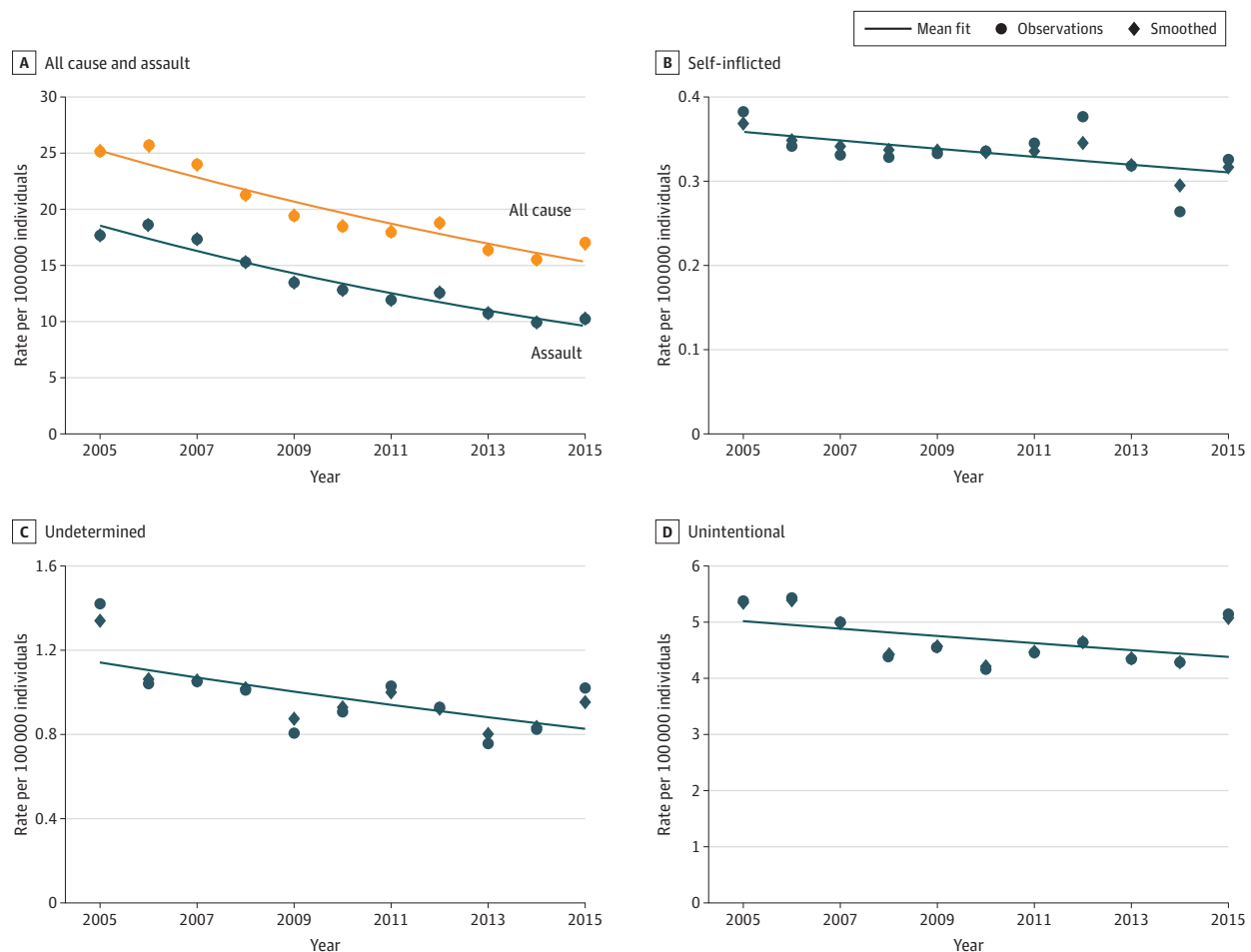
Sonoma and Los Angeles counties had the largest relative decrease in firearm injuries, at 73.8% in Sonoma County and 58.2% in Los Angeles County (Figure 4B). Of California's 58 counties, 28 (48.3%) experienced a decrease in the rate of nonfatal firearm injury during the study period. Counties with rate increases tended to be in Northern California. Absolute changes in fitted rates are reported in Figure 4C.

Discussion

This serial cross-sectional study found that nonfatal firearm injuries in California decreased by nearly 40% from 2005 to 2015, driven primarily by a decrease in assaults across all racial/ethnic groups and sexes, although the difference was most pronounced among Black men.

The demographic distribution of patients was consistent with known epidemiological patterns in firearm injuries, with rates much higher for men than women, assaultive injuries concentrated among young Black and Hispanic individuals from urban, lower-income areas, and self-inflicted

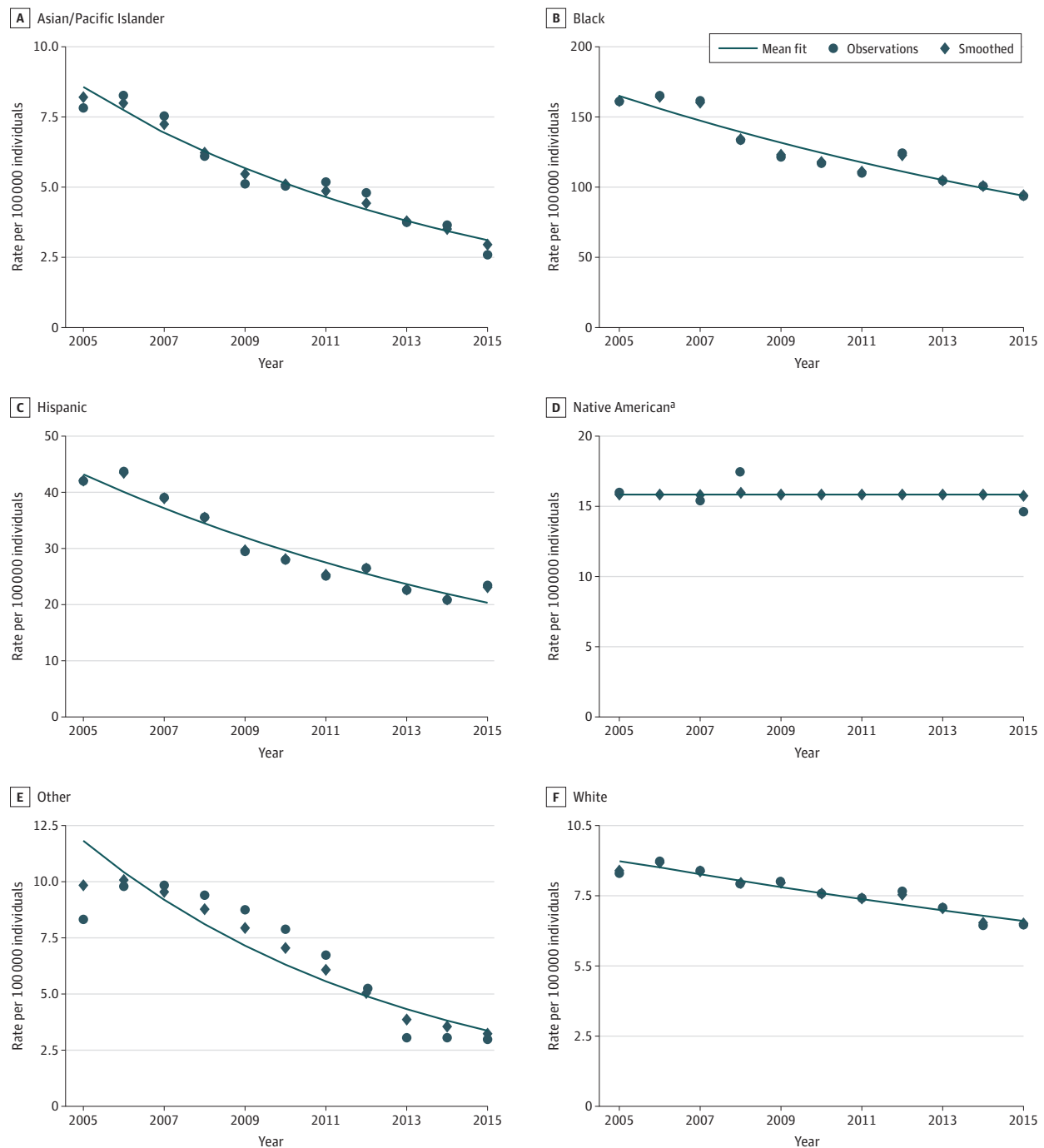
Figure 1. Annual Rate of Nonfatal Firearm Injury per 100 000 People From 2005 to 2015



injuries concentrated among White individuals in higher-income areas.^{10,19} As expected, ISSs and hospital length of stay were higher for self-inflicted injuries than for other injury causes. We found that urban counties had higher rates of firearm injury than their rural counterparts, with the highest rates seen in the San Joaquin Valley in central California.

From 2005 to 2015, California's overall CFR for firearm injuries increased by more than 20% in relative terms. This increase was partially driven by an increase in the proportion of self-inflicted injuries, which are more lethal than assaults; even so, the CFR for assaults also increased by nearly 15% in

Figure 2. Annual Rate of Assaultive Nonfatal Firearm Injuries per 100 000 People Among Men From 2005 to 2015



^a Insufficient unsuppressed observations to estimate slope.

Figure 3. Clinical Firearm Case Fatality Ratio by External Cause From 2005 to 2015

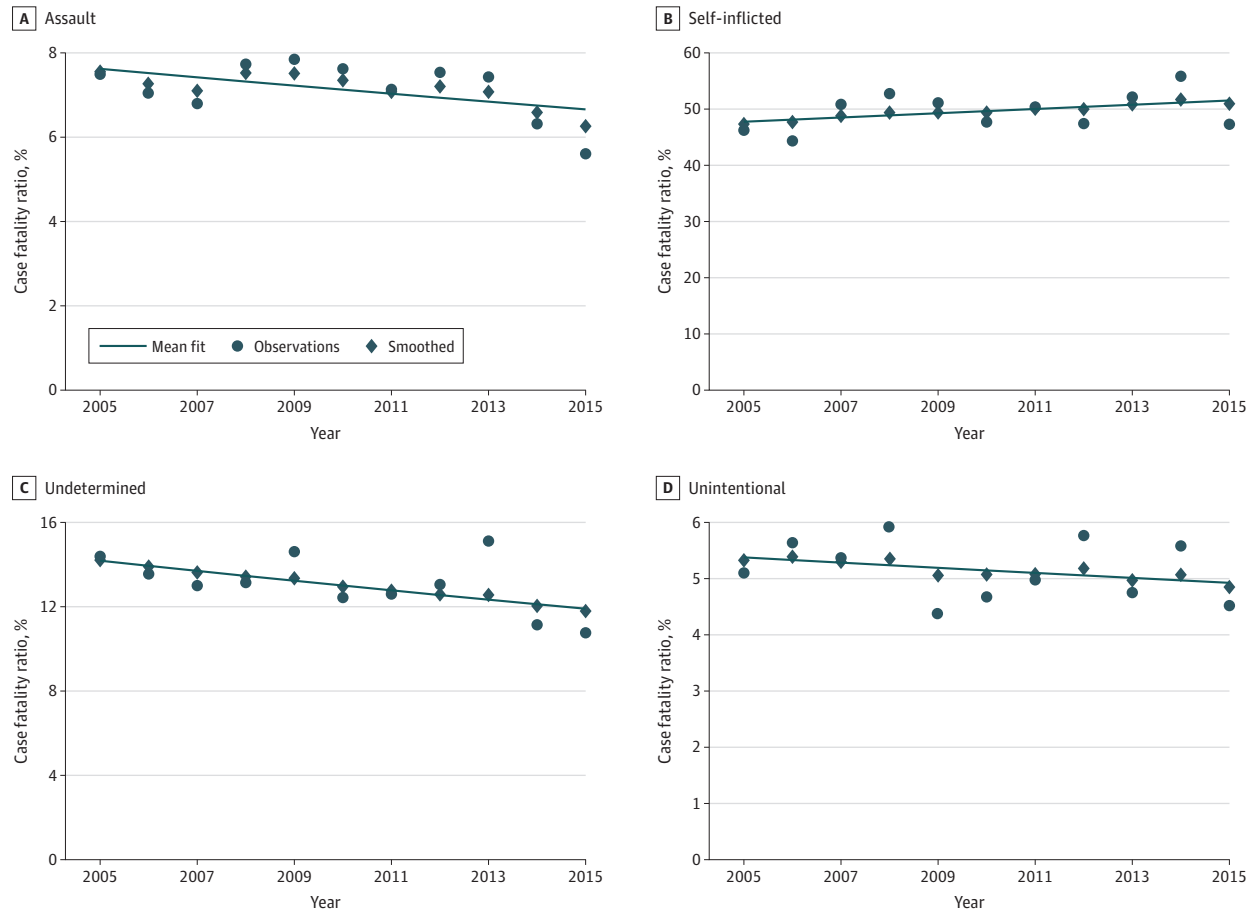
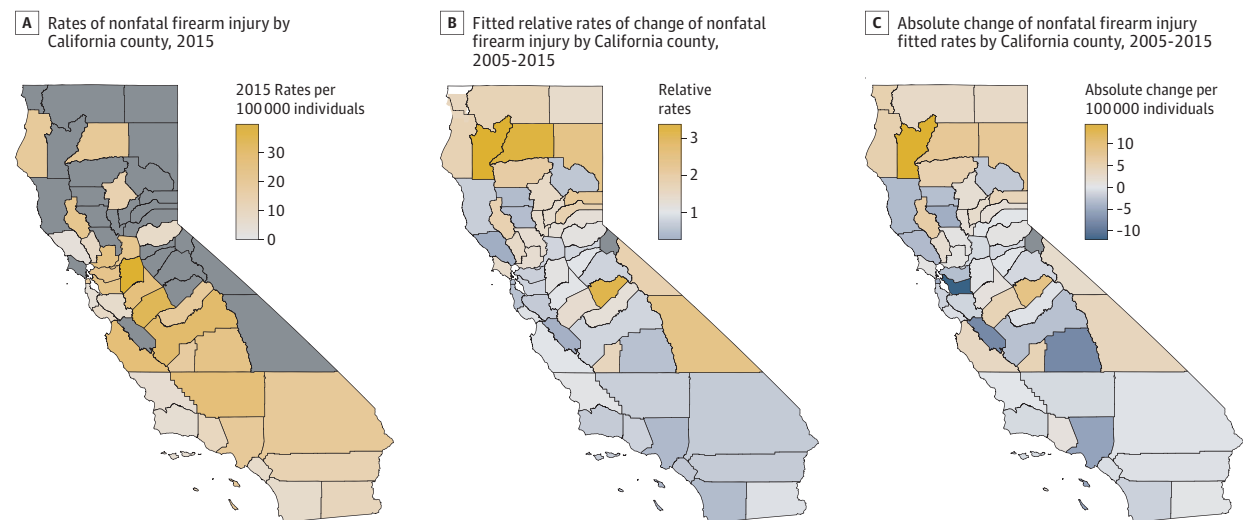


Figure 4. Rates of Nonfatal Firearm Injury by California County in 2015



Counties with fewer than 15 firearm injuries were suppressed.

relative terms, especially in the most recent year of data. This is consistent with other literature examining CFRs of firearm injury^{20,21} and may be explained by an increase in nonsurvivable assaultive injuries. This is contrary to unintentional injuries, for which the overall CFR decreased significantly during the study period.

Despite the increase in overall CFR, clinical CFR remained relatively stable. This discrepancy suggests an increase in the proportion of individuals with fatal injuries who did not reach the ED or hospital to be treated. Researchers have offered at least 2 possible explanations for the stable clinical CFR. One is that injury severity among patients who receive acute medical care has increased, such that improved care has not reduced mortality. However, our data suggest that injury severity has not increased over the study period. The second and more likely explanation in the context of these data is that, in California and during our study period, treatment of patients with life-threatening firearm injuries who reach the hospital has remained stable.

However, findings from a 2020 study by Tessler et al⁹ of injuries from firearms and motor vehicle crashes suggest that the first hypothesized explanation is correct: given that the CFR for motor vehicle crash injuries decreased while that for firearm injuries did not, and assuming that firearm and motor vehicle crash injuries receive the same level of care, there is evidence for there being an increase in firearm injury severity. Tessler et al reported that, except for firearm suicide, ISSs for firearm and motor vehicle crash injuries remained stable over their study period. They suggested that ISS might not be sensitive enough to detect changes in true severity. If this is true, it is also possible that the severity of motor vehicle crash injuries is subtly decreasing. Alternatively, trauma care for motor vehicle crash injuries and firearm injuries might not be improving at equivalent rates.

One strength of this study is that it relies on a complete enumeration of nonfatal injuries. Such data are not often available. Our CFR findings contradict the findings of a study by Kalesan et al⁴ that relied on the CDC's national estimates for nonfatal injuries and suggested that there was a "hidden epidemic" of nonfatal firearm assaults. Work by our group^{5,8} and others^{6,7} suggests these findings may be invalid.

The findings of this study suggest more research is needed to determine why the overall and cause-specific CFRs did not decrease. It is possible that the wounds are simply not survivable. To explore these questions, further studies to determine trends over time in preventable deaths among individuals who reach level 1 trauma centers are needed. However, over the study period, only 25.2% of deaths were found in the OSHPD data; the rest never reached the ED.

It is well known that most firearm-related deaths occur in the field.²² This might make a case for faster or improved transport and further study of the practices of emergency responders, such as the practice of "scoop and run" that is routine in Philadelphia.²³ Most directly, this makes the case for improved primary prevention efforts, such as discussing firearms with patients who are at risk for harm to self and others²⁴ and more effective violence prevention policies, and secondary prevention efforts, such as hospital-based violence prevention programs.²⁵

Limitations

This study has some limitations, the most important of which is that its data are for a single state, limiting generalizability. However, state data are needed because policy efforts to prevent firearm-related violence are primarily enacted at the state level. The US Congress has not enacted major changes to firearm policy in decades.

Additionally, reliance on ICD-9 and ICD-10 codes to capture firearm injuries is predicated on accurate and complete coding; miscoded firearm injuries are missed in this data set. In addition, the switch from ICD-9 to ICD-10 codes could introduce a change in capture rate of firearm injury in the last quarter of 2015. Third, self-inflicted injuries represent a very small percentage of nonfatal injuries given their high CFR, making it difficult to draw conclusions regarding trends from these data. Fourth, 5% of nonfatal injuries had an undetermined intent, and weapon type was missing in 69% of all injuries, making the weapon type unsuitable for analysis.

Conclusions

The results of this cross-sectional study could help clarify trends in the incidence and distribution of nonfatal firearm injury and the lethality of firearm injury in California. The results may be valuable to policy makers, public health professionals, clinicians, and researchers as they better tailor clinical practice and public policy to prevent firearm injuries and deaths. We hope this analysis will act as a model for other states, and we wish to emphasize the importance of access to statewide data for researchers in completing similar studies. The conjunction of multiple state-based analyses would allow us to come to a better understanding of nonfatal firearm injuries, which result in substantial burden to individuals, communities, and society at large.

ARTICLE INFORMATION

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Author Affiliations: Now with the Department of Surgery, Brigham and Women's Hospital, Boston, Massachusetts (Spitzer); University of California Firearm Violence Research Center, Sacramento (Spitzer, Pear, McCort, Wintemute); Violence Prevention Research Program, Department of Emergency Medicine, UC Davis School of Medicine, Sacramento (Pear, McCort, Wintemute).

Author Contributions: Drs Spitzer and Wintemute had full access to all of the data in the study and take responsibility for the integrity of the data and the accuracy of the data analysis.

Concept and design: Spitzer, Pear, Wintemute.

Acquisition, analysis, or interpretation of data: All authors.

Drafting of the manuscript: Spitzer.

Critical revision of the manuscript for important intellectual content: All authors.

Statistical analysis: Spitzer, Pear, McCort.

Obtained funding: Wintemute.

Supervision: Wintemute.

Conflict of Interest Disclosures: None reported.

Funding/Support: This study was supported by University of California Firearm Violence Research Center with funds from the State of California. Additional support came from the California Wellness Foundation (award No. 2014-255), the Heising-Simons Foundation (award No. 2017-0447), and the University of California, Davis, Violence Prevention Research Program.

Role of the Funder/Sponsor: The funders had no role in the design and conduct of the study; collection, management, analysis, and interpretation of the data; preparation, review, or approval of the manuscript; and decision to submit the manuscript for publication.

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SUPPLEMENT.

eTable. Defining Disposition

eFigure 1. Annual Rate of Nonfatal Firearm Injury Per 100 000 People in 2005-2015 Stratified by Sex

eFigure 2. Annual Rate of Unintentional Nonfatal Firearm Injuries Per 100 000 People Among Men

eFigure 3. Annual Rate of Assaultive and Unintentional Nonfatal Firearm Injuries Per 100 000 People Among Women

eFigure 4. Overall Firearm Case Fatality Ratio by External Cause From 2005 to 2015

EXHIBIT “2”



California LEGISLATIVE INFORMATION

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SB-377 Firearms: peace officer exemptions. (2023-2024)

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Date Published: 02/09/2023 09:00 PM

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL

NO. 377

Introduced by Senator Skinner

February 09, 2023

An act to amend Sections 26950 and 32000 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as introduced, Skinner. Firearms: peace officer exemptions.

(1) Existing law prohibits a firearms dealer from delivering a firearm within 10 days after the application to purchase or after notice by the Department of Justice that the applicant is not ineligible to possess a firearm, as specified, whichever is later. Existing law exempts from this prohibition the delivery of a firearm to a full-time paid peace officer, as defined, with written authorization from the head of the officer's employing agency. Existing law also exempts from this prohibition the delivery of a firearm to another dealer, the delivery of a firearm to a person possessing a special weapons permit issued by the Department of Justice, or the delivery of a firearm that is a curio or relic, as defined.

This bill would remove the 10-day waiting period exemption for a peace officer and instead exempt the delivery of a firearm purchased by a law enforcement agency, as defined, to an authorized law enforcement representative of that law enforcement agency for exclusive use by that agency if written authorization, as defined, from the head of the agency authorizing the delivery is presented to the person making the delivery.

(2) Existing law defines the characteristics of an unsafe handgun. Existing law requires the Department of Justice to compile, publish, and thereafter maintain a roster listing all of the handguns that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state. Existing law prohibits the sale or transfer of a handgun not listed on this roster.

Existing law exempts from this prohibition the sale or purchase of a handgun sold to certain law enforcement agencies and any sworn member of those entities, as specified.

This bill would remove from this exemption the sale or purchase of a handgun sold to a sworn member of these exempt agencies, thereby applying the exemption only to the sale or purchase of a handgun directly to the exempt law enforcement agencies.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26950 of the Penal Code is amended to read:

26950. (a) The waiting period described in Section 26815 does not apply to the sale, delivery, or transfer of firearms ~~made to any person who satisfies both of the following requirements:~~ *purchased by a law enforcement agency and received by an authorized law enforcement representative of that law enforcement agency for exclusive use by that agency if written authorization from the head of the agency authorizing the transaction is presented to the person delivering the firearm.*

~~(1)The person is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.~~

~~(2)The officer's employer has authorized the officer to carry firearms while in the performance of duties.~~

~~(b)(1)Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of duties, and authorizing the purchase or transfer.~~

~~(2)The certification shall be delivered to the dealer at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification.~~

~~(3)The dealer shall keep the certification with the record of sale.~~

~~(4)On the date that the sale, delivery, or transfer is made, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in Section 28160 or 28165.~~

(b) As used in this section, the following terms have the following meanings:

(1) "Law enforcement agency" means any agency or department of the state or any political subdivision thereof that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Written authorization" means verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to accept delivery of the firearm and that the firearm is for the exclusive use of the agency by which that person is employed.

SEC. 2. Section 32000 of the Penal Code is amended to read:

32000. (a) (1) A person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(2) The failure to report to the Department of Justice in accordance with the provisions of paragraph (2) of subdivision (e) the sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(3) In addition to any criminal penalty provided in paragraph (1), the unlawful sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not ~~prohibit~~ *authorize* the sale to, or purchase by, sworn members of these agencies ~~of a handgun~~ *in a personal capacity*.

(5) The sale, purchase, or delivery of a handgun, if the sale, purchase, or delivery of the handgun is made pursuant to subdivision (d) of Section 10334 of the Public Contract Code.

(6) (A) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun for use as a service weapon, if the handgun is sold to, or purchased by, any of the following entities for use ~~by, or sold to or purchased by~~ *by* sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST) pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

~~(A)~~

(i) The Department of Parks and Recreation.

~~(B)~~

(ii) The Department of Alcoholic Beverage Control.

~~(C)~~

(iii) The Division of Investigation of the Department of Consumer Affairs.

~~(D)~~

(iv) The Department of Motor Vehicles.

~~(E)~~

(v) The Fraud Division of the Department of Insurance.

~~(F)~~

(vi) The State Department of State Hospitals.

~~(G)~~

(vii) The Department of Fish and Wildlife.

~~(H)~~

(viii) The State Department of Developmental Services.

~~(I)~~

(ix) The Department of Forestry and Fire Protection.

~~(J)~~

(x) A county probation department.

~~(K)~~

(xi) The Los Angeles World Airports, as defined in Section 830.15.

~~(L)~~

(xii) A K-12 public school district for use by a school police officer, as described in Section 830.32.

~~(M)~~

(xiii) A municipal water district for use by a park ranger, as described in Section 830.34.

~~(N)~~

(xiv) A county for use by a welfare fraud investigator or inspector, as described in Section 830.35.

~~(O)~~

(xv) A county for use by the coroner or the deputy coroner, as described in Section 830.35.

~~(P)~~

(xvi) The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Section 830.36.

~~(Q)~~

(xvii) A fire department or fire protection agency of a county, city, city and county, district, or the state for use by either of the following:

(i)

(I) A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.

(ii)

(II) A member other than a member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.

~~(R)~~

(xviii) The University of California Police Department, or the California State University Police Departments, as described in Section 830.2.

~~(S)~~

(xix) A California Community College police department, as described in Section 830.32.

~~(T)~~

(xx) A harbor or port district or other entity employing peace officers described in subdivision (b) of Section 830.33, the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles.

~~(U)~~

(xxi) A local agency employing park rangers described in subdivision (b) of Section 830.31.

~~(V)~~

(xxii) The Department of Cannabis Control.

(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(7) (A) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun, if the handgun is sold to, or purchased by, any of the following entities for use as a service weapon by the sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

- (i) The California Horse Racing Board.
- (ii) The State Department of Health Care Services.
- (iii) The State Department of Public Health.
- (iv) The State Department of Social Services.
- (v) The Department of Toxic Substances Control.
- (vi) The Office of Statewide Health Planning and Development.
- (vii) The Public Employees' Retirement System.
- (viii) The Department of Housing and Community Development.
- (ix) Investigators of the Department of Financial Protection and Innovation.
- (x) The Law Enforcement Branch of the Office of Emergency Services.
- (xi) The California State Lottery.
- (xii) The Franchise Tax Board.

(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(c) (1) Notwithstanding Section 26825, a person licensed pursuant to Sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in paragraph (6) or (7) of subdivision (b) and a person who is not exempt from the requirements of this section.

(2) (A) A person who obtains or has use of an unsafe handgun pursuant to paragraph (6) or (7) of subdivision (b) shall, when leaving the handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

(B) A violation of subparagraph (A) is an infraction punishable by a fine not exceeding one thousand dollars (\$1,000).

(C) For purposes of this paragraph, the following definitions shall apply:

- (i) "Vehicle" has the same meaning as defined in Section 670 of the Vehicle Code.
- (ii) A vehicle is "unattended" when a person who is lawfully carrying or transporting a handgun in the vehicle is not within close proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.
- (iii) "Locked container" has the same meaning as defined in Section 16850.

(D) Subparagraph (A) does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course of their official duties.

(E) This paragraph does not supersede any local ordinance that regulates the storage of handguns in unattended vehicles if the ordinance was in effect before January 1, 2017.

(d) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

(e) (1) The Department of Justice shall maintain a database of unsafe handguns obtained pursuant to paragraph (4), (6), or (7) of subdivision (b). This requirement shall apply retroactively to include information in the department's possession. The department may satisfy this requirement by maintaining this information in any existing firearm database that reasonably facilitates compliance with this subdivision.

(2) A person or entity that is in possession of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b), shall notify the department of any sale or transfer of that handgun within 72 hours of the sale or transfer in a manner and format prescribed by the department. This requirement shall be deemed satisfied if the sale or transfer is processed through a licensed firearms dealer pursuant to Section 27545. A sale or transfer accomplished through an exception to Section 27545 is not exempt from this reporting requirement.

(3) By no later than March 1, 2021, the department shall provide a notification to persons or entities possessing an unsafe handgun pursuant to paragraph (4), (6), or (7) of subdivision (b) regarding the prohibitions on the sale or transfer of that handgun contained in this section. Thereafter, the department shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred pursuant to those provisions.

EXHIBIT “3”

1 ROB BONTA
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8 *Attorneys for Defendants Rob Bonta, in his official*
capacity as California Attorney General, and
9 *Allison Mendoza, in her official capacity as Acting*
Director of the Department of Justice Bureau of
10 *Firearms*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13 CIVIL DIVISION
14

15
16 **LANA RAE RENNA et al.,**

17 Plaintiffs,

18 v.

19 **ROB BONTA, in his official capacity**
20 **as Attorney General of California;**
21 **and ALLISON MENDOZA, in her**
22 **official capacity as Acting Director of**
the Department of Justice Bureau of
Firearms,

23 Defendants.
24
25
26
27
28

8:17-cv-00746-JLS-JDE

**DECLARATION OF SAUL
CORNELL IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION OR,
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

Date: February 10, 2023
Time: 1:30 p.m.
Dept: 13A (13th Floor)
Judge: The Honorable Dana M.
Sabraw
Trial Date: None set
Action Filed: 11/10/2020

1 I, Saul Cornell, declare that the following is true and correct:

2 1. I have been asked by the Office of the Attorney General for the State
3 of California to provide an expert opinion on the history of firearms regulation in
4 the Anglo-American legal tradition, with a particular focus on how the Founding
5 era understood the right to bear arms, as well as the understanding of the right to
6 bear arms held at the time of the ratification of the Fourteenth Amendment to the
7 United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*,
8 the U.S. Supreme Court underscored that text, history, and tradition are the
9 foundation of modern Second Amendment jurisprudence. This modality of
10 constitutional analysis requires that courts analyze history and evaluate the
11 connections between modern gun laws and earlier approaches to firearms regulation
12 in the American past. My report explores these issues in some detail. Finally, I
13 have been asked to evaluate the statutes at issue in this case, particularly regarding
14 their connection to the tradition of firearms regulation in American legal history.

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

18 **BACKGROUND AND QUALIFICATIONS**

19 3. I am the Paul and Diane Guenther Chair in American History at
20 Fordham University. The Guenther Chair is one of three endowed chairs in the
21 history department at Fordham and the only one in American history. In addition to
22 teaching constitutional history at Fordham University to undergraduates and
23 graduate students, I teach constitutional law at Fordham Law School. I have been a
24 Senior Visiting research scholar on the faculty of Yale Law School, the University
25 of Connecticut Law School, and Benjamin Cardozo Law School. I have given
26 invited lectures, presented papers at faculty workshops, and participated in
27 conferences on the topic of the Second Amendment and the history of gun
28 regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA

1 Law School, the University of Pennsylvania Law School, Columbia Law School,
2 Duke Law School, Pembroke College Oxford, Robinson College, Cambridge,
3 Leiden University, and McGill University.¹

4 My writings on the Second Amendment and gun regulation have been widely
5 cited by state and federal courts, including the majority and dissenting opinions in
6 *Bruen*.² My scholarship on this topic has appeared in leading law reviews and top
7 peer-reviewed legal history journals. I authored the chapter on the right to bear
8 arms in *The Oxford Handbook of the U.S. Constitution* and co-authored the chapter
9 in *The Cambridge History of Law in America* on the Founding era and the Marshall
10 Court, the period that includes the adoption of the Constitution and the Second
11 Amendment.³ Thus, my expertise not only includes the history of gun regulation
12 and the right to keep and bear arms, but also extends to American legal and
13 constitutional history broadly defined. I have provided expert witness testimony in
14 *Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper*, No. 14-cv-02850
15 (D. Colo.); *Chambers, v. City of Boulder*, No. 2018 CV 30581 (Colo. D. Ct.,
16 Boulder Cty.), *Zeleny v. Newsom*, No. 14-cv-02850 (N.D. Cal.), and *Miller v. Smith*,
17 No. 2018-cv-3085 (C.D. Ill.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D. Cal.);
18 *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, No. 21-cv-
19 1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.);
20 *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.); *Rupp v. Bonta*, No.
21 8:17-cv-00746-JLS-JDE (C.D. Cal.); and Nat'l Assoc. for Gun Rights, et al., v.
22 Campbell, D. Mass. No. 1:22-cv-11431-FDS (filed Jan. 31, 2023).

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

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

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 **RETENTION AND COMPENSATION**

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

7 **BASIS FOR OPINION AND MATERIALS CONSIDERED**

8 5. The opinion I provide in this report is based on my review of the
9 operative complaint filed in this lawsuit, my review of the state laws at issue in this
10 lawsuit, my education, expertise, and research in the field of legal history. The
11 opinions contained herein are made pursuant to a reasonable degree of professional
12 certainty.

13 **SUMMARY OF OPINIONS**

14 6. Understanding text, history, and tradition require a sophisticated grasp
15 of historical context. One must canvass the relevant primary sources, secondary
16 literature, and jurisprudence to arrive at an understanding of the scope of
17 permissible regulation consistent with the Second Amendment.

18 7. It is impossible to understand the meaning and scope of Second
19 Amendment protections without understanding the way Americans in the Founding
20 era approached legal questions and rights claims. In contrast to most modern
21 lawyers, the members of the First Congress who wrote the words of the Second
22 Amendment and the American people who enacted the text into law were well
23 schooled in English common law ideas. Not every feature of English common law
24 survived the American Revolution, but there were important continuities between
25 English law and the common law in America.⁴ Each of the new states, either by

26

27 ⁴ William B. Stoebuck, *Reception of English Common Law in the American*
28 *Colonies*, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776,
DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, *Law for*

1 statute or judicial decision, adopted multiple aspects of the common law, focusing
2 primarily on those features of English law that had been in effect in the English
3 colonies for generations.⁵ No legal principle was more important to the common
4 law than the concept of the peace.⁶ As one early American justice of the peace
5 manual noted: “the term peace, denotes the condition of the body politic in which
6 no person suffers, or has just cause to fear any injury.”⁷ Blackstone, a leading
7 source of early American views about English law, opined that the common law
8 “hath ever had a special care and regard for the conservation of the peace; for peace
9 is the very end and foundation of civil society.”⁸

10 8. In *Bruen*, Justice Kavanaugh reiterated *Heller*’s invocation of
11 Blackstone’s authority as a guide to how early Americans understood their
12 inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous
13 terms that there was a “well established historical tradition of prohibiting the
14 carrying of dangerous and unusual weapons.”⁹ The dominant understanding of
15 *the Empire: The Common Law in Colonial America and the Problem of Legal*
16 *Diversity*, 89 CHI.-KENT L. REV. 937 (2014).

17 ⁵ 9 STATUTES AT LARGE OF PENNSYLVANIA 29-30 (Mitchell & Flanders eds.
18 1903); FRANCOIS XAVIER MARTIN, A COLLECTION OF STATUTES OF THE
19 PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA 60–61
(Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

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

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

23 ⁸ 1 WILLIAM BLACKSTONE, COMMENTARIES *349.

24 ⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–627 (2008), and n. 26.
25 Blackstone and Hawkins, two of the most influential English legal writers consulted
26 by the Founding generation, described these types of limits in slightly different
27 terms. The two different formulations related to weapons described as dangerous
28 and unusual in one case and sometimes as dangerous or unusual in the other
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*

1 the Second Amendment and its state constitutional analogues at the time of their
2 adoption in the Founding period forged an indissoluble link between the right to
3 keep and bear arms with the goal of preserving the peace.¹⁰

4 9. “Constitutional rights,” Justice Scalia wrote in *Heller*, “are enshrined
5 with the scope they were thought to have when the people adopted them.”¹¹
6 Included in this right was the most basic right of all: the right of the people to
7 regulate their own internal police. Although modern lawyers and jurists are
8 accustomed to thinking of state police power, the Founding generation viewed this
9 concept as a right, not a power.¹² The first state constitutions clearly articulated
10 such a right — including it alongside more familiar rights such as the right to bear
11 arms.¹³ Pennsylvania’s Constitution framed this estimable right succinctly: “That

12 _____
13 *Proper’ and ‘Cruel AND Unusual’: Hendiadys in the Constitution*, 102 VIRGINIA L.
REV. 687 (2016).

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

23 ¹¹ *Heller*, 554 U.S. at 634–35; William J. Novak, *Common Regulation: Legal*
24 *Origins of State Power in America*, 45 HASTINGS L.J. 1061, 1081–83 (1994);
25 Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the*
26 *Constitution*, 20 J. POL’Y HIST. 47 (2008).

27 ¹² On the transformation of the Founding era’s ideas about a “police right”
28 into the more familiar concept of “police power,” see generally Aaron T. Knapp,
29 *The Judicialization of Police*, 2 CRITICAL ANALYSIS OF L. 64 (2015); see also
30 MARKUS DIRK DUBBER, THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS
31 OF AMERICAN GOVERNMENT (2005); Christopher Tomlins, *Necessities of State:*
32 *Police, Sovereignty, and the Constitution*, 20 J. OF POL’Y HIST. 47 (2008).

33 ¹³ PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV
34 (1776); N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and VT. DECLARATION OF
35 RIGHTS, art. V (1777).

1 the people of this State have the sole, exclusive and inherent right of governing and
2 regulating the internal police of the same. Thus, if Justice Scalia’s rule applies to
3 the scope of the right to bear arms, it must also apply to the scope of the right of the
4 people to regulate their internal police, a point that Chief Justice Roberts and
5 Justice Kavanaugh have each underscored.¹⁴ The history of gun regulation in the
6 decades after the right to bear arms was codified in both the first state constitutions
7 and the federal bill of rights underscores this important point.

8 10. In the years following the adoption of the Second Amendment and its
9 state analogues, firearm regulation increased. Indeed, the individual states
10 exercised their police powers to address longstanding issues and novel problems
11 created by firearms in American society.

12 **I. THE HISTORICAL INQUIRY REQUIRED BY *BRUEN*, *MCDONALD*, AND**
13 ***HELLER***

14 11. The United States Supreme Court’s decisions in *Heller*, *McDonald*¹⁵,
15 and *Bruen* have directed courts to look to text and history for guideposts in
16 evaluating the scope of permissible firearms regulation under the Second
17 Amendment. In another case involving historical determinations, Justice Thomas,
18 the author of the majority opinion in *Bruen*, has noted that judges must avoid
19 approaching history, text, and tradition with an “ahistorical literalism.”¹⁶ Legal
20 texts must not be read in a decontextualized fashion detached from the web of
21 historical meaning that made them comprehensible to Americans living in the past.

22
23
24 ¹⁴ John Roberts, Transcript of Oral Argument at 44, *Heller*, 554 U.S. 570;
25 *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1270 (D.C. Cir. 2011)
(Kavanaugh, J., dissenting); Joseph S. Hartunian, Gun Safety in the Age of
Kavanaugh 117 *Michigan Law Review* online 104 (2019).

26 ¹⁵ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

27 ¹⁶ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019)
28 (Thomas, J.) (criticizing “ahistorical literalism”).

1 Instead, understanding the public meaning of constitutional texts requires a solid
2 grasp of the relevant historical contexts.¹⁷

3 12. Following the mandates set out in *Heller*, *McDonald* and more recently
4 in *Bruen*, history provides essential guideposts in evaluating the scope of
5 permissible regulation under the Second Amendment.¹⁸ Moreover, as *Bruen* makes
6 clear, history neither imposes “a regulatory straightjacket nor a regulatory blank
7 check.”¹⁹ The Court acknowledged that when novel problems created by firearms
8 are issue the analysis must reflect this fact: “other cases implicating unprecedented
9 societal concerns or dramatic technological changes may require a more nuanced
10 approach.” *Bruen* differentiates between cases in which contested regulations are
11 responses to long standing problems and situations in which modern regulations
12 address novel problems with no clear historical analogues from the Founding era or
13 the era of the Fourteenth Amendment.

14 13. In the years between *Heller* and *Bruen*, historical scholarship has
15 expanded our understanding of the history of arms regulation in the Anglo-
16 American legal tradition, but much more work needs to be done to fill out this
17 picture.²⁰ Indeed, such research is still ongoing: new materials continue to emerge;
18 and in the months since *Bruen* was decided, additional evidence about the history of
19 regulation has surfaced and new scholarship interpreting it has appeared in leading
20 law reviews and other scholarly venues.²¹

21 ¹⁷ See Jonathan Gienapp, *Historicism and Holism: Failures of Originalist*
22 *Translation*, 84 FORDHAM L. REV. 935 (2015).

23 ¹⁸ *Bruen*, 142 S. Ct. 2111.

24 ¹⁹ *Id.*

25 ²⁰ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of*
Second Amendment Law & Policy, 80 L. & CONTEMP. PROBS. 1 (2017).

26 ²¹ *Symposium — The 2nd Amendment at the Supreme Court: “700 Years Of*
27 *History” and the Modern Effects of Guns in Public*, 55 U.C. DAVIS L. REV. 2495
28 (2022); NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE
OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob D. Charles &

1 14. Justice Kavanaugh underscored a key holding of *Heller* in his *Bruen*
2 concurrence: “Like most rights, the right secured by the Second Amendment is not
3 unlimited. From Blackstone through the 19th-century cases, commentators and
4 courts routinely explained that the right was not a right to keep and carry any
5 weapon whatsoever in any manner whatsoever and for whatever purpose.”
6 Crucially, the Court further noted that “we do think that *Heller* and *McDonald* point
7 toward at least two metrics: how and why the regulations burden a law-abiding
8 citizen’s right to armed self-defense.”²²

9 15. One overarching principle regarding firearms regulation does
10 emerge from this period and it reflects not only the common law assumptions
11 familiar to the Founding generation, but it is hard-wired into the Second
12 Amendment itself. As Justice Scalia noted in *Heller*, and Justice Thomas reiterated
13 in *Bruen*, the original Second Amendment was a result of interest balancing
14 undertaken by the people themselves in framing the federal Constitution and the
15 Bill of Rights. Although “free-standing balancing” is precluded by *Heller*, the plain
16 meaning of the Amendment’s text recognizes a role for regulation explicitly and
17 further underscores that actions inimical to a free state fall outside of the scope of
18 the right instantiated in the text.²³ Thus, from its outset the Second Amendment
19 recognizes both the right to keep and bear arms and the right of the people to
20 regulate arms to promote the goals of preserving a free state. An exclusive focus on
21 rights and a disparagement of regulation is thus antithetical to the plain meaning of
22 the text of the Second Amendment. Although rights and regulation are often cast as
23 antithetical in the modern gun debate, the Founding generation saw the two goals as
24 complimentary.

25
26 _____
27 Darrell A.H. Miller eds., forthcoming 2023).

28 ²² *Bruen*, 142 S. Ct. at 2132–33.

²³ U.S. Const. amend. II.

1 16. Comparing the language of the Constitution’s first two amendments
2 and their different structures and word choice makes this point crystal clear. The
3 First Amendment prohibits “abridging” the rights it protects. In standard American
4 English in the Founding era, to “abridge” meant to “reduce.” Thus, the First
5 Amendment prohibits a diminishment of the rights it protects. The Second
6 Amendment’s language employs a very different term, requiring that the right to
7 bear arms not be “infringed.”²⁴ In Founding-era American English, the word
8 “infringement” meant to “violate” or “destroy.” In short, when read with the
9 Founding era’s interpretive assumptions and legal definitions in mind, the two
10 Amendments set up radically different frameworks for evaluating the rights they
11 enshrined in constitutional text. Members of the Founding generation would have
12 understood that the legislature could regulate the *conduct* protected by the Second
13 Amendment and comparable state arms bearing provisions as long as such
14 regulations did not destroy the underlying *right*.

15 17. John Burn, author of an influential eighteenth-century legal dictionary,
16 illustrated the concept of infringement in the context of his discussion of violations
17 of rights protected by the common law. Liberty, according to Burns, was not
18 identical to that “wild and savage liberty” of the state of nature. True liberty, by
19 contrast, only existed when individuals created civil society and enacted laws and
20 regulations that promoted *ordered* liberty.²⁵

21 ²⁴ The distinction emerges clearly in a discussion of natural law and the law
22 of nations in an influential treatise on international law much esteemed by the
23 Founding generation: “Princes who infringe the law of nations, commit as great a
24 crime as private people, who violate the law of nature,” J.J. BURLAMAQUI, THE
25 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>.

26 ²⁵ *Liberty*, A NEW LAW DICTIONARY (1792) *See also*, Jud Campbell,
27 *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW &
28 CONTEMP. PROBS. 31, 32–33 (2020)

1 18. Similarly, Nathan Bailey’s *Dictionarium Britannicum* (1730) defined
2 “abridge” as to “shorten,” while “infringe” was defined as to “break a law.”²⁶ And
3 his 1763 *New Universal Dictionary* repeats the definition of “abridge” as “shorten”
4 and “infringe” as “to break a law, custom, or privilege.”²⁷ Samuel Johnson’s
5 *Dictionary of the English Language* (1755) defines “infringe” as “to violate; to
6 break laws or contracts” or “to destroy; to hinder.”²⁸ Johnson’s definition of
7 “abridge” was “to shorten” and “to diminish” or “to deprive of.”²⁹ And Noah
8 Webster’s *An American Dictionary of the English Language* (1828) largely repeats
9 Johnson’s definitions of “infringe” and “abridge.”³⁰ Copies of these dictionary
10 entries are attached hereto as Exhibit 2. Although today the two terms are conflated
11 by some, the meanings of abridge and infringe were and remain distinct. The
12 Founding generation was far more nuanced in distinguishing between the
13 differences between these two terms.

14 19. Regulation, including robust laws, were not understood to be an
15 “infringement” of the right to bear arms, but rather the necessary foundation for the
16 proper exercise of that right as required by the concept of ordered liberty.³¹ As one

17 ²⁶ *Abridge*, DICTIONARIUM BRITANNICUM (1730).

18 ²⁷ *Abridge*, NEW UNIVERSAL DICTIONARY (1763).

19 ²⁸ *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

20 ²⁹ *Abridge*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

21 ³⁰ *Abridge, Infringe*, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE
(1828).

22 ³¹ Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of*
23 *Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). *See generally*
24 GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY,*
25 *EXCLUSION, AND THE FALL OF THE FOUNDERS’ CONSTITUTION, 1780s–1830s*, at 2;
26 Victoria Kahn, *Early Modern Rights Talk*, 13 YALE J.L. & HUMAN. 391 (2001)
27 (discussing how the early modern language of rights incorporated aspects of natural
28 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).

1 patriotic revolutionary era orator observed, almost a decade after the adoption of the
2 Constitution: “True liberty consists, not in having *no government*, not in a
3 *destitution of all law*, but in our having an equal voice in the formation and
4 execution of the laws, according as they effect [*sic*] our persons and property.”³²
5 By allowing individuals to participate in politics and enact laws aimed at promoting
6 the health, safety, and well-being of the people, liberty flourished.³³

7 20. The key insight derived from taking the Founding era conception of
8 rights seriously and applying the original understanding of the Founding era’s
9 conception of liberty is the recognition that regulation and liberty were not
10 antithetical to one another. The inclusion of rights guarantees in constitutional texts
11 was not meant to place them beyond the scope of legislative control. “The point of
12 retaining natural rights,” originalist scholar Jud Campbell reminds us “was not to
13 make certain aspects of natural liberty immune from governmental regulation.
14 Rather, retained natural rights were aspects of natural liberty that could be restricted
15 only with just cause and only with consent of the body politic.”³⁴ Rather than limit
16 rights, regulation was the essential means of preserving rights, including self-
17 defense.³⁵ In fact, without robust regulation of arms, it would have been impossible

18 ³² Joseph Russell, *An Oration; Pronounced in Princeton, Massachusetts, on*
19 *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).

20 ³³ See generally QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998)
21 (examining neo-Roman theories of free citizens and how it impacted the
22 development of political theory in England); THE NATURE OF RIGHTS AT THE
23 AMERICAN FOUNDING AND BEYOND (Barry Alan Shain ed., 2007) (discussing how
the Founding generation approached rights, including the republican model of
protecting rights by representation).

24 ³⁴ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L.
25 REV. 517, 527 (2019) (emphasis in original). See generally Saul Cornell, *Half*
26 *Cocked: The Persistence of Anachronism and Presentism in the Academic Debate*
27 *Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206
(2016) *s* (noting that the Second Amendment was not understood in terms of the
simple dichotomies that have shaped modern debate over the right to bear arms).

28 ³⁵ See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15

1 to implement the Second Amendment and its state analogues. Mustering the militia
2 required keeping track of who had weapons and included the authority to inspect
3 those weapons and fine individuals who failed to store them safely and keep them
4 in good working order.³⁶ The individual states also imposed loyalty oaths,
5 disarming those who refused to take such oaths. No state imposed a similar oath as
6 pre-requisite to the exercise of First Amendment-type liberties. Thus, some forms
7 of prior restraint, impermissible in the case of expressive freedoms protected by the
8 First Amendment or comparable state provisions, were understood by the Founding
9 generation to be perfectly consistent with the constitutional right to keep and bear
10 arms.³⁷

11 21. In keeping with the clear public meaning of the Second Amendment's
12 text and comparable state provisions, early American governments enacted laws to
13 preserve the rights of law-abiding citizens to keep and bear arms and promote the
14 equally vital goals of promoting public safety. As long as such laws did not destroy
15 the right of self-defense, the individual states enjoyed broad latitude to regulate
16 arms.³⁸

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

24 ³⁶ H. RICHARD UVILLER & WILLIAM G. MERKEL, THE MILITIA AND THE
25 RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT 150 (2002).

26 ³⁷ Saul Cornell, *Commonplace or Anachronism: The Standard Model, the*
27 *Second Amendment, and the Problem of History in Contemporary Constitutional*
28 *Theory* 16 CONSTITUTIONAL COMMENTARY 988 (1999).

³⁸ Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early*

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

22. Guns have been regulated from the dawn of American history.³⁹ At the time *Heller* was decided, there was little scholarship on the history of gun regulation and a paucity of quality scholarship on early American gun culture.⁴⁰ Fortunately, a burgeoning body of scholarship has illuminated both topics, deepening scholarly understanding of the relevant contexts needed to implement *Bruen*'s framework.⁴¹

23. The common law that Americans inherited from England always acknowledged that the right of self-defense was not unlimited but existed within a well-delineated jurisprudential framework. The entire body of the common law was designed to preserve the peace.⁴² Statutory law, both in England and America functioned to further secure the peace and public safety. Given these indisputable facts, the Supreme Court correctly noted, the right to keep and bear arms was never understood to prevent government from enacting a broad range of regulations to promote the peace and maintain public safety.⁴³ To deny such an authority would be to convert the Constitution into a suicide pact and not a charter of government. In keeping with this principle, the Second Amendment and its state analogues were understood to enhance the concept of ordered liberty, not undermine it.⁴⁴

American Origins of Gun Control, 73 FORDHAM L. REV. 487 (2004).

³⁹ Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 L. & CONTEMP. PROBS. 55 (2017).

⁴⁰ *Id.*

⁴¹ Ruben & Miller, *supra* note 20, at 1.

⁴² 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).

⁴³ *McDonald*, 561 U.S. at 785 (noting “[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment”).

⁴⁴ *See generally* Saul Cornell, *The Long Arc Of Arms Regulation In Public:*

24. *Bruen*'s methodology requires judges to distinguish between the relevant history necessary to understand early American constitutional texts and a series of myths about guns and regulation that were created by later generations to sell novels, movies, and guns themselves.⁴⁵ Unfortunately, many of these myths continue to cloud legal discussions of American gun policy and Second Amendment jurisprudence.⁴⁶

25. Although it is hard for many modern Americans to grasp, there was no comparable societal ill to the modern gun violence problem for Americans to solve in the era of the Second Amendment. A combination of factors, including the nature of firearms technology and the realities of living life in small, face-to-face, and mostly homogenous rural communities that typified many parts of early America, militated against the development of such a problem. In contrast to modern America, homicide was not the problem that government firearm policy needed to address at the time of the Second Amendment.⁴⁷

26. The surviving data from New England is particularly rich and has allowed scholars to formulate a much better understanding of the dynamics of early American gun policy and relate it to early American gun culture.⁴⁸ Levels of gun

From Surety To Permitting, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)

⁴⁵ PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF AMERICAN GUN CULTURE* (2016).

⁴⁶ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA* (1993); JOAN BURBICK, *GUN SHOW NATION: GUN CULTURE AND AMERICAN DEMOCRACY* (2006).

⁴⁷ RANDOLPH ROTH, *AMERICAN HOMICIDE* 56, 315 (2009).

⁴⁸ It is important to recognize that there were profound regional differences in early America. *See* JACK P. GREENE, *PURSUITS OF HAPPINESS: THE SOCIAL DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF AMERICAN CULTURE* (1988). These differences also had important consequences for the evolution of American law. *See generally* David Thomas Konig, *Regionalism in Early American Law*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

1 violence among those of white European ancestry in the era of the Second
2 Amendment were relatively low compared to modern America. These low levels of
3 violence among persons of European ancestry contrasted with the high levels of
4 violence involving the tribal populations of the region. The data presented in
5 Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth.
6 It captures one of the essential facts necessary to understand what fears motivated
7 American gun policy in the era of the Second Amendment. The pressing problem
8 Americans faced at the time of the Second Amendment was that citizens were
9 reluctant to purchase military style weapons which were relatively expensive and
10 had little utility in a rural society. Americans were far better armed than their
11 British ancestors, but the guns most Americans owned and desired were those most
12 useful for life in an agrarian society: fowling pieces and light hunting muskets.⁴⁹
13 Killing pests and hunting birds were the main concern of farmers, and their choice
14 of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols
15 were of limited utility for anyone outside of a small elite group of wealthy,
16 powerful, and influential men who needed these weapons if they were forced to
17 face an opponent on the field of honor in a duel, as the tragic fate of Alexander
18 Hamilton so vividly illustrates.⁵⁰

19 27. Limits in Founding-era firearms technology also militated against the
20 use of guns as effective tools of interpersonal violence in this period. Eighteenth-
21 century muzzle-loading weapons, especially muskets, took too long to load and
22 were therefore seldom used to commit crimes. Nor was keeping guns loaded a
23 viable option because the black powder used in these weapons was not only

24 ⁴⁹ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and*
25 *Eighteenth Century England and America*, in *A RIGHT TO BEAR ARMS?: THE*
26 *CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND*
AMENDMENT (Jennifer Tucker et al. eds., 2019).

27 ⁵⁰ Joanne B. Freeman, *AFFAIRS OF HONOR: NATIONAL POLITICS IN THE NEW*
28 *REPUBLIC* (2001).

corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles and muskets hung over the mantle place in early American homes was not primarily a function of aesthetics or the potent symbolism of the hearth, as many today assume. As historian Roth notes: “black powder’s hygroscopic, it absorbs water, it corrodes your barrel, you can’t keep it loaded. Why do they always show the gun over the fireplace? Because that’s the warmest, driest place in the house.”⁵¹ Similar problems also limited the utility of muzzle-loading pistols as practical tools for self-defense or criminal offenses. Indeed, at the time of the Second Amendment, over 90% of the weapons owned by Americans were long guns, not pistols.⁵²

Figure 1

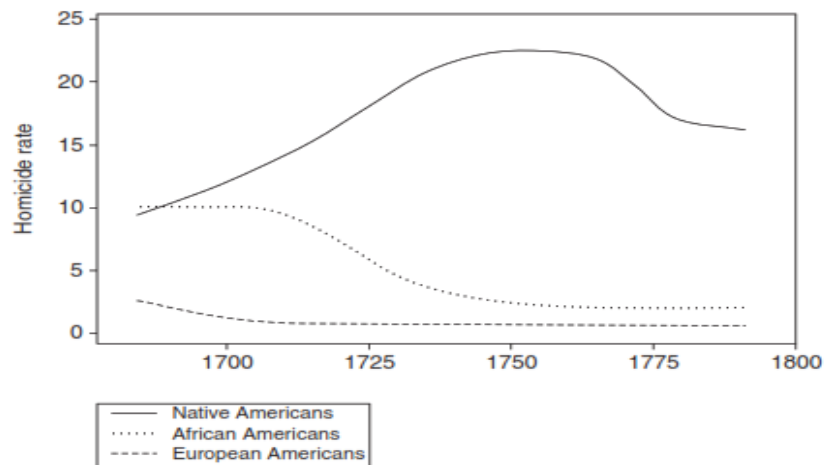


Figure 2.3 Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

28. As Roth’s data makes clear, there was not a serious homicide problem looming over debates about the Second Amendment. Nor were guns the primary

⁵¹ Randolph Roth, Transcript: *Why is the United States the Most Homicidal in the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013), <https://nij.ojp.gov/media/video/24061#transcript--0>.

⁵² Sweeney, *supra* note 49.

1 weapon of choice for those with evil intent during this period.⁵³ The skill and time
2 required to load and fire flintlock muzzle loading black powder weapons meant that
3 they were less likely to be used in crimes of passion. The preference for storing
4 them unloaded also meant they posed fewer dangers to children from accidental
5 discharge.

6 29. The Founding generation did not confront a gun violence problem
7 similar in nature or scope to the ills that plague modern America. The Founding
8 generation faced a different, but no less serious problem, American reluctance to
9 purchase the type of weapons needed to effectively arm their militias. Despite
10 repeated efforts to exhort and legislate to promote this goal, many states were
11 failing to adequately equip the militia with suitable firearms that could withstand
12 the rigors of the type of close-quarters hand-to-hand combat required by military
13 tactics. A gun had to be able to receive a bayonet and serve as a bludgeon if
14 necessary. The light weight guns favored by the overwhelmingly rural population
15 of early America were well designed to put food on the table and rid fields of
16 vermin, but were not well suited to eighteenth-century ground wars. When the U.S.
17 government surveyed the state of the militia's preparedness shortly after Jefferson
18 took office in 1800, the problem had not been solved. Although Massachusetts
19 boasted above 80% of its militia armed with military quality weapons, many of the
20 southern states lagged far behind, with Virginia and North Carolina hovering at
21 about less than half the militia properly armed.⁵⁴

22 30. Government policy, both at the state and federal level, responded to
23 these realities by requiring a subset of white citizens, those capable of bearing arms,
24 to acquire at their own expense a military quality musket and participate in
25 mandatory training and other martial activities. Gun policy in the Founding era
26

27 ⁵³ HAAG, *supra* note 45.

28 ⁵⁴ Sweeney, *supra* note 49.

1 reflected these realities, and accordingly, one must approach any analogies drawn
2 from this period's regulations with some caution when applying them to a modern
3 heterogeneous industrial society capable of producing a bewildering assortment of
4 firearms whose lethality would have been almost unimaginable to the Founding
5 generation.⁵⁵ Put another way, laws created for a society without much of a gun
6 violence problem enacted at a time of relative gun scarcity, at least in terms of
7 militia weapons, have limited value in illuminating the challenges Americans face
8 today.

9 31. Another aspect of Founding era gun policy that needs to be
10 acknowledged is the active role that government took in encouraging the
11 manufacturing of arms. The American firearms industry in its infancy was largely
12 dependent on government contracts and subsidies. Thus, government had a vested
13 interest in determining what types of weapons would be produced. Government
14 regulation of the firearms industry also included the authority to inspect the
15 manufactures of weapons and impose safety standards on the industry.

16 32. As business historian Lindsay Schakenbach Regele notes, "by 1810,
17 western Massachusetts produced more small arms than anywhere else in the
18 Northeast."⁵⁶ Beginning in 1794 the federal armory in Springfield, Massachusetts
19 served as a spur to technological innovation in the region. In the years following
20 the War of 1812, the Armory served as an incubator for other local producers and
21 gunsmiths, so much so that one Pittsfield gunsmith, Lemuel Pomeroy praised the
22 federal government for its actions which encouraged gunsmiths "to fabricate arms
23

24 ⁵⁵ Darrell A. H. Miller & Jennifer Tucker, *Common Use, Lineage, and*
25 *Lethality*, 55 U.C. DAVIS L. REV. 2495 (2022).

26 ⁵⁶ Lindsay Schakenbach Regele, *A Different Constitutionality for Gun*
27 *Regulation*, 46 HASTINGS CONST. L.O. 523, 524 (2019); Andrew J. B. Fagal,
28 *American Arms Manufacturing and the Onset of the War of 1812*, 87 NEW ENG. Q.
526, 526 (2014).

1 of the first quality.”⁵⁷ The Springfield Armory’s output accounted for most of the
2 guns produced in the state.

3 33. In 1805, Massachusetts enacted a law requiring all guns, before sale,
4 to be inspected, marked, and stamped by an inspector. The state revised the proof
5 statute two more times in the decades leading up to the Civil War.⁵⁸ These
6 requirements ensured that the guns sold to the public were safe and suitable for
7 use. Although the guns produced by the Springfield Armory were not subject to
8 state law, because they were under federal control, these arms were nonetheless
9 subjected to thorough testing and were stamped as well. Indeed, the fact that these
10 arms had undergone a rigorous testing and evaluation process became a major
11 selling point that was advertised to increase their value and desirability as surplus
12 military arms in the booming consumer market for guns that exploded in the
13 decades after the War of 1812.⁵⁹

14 34. The calculus of individual self-defense changed dramatically in the
15 decades following the adoption of the Second Amendment.⁶⁰ The early decades of
16 the nineteenth century witnessed a revolution in the production and marketing of
17 guns.⁶¹ The same technological changes and economic forces that made wooden
18

19 ⁵⁷ Lindsay Schakenbach Regele, *MANUFACTURING ADVANTAGE: WAR, THE*
20 *STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776–1848* (2019) at 65-66.

21 ⁵⁸ 1805 Mass. Acts 588, An Act to Provide for the Proof of Fire Arms
22 Manufactured Within This Commonwealth, Ch. 35. A copy of this law is attached
23 hereto as Exhibit 3. The law was revised in 1837 and later in 1859, see Chap 49,
24 Sec. 27 (Firearms), General Statutes of the Commonwealth of Massachusetts:
25 Revised by Commissioners Appointed under a Resolve of February 16, 1855,
26 Amended by the Legislature, and Passed December 28, 1859 (1860).

27 ⁵⁹ Lindsay Schakenbach Regele, *Guns for the Government: Ordnance, the Military*
28 *‘Peacetime Establishment,’ and Executive Governance in the Early Republic*
34 *STUDIES IN AMERICAN POLITICAL DEVELOPMENT* 132, 145 (2020).

⁶⁰ Cornell, *supra* note 3, at 745.

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

1 clocks and other consumer goods such as Currier and Ives prints common items in
2 many homes also transformed American gun culture.⁶² These same changes also
3 made handguns and a gruesome assortment of deadly knives, including the dreaded
4 Bowie knife, more common. The culmination of this gradual evolution in both
5 firearms and ammunition technology was the development of Samuel Colt's pistols
6 around the time of the Mexican-American War.⁶³ Economic transformation was
7 accompanied by a host of profound social changes that gave rise to America's first
8 gun violence crisis. As cheaper, more dependable, and easily concealable handguns
9 proliferated in large numbers, Americans, particularly southerners, began sporting
10 them with alarming regularity. The change in behavior was most noticeable in the
11 case of handguns.⁶⁴

12 35. The response of states to the emergence of new firearms that
13 threatened the peace was a plethora of new laws. In sort, when faced with changes
14 in technology, consumer behavior, and faced with novel threats to public safety, the
15 individual states enacted laws to address these problems. In every instance apart
16 from a few outlier cases in the Slave South, courts upheld such limits on the
17 unfettered exercise a right to keep and bear arms. The primary limit identified by
18 courts in evaluating such laws was the threshold question about abridgement: did
19 the law negate the ability to act in self-defense.⁶⁵ In keeping with the clear
20 imperative hard-wired into the Second Amendment, states singled out weapons that
21 posed a particular danger for regulation or prohibition. Responding in this fashion

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

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

26 ⁶⁴ Cornell, *supra* note 3, 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 was entirely consistent with Founding-era conceptions of ordered liberty and the
2 Second Amendment.

3 36. Not all guns were treated equally by the law in early America. Some
4 guns were given heightened constitutional protection and others were treated as
5 ordinary property subject to the full force of state police power authority.⁶⁶ The
6 people themselves acting through their legislatures retained the fundamental right to
7 determine which dangerous weapons were exempted from the full protection of the
8 constitutional right to keep and bear arms. The antebellum case law examined by
9 *Heller* makes clear that the metric used by courts to evaluate laws was simple and
10 reflected the concept of infringement. Laws that undermined the right of self-
11 defense were generally struck down, regulations that limited but did not destroy the
12 right were upheld.⁶⁷

13 37. Some states opted to tax some common weapons to discourage their
14 proliferation.⁶⁸

15 ⁶⁶ Saul Cornell, *History and Tradition or Fantasy and Fiction: Which*
16 *Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?*, 49
HASTINGS CONST. L.Q. 145 (2022).

17 ⁶⁷ The best illustration of this rule is *Reid*, discussed by *Heller* at 629.

18 ⁶⁸ 1858-1859 N.C. Sess. Laws 34-36, Pub. Laws, An Act Entitled Revenue,
19 chap. 25, § 27, pt. 15. (“The following subjects The following subjects shall be
20 annually listed, and be taxed the amounts specified: . . . Every dirk, bowie-knife,
21 pistol, sword-cane, dirk-cane and rifle cane, used or worn about the person of any
22 one at any time during the year, one dollar and twenty-five cents. Arms used for
23 mustering shall be exempt from taxation.”). Anderson Hutchinson, *Code of*
24 *Mississippi: Being an Analytical Compilation of the Public and General Statutes of*
25 *the Territory and State, with Tabular References to the Local and Private Acts, from*
26 *1798 to 1848 : With the National and State Constitutions, Cessions of the Country*
27 *by the Choctaw and Chickasaw Indians, and Acts of Congress for the Survey and*
28 *Sale of the Lands, and Granting Donations Thereof to the State (1848) at 182. See*
also 1866 Ga. Law 27, An Act to authorize the Justices of the Inferior Courts of
Camden, Glynn and Effingham counties to levy a special tax for county purposes,
and to regulate the same.

38. In particular not all hand guns were created equal in the eyes of the law. During Reconstruction a number of states prohibited guns that were deemed to pose a particular risk because they were easily concealed.⁶⁹

III. THE POLICE POWER AND FIREARMS REGULATION

39. The 1776 Pennsylvania Constitution, the first revolutionary constitution to assert a right to bear arms, preceded the assertion of this right by affirming a more basic rights claim: “That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.”⁷⁰ The phrase “internal police” had already become common, particularly in laws establishing towns and defining the scope of their legislative authority.⁷¹ By the early nineteenth century, the term “police” was a fixture in American law.⁷² Thus, an 1832 American encyclopedia confidently asserted that police, “in the common acceptance of the word, in the U. States and England, is applied to the municipal rules, institutions and officers provided for maintaining order, cleanliness &c.”⁷³ The Founding era’s conception of a basic police right located in legislatures

⁶⁹ 1879 Tenn. Pub. Acts 135-36, An Act to Prevent the Sale of Pistols, chap. 96, § 1; 1881 Ark. Acts 192, An Act to Preserve the Public Peace and Prevent Crime, ch. XCVI (96), § 3.

⁷⁰ PA. CONST. OF 1776, Ch. I, art iii.

⁷¹ For other examples of constitutional language similar to Pennsylvania’s provision, N.C. CONST. OF 1776, DECLARATION OF RIGHTS, art. II; VT. CONST. OF 1777, DECLARATION OF RIGHTS, art. IV. For other examples of this usage, *see* An Act Incorporating the residents residing within limits therein mentioned, *in* 2 NEW YORK LAWS 158 (1785) (establishing the town of Hudson, NY); An Act to incorporate the Town of Marietta, *in* LAWS PASSED IN THE TERRITORY NORTHWEST OF THE RIVER OHIO 29 (1791). For later examples, *see* 1 STATUTES OF THE STATE OF NEW JERSEY 561 (rev. ed. 1847); 1 SUPPLEMENTS TO THE REVISED STATUTES. LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, PASSED SUBSEQUENTLY TO THE REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S. Cushing, eds. 1849).

⁷² ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS 2, n.2 (1904).

⁷³ 10 ENCYCLOPEDIA AMERICANA 214 new edition (Francis Lieber ed.).

1 was transmuted during the Marshall Court’s era into the judicial doctrine of the
2 police power and would become a fixture in American law.

3 40. The power to regulate firearms and gunpowder has always been
4 central to the police power and historically was shared among states, local
5 municipalities, and the federal government when it was legislating conduct on
6 federal land and in buildings.⁷⁴ The adoption of the Constitution and the Bill of
7 Rights did not deprive states of their police powers. Indeed, if it had, the
8 Constitution would not have been ratified and there would be no Second
9 Amendment today. Ratification was only possible because Federalists offered
10 Anti-Federalists strong assurances that nothing about the new government
11 threatened the traditional scope of the individual state’s police power authority,
12 including the authority to regulate guns and gun powder.⁷⁵

13 41. Federalists and Anti-Federalists bitterly disagreed over many legal
14 issues, but this one point of accord was incontrovertible. Brutus, a leading Anti-
15 Federalist, emphatically declared that “[I]t ought to be left to the state governments
16 to provide for the protection and defence [sic] of the citizen against the hand of
17 private violence, and the wrongs done or attempted by individuals to each other
18”⁷⁶ Federalist Tench Coxe concurred, asserting that: “[t]he states will regulate
19 and administer the criminal law, exclusively of Congress.” States, he assured the
20 American people during ratification, would continue to legislate on all matters
21 related to the police power “such as unlicensed public houses, nuisances, and many
22
23

24 ⁷⁴ Harry N. Scheiber, *State Police Power*, in 4 ENCYCLOPEDIA OF THE
25 AMERICAN CONSTITUTION 1744 (Leonard W. Levy et al. eds., 1986).

26 ⁷⁵ Saul Cornell, *THE OTHER FOUNDERS: ANTIFEDERALISM AND THE
27 DISSENTING TRADITION IN AMERICA, 1788-1828* (1999).

28 ⁷⁶ Brutus, *Essays of Brutus VII*, reprinted in 2 THE COMPLETE
ANTIFEDERALIST 358, 400–05 (Herbert J. Storing ed., 1981).

1 other things of the like nature.”⁷⁷ State police power authority was at its pinnacle in
2 matters relating to guns or gun powder.⁷⁸

3 42. Every aspect of the manufacture, sale, and storage of gun powder was
4 regulated due to the substance’s dangerous potential to detonate if exposed to fire or
5 heat. Firearms were also subject to a wide range of regulations, including laws
6 pertaining to the manufacture, sale, and storage of weapons.⁷⁹

7 43. Thus, Massachusetts enacted a law that prohibited storing a loaded
8 weapon in a home, a firearms safety law that recognized that the unintended
9 discharge of firearms posed a serious threat to life and limb.⁸⁰ New York City even
10 granted broad power to the government to search for gun powder and transfer
11 powder to the public magazine for safe storage:

12 it shall and may be lawful for the mayor or recorder, or any two
13 Alderman of the said city, upon application made by any inhabitant or
14 inhabitants of the said city, and upon his or their making oath of
15 reasonable cause of suspicion (of the sufficiency of which the said
16 mayor or recorder, or Aldermen, is and are to be the judge or judges)
17 to issue his or their warrant or warrants, under his or their hand and
18 seal, or hands and seals for searching for such gun powder, in the day
19 time, in any building or place whatsoever.⁸¹

19 ⁷⁷ Tench Coxe, A Freeman, *Pa. Gazette*, Jan. 23, 1788, reprinted in FRIENDS
20 OF THE CONSTITUTION: WRITINGS OF THE “OTHER” FEDERALISTS 82 (Colleen A.
21 Sheehan & Gary L. McDowell eds., 1998).

21 ⁷⁸ CORNELL, *supra* note 35.

22 ⁷⁹ Cornell and DeDino, *supra* note 38; public carry by contrast was limited
23 by common law and criminal statutes, see, Cornell, *supra* note 42.

24 ⁸⁰ Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to
25 the Several Acts Already Made for the Prudent Storage of Gun Powder within the
26 Town of Boston, § 2. A copy of this law is attached hereto as Exhibit 4.

27 ⁸¹ An Act to Prevent the Storing of Gun Powder, within in Certain Parts of
28 New York City, 2 LAWS OF THE STATE OF NEW-YORK, COMPRISING THE
CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION,
FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE at 191-2 (Thomas
Greenleaf, ed., 1792). A copy of this law is attached hereto as Exhibit 5.

1 44. The power to regulate firearms and gunpowder was therefore at the
2 very core of the police power and inheres in both states and local municipalities.
3 The application of the police power to firearms and ammunition was singled out as
4 the quintessential example of state police power by Chief Justice John Marshall in
5 his 1827 discussion of laws regulating gun powder in *Brown v. Maryland*.⁸² This
6 was so even though gunpowder was essential to the operation of firearms at that
7 time and gun powder regulations necessarily affected the ability of gun owners to
8 use firearms for self-defense, even inside the home.

9 45. A slow process of judicializing this concept of police, transforming the
10 Founding era's idea of a "police right" into a judicially enforceable concept of the
11 "police power" occurred beginning with the Marshall Court and continuing with the
12 Taney Court.⁸³

13 46. Nor was Chief Justice John Marshall unique in highlighting the
14 centrality of this idea to American law.⁸⁴ The ubiquity of the police power
15 framework for evaluating the constitutionality of legislation regarding firearms
16 reflected the centrality of this approach to nearly every question of municipal
17

18 ⁸² 25 U.S. (12 Wheat.) 419, 442-43 (1827) ("The power to direct the removal
19 of gunpowder is a branch of the police power").

20 ⁸³ Eras of Supreme Court history are typically defined by the tenure of the
21 Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief
22 overview, see "The Marshall Court, 1801-1835", SUPREME COURT HISTORICAL
23 SOCIETY (last visited Oct. 5, 2022), [https://supremecourthistory.org/history-of-the-
24 court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-
court-1801-1835/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/). The Taney Court period covered the years 1836-1864. See "The
25 Taney Court, 1836-1864", SUPREME COURT HISTORICAL SOCIETY (last visited Oct.
26 5, 2022), [https://supremecourthistory.org/history-of-the-
27 courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/](https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/).

28 ⁸⁴ In the extensive notes he added as editor of the 12th edition of James Kent's
classic *Commentaries an American Law*, Oliver Wendell Holmes, Jr., wrote that
regulation of firearms was the *locus classicus* of the police power. See 2 JAMES
KENT COMMENTARIES ON AMERICAN LAW (340) 464 n.2 (Oliver Wendell Holmes,
Jr., ed. 12 ed. 1873).

1 legislation touching health or public safety in early America.⁸⁵ Massachusetts
2 Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era
3 elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*; a
4 decision that became a foundational text for lawyers, judges, and legislators looking
5 for guidance on the meaning and scope of the police power. Shaw described the
6 police power in the following manner:

7 [T]he power vested in the legislature by the constitution, to make,
8 ordain and establish all manner of wholesome and reasonable laws,
9 statutes and ordinances, either with penalties or without, not
10 repugnant to the constitution, as they shall judge to be for the good
11 and welfare of the commonwealth, and of the subjects of the same.
12 It is much easier to perceive and realize the existence and sources
13 of this power, than to mark its boundaries, or prescribe limits to its
14 exercise. There are many cases in which such a power is exercised
15 by all well-ordered governments, and where its fitness is so
16 obvious, that all well regulated minds will regard it as reasonable.
17 Such are the laws to prohibit the use of warehouses for the storage
18 of gunpowder.⁸⁶

14 47. In short, there was unanimous agreement among leading antebellum
15 jurists, at both the federal and state level, that the regulation of arms and gun
16 powder was at the core of the police power enjoyed by legislatures. Indeed, the
17 scope of government power to regulate, prohibit, and inspect gunpowder has been
18 among the most far reaching of any exercise of the police power throughout
19

22 ⁸⁵ FREUND, *supra* note 72, at 2, n.2 (1904). WILLIAM J. NOVAK, *THE PEOPLE'S*
23 *WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996);
24 Christopher Tomlins, *To Improve the State and Condition of Man: The Power to*
25 *Police and the History of American Governance*, 53 *BUFF. L. REV.* 1215 (2005);
26 DUBBER, *supra* note 12; GARY GERSTLE, *LIBERTY AND COERCION: THE PARADOX OF*
27 *AMERICAN GOVERNMENT, FROM THE FOUNDING TO THE PRESENT* (Princeton Univ.
28 Press, 2015).

26 ⁸⁶ *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53 (1851). For another good
27 discussion of how state jurisprudence treated the concept, see *Thorpe v. Rutland*, 27
28 Vt. 140, 149 (1855).

American history.⁸⁷ A Maine law enacted in 1821 authorized town officials to enter any building in town to search for gun powder:

Be it further enacted, That it shall, and may be lawful for any one or more of the selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefore according to law.⁸⁸

48. No jurisdiction enumerated the full contours of the police power they possessed in a single text or in a single statute or ordinance. Rather, it was well understood that the exercise of this power would need to adapt to changing circumstances and new challenges as they emerged. This conception of law was familiar to most early American lawyers and judges who had been schooled in common law modes of thinking and analysis.⁸⁹ Throughout the long sweep of Anglo-American legal history, government applications of the police power were marked by flexibility, allowing local communities to adapt to changing circumstances and craft appropriate legislation to deal with the shifting challenges they faced.⁹⁰ This vision of the police power was articulated forcefully by the Supreme Court in the License Cases when Justice McClean wrote this about the scope of state police power:

It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. In the progress of population, of wealth, and of civilization, new and vicious indulgences spring up, which require restraints that can only be imposed by new legislative power.

⁸⁷ CORNELL, THE POLICE POWER, *supra* note 35.

⁸⁸ 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 5. A copy of this law is attached hereto as Exhibit 6.

⁸⁹ KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN AMERICA, 190-1900: LEGAL THOUGHT BEFORE MODERNISM (2013).

⁹⁰ William J. Novak, *A State of Legislatures*, 40 POLITY 340 (2008).

1 When this power shall be exerted, how far it shall be carried, and where it
2 shall cease, must mainly depend upon the evil to be remedied.⁹¹

3 49. One of the most important early American gun-related cases discussed
4 in *Heller*, *State v. Reid*, offers an excellent illustration of the way police power
5 jurisprudence was used by antebellum judges to adjudicate claims about gun rights
6 and the right of the people to regulate.⁹² The case is a classic example of
7 antebellum police power jurisprudence. The Supreme Court of Alabama evaluated
8 the statute by focusing on the scope of state police power authority over guns. “The
9 terms in which this provision is phrased,” the court noted, “leave with the
10 Legislature the authority to adopt such regulations of police, as may be dictated by
11 the safety of the people and the advancement of public morals.”⁹³ In the court’s
12 view, the regulation of arms was at the very core of state police power.⁹⁴ The
13 judicial determination was straightforward: was the challenged law a legitimate
14 exercise of the police power or not?

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

17 50. 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 ⁹¹ *License Cases* (*Thurlow v. Massachusetts*; *Fletcher v. Rhode Island*; *Peirce*
23 *v. New Hampshire*), 5 How. (46 U.S.) 504, 592 (1847).

24 ⁹² *See State v. Reid*, 1 Ala. 612, 612 (1840).

25 ⁹³ *Id.* at 616.

26 ⁹⁴ Apart from rare outlier decisions, such as *Bliss v. Commonwealth*, 12 Ky.
27 (2 Litt.) 90, 92 (1822) courts employed a police power framework to adjudicate
28 claims about the scope of state power to regulate arms. For a useful discussion of
Bliss in terms of the police power, *see* FREUND, *supra* note 72, at 91.

1 of the connection between these two formerly distinct rights, fusing the two
2 together as one single constitutional principle. This change reflected two profound
3 transformations in American politics and law between 1776 and 1868. First, the
4 judicial concept of police power gradually usurped the older notion of a police right
5 grounded in the idea of popular sovereignty. As a result, state constitutions no
6 longer included positive affirmations of a police right. Secondly, the constitutional
7 “mischief to be remedied” had changed as well.⁹⁵ Constitution writers in the era of
8 the American Revolution feared powerful standing armies and sought to entrench
9 civilian control of the military. By contrast, constitution writers in the era of the
10 Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart
11 Kings using their standing army to oppress American colonists. In place of these
12 ancient fears, a new apprehension stalked Americans: the proliferation of
13 especially dangerous weapons and the societal harms they caused.⁹⁶

14 51. The new language state constitutions employed to describe the right to
15 bear arms enacted during Reconstruction responded to these changed circumstances
16 by adopting a new formulation of the venerable right codified in 1776, linking the
17 right to bear arms inextricably with the states broad police power to regulate
18 conduct to promote health and public safety.⁹⁷ For example, the 1868 Texas

19 ⁹⁵ 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).

⁹⁶ See *McDonald*, 561 U.S. at 767–68

⁹⁷ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth*

1 Constitution included new language that underscored the indissoluble connection
2 that Anglo-American law had long recognized between the right to keep and bear
3 arms and regulation of guns. “Every person shall have the right to keep and bear
4 arms, in the lawful defence of himself or the government, under such regulations as
5 the Legislature may prescribe.”⁹⁸ Nor was Texas an outlier in this regard. Sixteen
6 state constitutions adopted during this period employed similarly expansive
7 language.⁹⁹ Millions of Americans living in the newly organized western states and
8 newly reconstructed states of the former confederacy adopted constitutional
9 provisions that reflected this new formulation of the right to bear arms. Thus,
10 millions of Americans were living under constitutional regimes that acknowledged
11 that the individual states’ police power authority over firearms was at its apogee
12 when regulating guns.¹⁰⁰

13 52. This expansion of regulation was entirely consistent with the
14 Fourteenth Amendment’s emphasis on the protection of rights and the need to
15 regulate conduct that threatened the hard-won freedoms of recently free people of
16 the South and their Republican allies. The goals of Reconstruction were therefore
17 intimately tied to the passage and enforcement of racially neutral gun regulations.¹⁰¹

18
19 *Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War
America*, 55 U.C. DAVIS L. REV. 65 (2022).

20 ⁹⁸ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional
21 provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 (“The
22 people have the right to bear arms for their security and defense; but the legislature
23 shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6
24 (“[T]he people have the right to bear arms for their security and defense, but the
25 legislature may regulate the exercise of this right by law.”).

26 ⁹⁹ Cornell, *supra* note 97, at 75–76.

27 ¹⁰⁰ *Id.*

28 ¹⁰¹ 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 53. Reconstruction ushered in profound changes in American law, but it
2 did not fundamentally alter the antebellum legal view that a states' police powers
3 were rooted in the people's right to make laws to protect the peace and promote
4 public safety. Nor did Reconstruction challenge the notion that these powers were
5 at their zenith when dealing with guns and gun powder. In fact, the Republicans
6 who wrote the Fourteenth Amendment were among the most ardent champions of
7 an expansive view of state police power. As heirs to the antebellum Whig vision of
8 a well-regulated society, Reconstruction-era Republicans used government power
9 aggressively to protect the rights of recently freed slaves and promote their vision
10 of ordered liberty.¹⁰²

11 54. Indeed, the passage of the Fourteenth Amendment was premised on the
12 notion that the individual states would not lose their police power authority to the
13 federal government. The author of Section One of the Fourteenth Amendment,
14 John Bingham, reassured voters that the states would continue to bear the primary
15 responsibility for "local administration and personal security."¹⁰³ As long as state
16 and local laws were racially neutral and favored no person over any other, the
17 people themselves, acting through their representatives, were free to enact
18 reasonable measures necessary to promote public safety and further the common
19 good.¹⁰⁴

20 ¹⁰² Robert J. Kaczorowski, *Congress's Power to Enforce Fourteenth*
21 *Amendment Rights: Lessons from Federal Remedies the Framers Enacted*, 42
22 HARV. J. ON LEGIS. 187 (2005); Christopher Tomlins, *To Improve the State and*
23 *Condition of Man: The Power to Police and the History of American Governance*
53 BUFFALO L. REV. 1215 (2005/2006).

24 ¹⁰³ 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.
REV. 1043, 1058 (2010).

26 ¹⁰⁴ For a discussion of how the courts wrestled with the meaning of the
27 Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM*
28 *POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* (1998).

1 55. It would be difficult to understate the impact of this new paradigm for
2 gun regulation on post-Civil War legislation. Across the nation legislatures took
3 advantage of the new formulation of the right to bear arms included in state
4 constitutions and enacted a staggering range of new laws to regulate arms. Indeed,
5 the number of laws enacted skyrocketed, increasing by over four hundred percent
6 from antebellum levels.¹⁰⁵ Not only did the number of laws increase, but the
7 number of states and localities passing such laws also expanded.¹⁰⁶

8 56. Henry Campbell Black, the author of *Black's Law Dictionary*,
9 described the police power as “inalienable” and echoed the view of a long line of
10 jurists who noted that the scope of the power was not easily defined and the
11 determination of its limits was best left to courts on a case-by-case basis.¹⁰⁷ Indeed,
12 even the most ardent critics of the police power, such as conservative legal scholar
13 Christopher G. Tiedeman, acknowledged that “police power of the State extends to
14 the protection of the lives, limbs, health, comfort and quiet of all persons, and the
15 protection of all property within the State.”¹⁰⁸

16 57. In keeping with the larger goals of Reconstruction, Republicans sought
17 to protect the rights of African Americans to bear arms but were equally insistent on
18 enacting strong racially neutral regulations aimed at public safety. Violence
19 directed against African Americans, particularly the campaign of terror orchestrated
20 by white supremacist para-military groups prompted Republican dominated
21 legislatures in the Reconstruction South to pass a range of racially neutral gun
22

23 ¹⁰⁵ See Spitzer, *supra* note 39, at 59–61 tbl. 1.

24 ¹⁰⁶ *Id.*

25 ¹⁰⁷ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344
(2d ed., 1897).

26 ¹⁰⁸ CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE
27 POLICE POWER IN THE UNITED STATES 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27
28 Vt. 140, 149–50 (1854)).

1 regulations.¹⁰⁹ The racially neutral gun laws enacted by Republicans were in part a
2 reaction to the discriminatory black codes passed by neo-confederate legislatures
3 earlier in Reconstruction. The Black Codes violated the Second Amendment, but
4 the wave of firearms legislation passed by Republican controlled state legislatures
5 in the South were consciously crafted to honor the Second Amendment and protect
6 individuals from gun violence.¹¹⁰

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

14 **V. BRUEN'S FRAMEWORK AND THE SCOPE OF PERMISSIBLE REGULATION**

15 59. The power to regulate and in some cases prohibit guns and gun powder
16 has always been central to the police power authority of states and localities. At
17 different moments in American history communities have regulated weapons. As
18 the Second Amendment's text makes clear, weapons that undermine the security of
19 a free state are not within the scope of its protections. In short, social, and
20
21

22 ¹⁰⁹ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in*
23 *Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas,
24 *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in*
Texas, 1836-1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

25 ¹¹⁰ See Darrell A. H. Miller, *Peruta, The Home-Bound Second Amendment,*
26 *and Fractal Originalism*, 127 HARV. L. REV. 238, 241 (2014); see also Robert J.
27 Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights:*
28 *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).

1 economic transformation were always accompanied by legal transformation. Put
2 another way, as times change, the law changes with them.¹¹¹

3 60. Political scientist Robert Spitzer’s overview of the history of firearms
4 regulation underscores a basic point about American law: “The lesson of gun
5 regulation history here is that new technologies bred new laws when circumstances
6 warranted.”¹¹² States and localities have regulated gunpowder and arms, since the
7 earliest days of the American Republic. The statutes at issue in this case are
8 analogous to a long-established tradition of firearms regulation in America,
9 beginning in the colonial period and stretching across time to the present. This
10 venerable tradition of using police power authority to craft specific laws to meet
11 shifting challenges has continued to the present day.¹¹³ The adaptability of state
12 and local police power provided the flexibility governments needed to deal with the
13 problems created by changes in firearms technology and gun culture.

14 61. The metric used by courts to adjudicate questions about the scope of
15 permissible regulation has remain constant over the long arc of American history.
16 To constitute an infringement of the right the law must burden the right of self-
17 defense to such a degree that it effectively negates it. As long as laws stay within
18 this threshold they have been held to be constitutional.

26 ¹¹¹ Spitzer, *supra* note 37.

27 ¹¹² *Id.*

28 ¹¹³ GERSTLE, *supra* note 85.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on January 27, 2023 at Redding, CT.

3
4 *Saul Cornell*

5 _____
Saul Cornell

Exhibit 1

Saul Cornell

Paul and Diane Guenther Chair in American History

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Fordham University

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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)

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- Cherry-picked history and ideology-driven outcomes: Bruen’s originalist distortions,” SCOTUSblog (Jun. 27, 2022, 5:05 PM),
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- “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)

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Company, at first called *Abram*, High Father] the great Patriarch of the Nation of the Jews.

ABRAHAM's *Balm*, the Hemp-tree, a kind of Willow so called.

ABRAID [of Abnebian, or Abneden, Sax.] awaked, raised up. *Chauc.*

A'BRAM [אברהם *H. i. e.* High Father; of אב a Father, and רם High] the original Name of the Patriarch *Abram*.

ABRAM *Cove*, naked or poor man. *Cant.*

ABRA'SION, a shaving off, a raising or crossing out.

ABRE'DE, abroad. *Chauc.*

To ABRE'DGE } to abridge, to shorten,

To ABREGGE } *Abreger*, *F. Chauc.*

To ABRE'IDE } to start up, to awake,

To ABREYD } arise. *Chauc.*

ABRE'DING, upbraiding. *Chauc.*

ABRENUCIATION, a renouncing or forsaking a Thing entirely. *L.*

ABRIG } [among *Chymists*] Sulphur.

ABRICK } [among *Chymists*] Sulphur.

To ABRIDGE [abreger, *F.*] to make shorter in Words, still retaining the Sense and Substance; also to restrain a Person from some Liberty, &c. before enjoyed.

To ABRIDGE [in *Common Law*] to make a Declaration or Count shorter, by leaving out Part of the Plaint or Demand, and praying the Defendant may answer to the other only.

AN ABRIDGEMENT [Abridgement, *F.*] an Epitome, a short Account of a Book Writing, or Matter.

To ABROGATE [atroger, *F. abrogatum*, *L.*] to disannul, to abolish, to take away; to repeal or make void a Law which was before in Force.

ABROGA'TION, the Act of Repealing, &c. *F. of L.*

ABRUPT' [abruptus, *L.*] broken off, on a sudden, hasty, rough, unseasonable.

AB'SALOM [אבשלום *H. i. e.* the Father's Peace, of אב a Father, and שלום Peace] King *David*'s rebellious Son.

AB'SALONISM, the Practice of Rebellion against a Father.

AB'SCESS } [Absces, *F. Abscessus*, *L.*] an
AB'SCESSE } Ulceration arising in any Part of the Body, and tending to Suppuration; the same with Imposthume.

ABCES'SION, a going away. *L.*

ABCS'SÆ [in *Conic Sections*] are the Parts of the Axis cut off by the Ordinates.

ABCS'SION, a cutting off. *L.*

ABSCISSION [in *Astrology*] is when three Planets being within the Bounds of their Orbs, and in different Degrees of the Sign, the third comes to a Conjunction with the middle Planet, and cuts off the Light of the first.

To ABSCOND' [abscondere, *L.*] to conceal or hide one's self.

A B

ABSCON'SION, an hiding. *L.*

AB'SENT [absens, *L.*] not present, out of the Way, missing. *F.*

ABSENTA'NEOUS [absentaneus, *L.*] done in Absence, pertaining to Absence.

AB'SIS } [of *A, B, C,*] Alphabets of Let-
AP'SIS } ters to be learned; Horn-Books, Primers, &c.

AB'SIS } [Αψις, *Gr.*] the bowed or arched
AP'SIS } Roof of an Oven, Room, House, &c. the Ring or Compass of a Wheel: Also a Term used by *Astronomers*, when the Planets moving to their Apogæum or Perigæum are at a stay.

ABSOLU, absolved. *F.*

ABSOLVATORY [absolutoire, *F. of absolutorius*, *L.*] belonging to a Pardon or Acquittal.

To ABSOLV'E [absolvere, *L.*] to acquit or discharge of an Accusation or Crime laid against one. *L.*

ABSOLUTE [absolu, *F. of absolutus*, *L.*] free from the Power of another; that has Perfection in itself, arbitrary, unlimited.

ABSOLUTE Equation [in *Astronomy*] are the Sums of the Eccentric and Optic Equations.

ABSOLUTE Estate [*Law Term*] is one free of all manner of Incumbrances and Conditions.

ABSOLUTE Gravity [among *Philosophers*] is that Property in Bodies by which they are said to weigh so much, without any regard to any Circumstances of Modification, and is always as the Quantity of Matter therein contained.

An ABSOLUTE Number [in an *Algebraick Equation*] is that which possesseth one entire Part or Side of the Equation, and is always a known Quantity.

ABSOLUTE Space is that which, considered in its own Nature, without regard to any outward Thing, always continues the same, and is immoveable.

AB'SOLUTELY [absolutum, *F. of absolute*, *L.*] after an absolute Manner, as the Terms of a Proposition are said to be taken absolutely, *i. e.* without relation to any thing else. Sometimes it is used in opposition to Terms and Conditions; as, *God does not forgive Men absolutely, but upon Condition of Repentance and Amendment.*

ABSOLU'TION, a Pardoning, Remission or Forgiveness of Sins pronounced by a Priest. *F. of L.*

AB'SONANT [absorans, *L.*] properly sounding harsh, disagreeing from the Purpose, absurd.

AB'SONOUS [absorvus, *L.*] the same as *Absonant*.

ABSONIARE [Old Record] to shun, avoid, detest.

To ABSORB' [absorber, *F. absorbere*, *L.*] to swallow up, to waste or consume.

ABSORB'

I N

INFLEXIBLENESS, } Obstinacy, Stiff-
INFLEXIBILITY, } nels, an inflexi-
ble Humour. F. of L.

INFLEXIBLE [*inflexibilis*, L. i. e. *non flexibilis*] which cannot be bended or bowed; not to be prevailed upon or persuaded.

INFLEXION, a Bending, Turning, Winding. L.

To INFLECT' [*infigere*, F. *inflexum*, L. q. d. *figere in*] to dash or strike against, to lay a Punishment upon.

INFLECTION, a laying a Punishment upon, a Smiting. L.

INFLUENCE [*influentia*, L.] a flowing into, a sending forth Power or Virtue; the Power of a Superior over an Inferiör.

To INFLUENCE [*influer*, F.] to sway, or have Power over.

INFLUENT [*influens*, L.] flowing into.

INFLUENT Juices [among Physicians] Juices of a human Body, that by the Contrivance of Nature, and Laws of Circulation, fall into another Current or Receptacle; as the Bile to the Gall-Bladder, &c.

INFLUENTIAL, influencing, or bearing Sway.

INFLUX [*influxus*, L.] a flowing, or running into.

To INFOLD' [of *in* and *pealban*, Sax. *einfalten*, Teut.] to fold or wrap up.

To ENFORCE' [*enforcer*, F.] to prevail upon by Force of Argument, to strengthen.

ENFORCEMENT, a Compulsion, or Constraint. F.

To INFORM' [*informar*, F. *informare*, L. q. d. *in formam ducere*] to give notice, to tell, to teach, instruct, or make acquainted with.

INFORM' [*informis*, L.] mis-shapen, without Form.

In FORMA Pauperis [Law Phrase] is having Clerks and Counsel assigned without Fees, upon Affidavit made, that, the Suitor's Debts being paid, he is not worth five Pounds. L.

INFORMATION, a making known, Telling, Advice, Instruction; an Accusation or Charge brought against one. L.

INFORMATUS *non sum* [i. e. I am not informed] a formal Answer made in Court by an Attorney, when he has no more to say in defence of his Client. L. T.

INFORMED Stars [in Astronomy] are such of the fixed Stars as are cast into, or ranged under, any Form.

INFORMER, one who informs in a Court of Judicature, or before a Magistrate, against such as transgress the Law.

INFORMOUS [*informe*, F. *informis*, L.] without Form, Shape, or Fashion.

INFORTUNATE [*infortunatus*, F. of *infortunatus*, L. i. e. *non fortunatus*] unhappy, unlucky.

INFOR'TUNE, Misfortune. Chauc.

INFORTUNES [in Astrology] Saturn

I N

and Mars, so called, because of their unfortunate Influences.

INFORTUNID [*infortunatus*, L.] unfortunate. Chauc.

To INFRANCHISE' [of *franc*, F. *france*, Ital. free] to make a Freeman or Denizen; to incorporate into a Society or Body Politick.

INFRANCHISEMENT, infranchising, setting free, Discharge, Release.

INFRA Scapularis Musculus [in Anatomy] a Muscle of the Arm, which arises from the lower Part of the Scapula. L.

INFRA Spinatus Musculus [in Anatomy] a Muscle of the Arm placed below the Spina. L.

INFRAC'TION, a breaking in. L.

INFRANGIBLE [*infrangibilis*, L.] not to be broken, durable, strong.

INFRE'QUENT [*infrequens*, L.] that seldom happens, rare, uncommon, F.

INFRICATION, } a rubbing or cha-
INFRIC'TION, } fing. F.

To INFRING'E [*infringere*, L. q. d. *to break in upon*] to break a Law, Custom, or Privilege.

INFRINGMENT, such Violation, Breach, &c.

INFRUGIFEROUS [*infrugiferus*, L.] not bearing Fruit.

INFUCATION, a painting of the Face, a colouring or disguising. L.

INFUMATION, a drying in Smoak. L.

INFUNDIBULIFORMES [among Botanists] any Flowers shaped like a Funnel.

INFUNDIBULUM Cerebri [in Anatomy] the Brain Tunnel, a hollow Place in the Root of the Brain, through which serous Humours are discharged. L.

INFUNDIBULUM Renum [in Anatomy] the Basin through which the Urine passes to the Ureters and Bladder. L.

INFURiate [of *in* and *furiatus*, L.] stark mad or recovered from Madness.

To INFUSCATE [*infuscatum*, L.] to make dark or dusky.

INFUSCATION, a making dark or dusky. L.

To INFUSE [*infuser* F. of *infusum*, Sup. L. i. e. *fundere in*] to pour in or into, to soak or steep, to endue with, or inspire.

INFUSION, a pouring in. F. of L.

INFUSION [in Pharmacy] a steeping of Drugs, Leaves, Roots, &c. in some Liqueur, in order to get out their Virtue.

ANING [Ing, Dan.] a Meadow or low Ground, a Common. Lincolnshire.

To INGEMINATE [*ingeminatum*, L.] to double or repeat often.

INGEMINATED Flowers [among Florists] is when one Flower grows out of another.

INGEMINATION, a Doubling or Repeating.

A

DICTIONARY
OF THE
ENGLISH LANGUAGE:
IN WHICH
The WORDS are deduced from their ORIGINALS,
AND
ILLUSTRATED in their DIFFERENT SIGNIFICATIONS
BY
EXAMPLES from the best WRITERS.
TO WHICH ARE PREFIXED,
A HISTORY of the LANGUAGE,
AND
AN ENGLISH GRAMMAR.

By SAMUEL JOHNSON, A.M.

IN TWO VOLUMES:

VOL. I.

THE SECOND EDITION.

Cum tabulis animum censoris sumet honesti:
Audebit quæcunque parum splendoris habebunt,
Et sine pondere erunt, et honore indigna ferentur.
Verba movere loco; quamvis invita recedant,
Et versentur adhuc intra penetralia Vestæ:
Obscurata diu populo bonus eruet, atque
Proferet in lucem speciosa vocabula rerum,
Quæ præcis memorata Catonibus atque Cethegis,
Nunc situs informis premit et deferta vetustas. Hor.

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MDCCLV.

GRAMMARS

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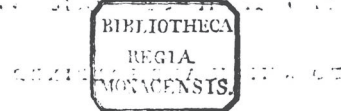
IN WHICH

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VOL. I

THE SECOND EDITION

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A B R

6. Relating to the person, as a servant.
Liking very well the young gentleman, such I took him to be, admitted this Deiphantes about me, who well shewed there is no service like his that serves because he loves. *Sidney, b. ii.*
Good master, corporal, captain, for my old dame's sake, stand my friend: she hath no body to do any thing about her when I am gone, and she is old and cannot help herself. *Shakespeare's Henry IV. p. ii.*

ABO'UT. *adv.*

1. Circularly.
The weyward sisters, hand in hand,
Posters of the 'sea and land,
Thus do go about, about,
Thrice to thine, and thrice to mine,
And thrice again to make up nine. *Shakespeare, Macbeth.*

2. In circuit.
My honest lads, I'll tell you what I am about.—Two yards and more.—No quips now Pistol: indeed I am in the waste two yards about; but I am about no waste, I am about thrift. *Shakespeare's Merry Wives of Windsor.*

A tun about was ev'ry pillar there,
A polish'd mirror shone not half so clear. *Dryd. Fables.*

3. Nearly.
When the boats were come within about sixty yards of the pillar, they found themselves all bound, and could go no farther; yet so as they might move to go about, but might not approach nearer. *Bacon's New Atlantis.*

4. Here and there; every way.
Up rose the gentle virgin from her place,
And looked all about, if she might spy
Her lovely knight to move his manly pace. *Fairy Queen, b. i. cant. 2. stanza. 33.*

A wolf that was past labour, had the wit in his old age, yet to make the best of a bad game; he borrows a habit, and so about he goes, begging charity, from door to door, under the disguise of a pilgrim. *L'Estrange.*

5. With to before a verb; as, about to fly; upon the point, within a small distance of.

These dying lovers, and their floating sons,
Suspend the fight, and silence all our guns:
Beauty and youth, about to perish, finds
Such noble pity in brave English minds. *Waller.*

6. The longest way, in opposition to the short straight way.
Gold hath these natures; greatness of weight; closeness of parts; fixation; pliancy, or softness; immunity from rust; colour, or tincture of yellow: Therefore the sure way (though most about) to make gold, is to know the causes of the several natures before rehearsed. *Bacon's Natural Hist. N° 328.*

Spies of the Volscians
Held me in chafe, that I was forc'd to wheel
Three or four miles about; else had I, Sir,
Half an hour since brought my report. *Shakespeare, Coriolanus.*

7. To bring about; to bring to the point or state desired; as, he has brought about his purposes.
Whether this will be brought about, by breaking his head, I very much question. *Spectator.*

8. To come about; to come to some certain state or point.
Wherefore it came to pass, when the time was come about, after Hannah had conceived, that the bare a son. *1 Sam. i. 20.*

One evening it befel, that looking out,
The wind they long had wish'd was come about;
Well pleas'd they went to rest; and if the gale
'Till morn continu'd, both resolv'd to fail. *Dryd. Fables.*

9. To go about a thing; to prepare to do it.
Did not Moses give you the law, and yet none of you keepeth the law? Why go ye about to kill me? *John vii. 19.*
In common language, they say, to come about a man, to circumvent him.

Some of these phrases seem to derive their original from the French *a bout*; *venir à bout d'une chose*; *venir bout de quelque un.*

A. Bp. for Archbishop; which see.

ABRACADABRA. A superstitious charm against agues.

ABRA'DE. *v. a.* [abrado, Lat.] To rub off; to wear away from the other parts; to waste by degrees.

By this means there may be a continued supply of what is successively abraded from them by decurion of waters.

Hale's Origin of Mankind.

ABRAHAM'S BALM. The name of an herb.

ABRASION. [See ABRASE.]

1. The act of abrading; a rubbing off.
2. [In medicine.] The wearing away of the natural mucus, which covers the membranes, particularly those of the stomach and guts, by corrosive or sharp medicines, or humours. *Quincy.*

3. The matter worn off by the attrition of bodies.

ABRAST. *adv.* [See BREAST.] Side by side; in such a position that the breasts may bear against the same line.

My cousin Suffolk,

My soul shall thine keep company to heaven:

Tarry, sweet soul, for mine, then fly abroad. *Shak. Henry V.*

For honour travels in a freight so narrow,

Where one but goes abroad. *Shakespeare, Troilus and Cressida.*

A B R

The riders rode abroad, and one his shield,
His lance of cornel-wood another held;
The third his bow, and glorious to behold!
The costly quiver, all of burnish'd gold. *Dryden's Fables.*

ABRI'COT. See APRICOT.

TO ABRI'DGE. *v. a.* [abreger, Fr. *abbrevia*, Lat.]

1. To make shorter in words, keeping still the same substance.

All these sayings, being declared by Jason of Cyrene in five books, we will essay to abridge in one volume. *2 Macc. ii. 23.*

2. To contract, to diminish, to cut short.

The determination of the will, upon enquiry, is following the direction of that guide; and he, that has a power to act or not to act, according as such determination directs, is free. Such determination abridges not that power wherein liberty consists. *Locke.*

3. To deprive of; in which sense it is followed by the particle *from* or *of*, preceding the thing taken away.

I have disabled mine estate,

By shewing something a more swelling port,

Than my faint means would grant continuance;

Nor do I now make moan to be abridg'd

From such a noble rate. *Shakespeare's Merchant of Venice.*

They were formerly, by the common law, discharged from pontage and murage; but this privilege has been abridged them since by several statutes. *Ayliffe's Parergon Juris Canonici.*

ABRIDGED OF. *part.* Deprived of, debarred from, cut short.

AN ABRIDGER.

1. He that abridges; a shortener.

2. A writer of compendiums or abridgments.

ABRIDGMENT. *n. s.* [abregement, Fr.]

1. The contraction of a larger work into a small compass.

Surely this commandment containeth the law and the prophets; and, in this one word, is the abridgment of all volumes of scripture. *Hooker, b. ii. § 5.*

Myself have play'd

The int'rim, by remembering you 'tis past;

Then brook abridgment, and your eyes advance

After your thought, straight back again to France? *Shakespeare's Henry V.*

Idolatry is certainly the first-born of folly, the great and leading paradox; nay, the very abridgment and sum total of all absurdities. *South's Sermons.*

2. A diminution in general.

All trying, by a love of littleness,

To make abridgments, and to draw to less,

Even that nothing which at first we were. *Denne.*

3. Refraining, or abridgment of liberty.

The constant desire of happiness, and the constraint it puts upon us, no body, I think, accounts an abridgment of liberty, or at least an abridgment of liberty, to be complained of. *Locke.*

ABRO'ACH. *adv.* [See TO BROACH.]

1. In a posture to run out; to yield the liquor contained; properly spoken of vessels.

The Templer spruce, while ev'ry spout's abraach,

Stays 'till 'tis fair, yet seems to call a coach. *Swift's Mis.*

The jars of gen'rous wine (Acestes' gift,

When his Trinacrian shores the navy left)

He set abraach, and for the feast prepar'd,

In equal portions with the ven'lon shar'd. *Dryden's Virgil's Æneid, vol. ii.*

2. In a figurative sense: in a state to be diffused or advanced; in a state of such beginning as promises a progress.

That man, that sits within a monarch's heart,

And ripens in the sunshine of his favour,

Would he abuse the count'nance of the king,

Alack! what mischiefs might be set abraach,

In shadow of such greatness? *Shakespeare's Henry IV. p. ii.*

ABRO'AD. *adv.* [compounded of *a* and *broad*. See BROAD.]

1. Without confinement; widely; at large.

Intermit no watch

Against a wakeful foe, while I abroad,

Thro' all the coasts of dark destruction, seek

Deliverance. *Milton's Paradise Lost, b. ii. l. 463.*

Again, the lonely fox roams far abroad,

On secret rapine bent, and midnight fraud;

Now haunts the cliff, now traverses the lawn,

And flies the hated neighbourhood of man. *Prior.*

2. Out of the house.

Welcome, sir,

This cell's my court; here have I few attendants,

And subjects none abroad. *Shakespeare's Tempest.*

Lady—walked a whole hour abroad, without dying after

it; at least in the time I staid; though she seemed to be

fainting, and had convulsive motions several times in her head. *Pope's Letters.*

3. In another country.

They thought it better to be somewhat hardly yoked at

home, than for ever abroad, and discredited. *Hooker's Pref.*

Whosoever offers at verbal translation, shall have the mis-

fortune of that young traveller, who lost his own language

abroad, and brought home no other instead of it. *Sir J. Denham.*

D

Wha

I N F

He should regard the propriety of his words, and get some information in the subject he intends to handle. *Swift.*
These men have had longer opportunities of information, and are equally concerned with ourselves. *Rogers.*
2. Charge or accusation exhibited.
3. The act of informing or actuating.
INFORMER. *n. f.* [from *inform.*] 1. One who gives intelligence.
This writer is either byassed by an inclination to believe the worst, or a want of judgment to chuse his informers. *Swift.*
2. One who discovers offenders to the magistrate.
There were spies and informers set at work to watch the company. *L'Estrange.*
Let no court sycophant pervert my sense,
Nor fly informer watch these words to draw
Within the reach of treason. *Pope.*
Informer are a detestable race of people, although sometimes necessary. *Swift.*
INFORMIDABLE. *adj.* [in and *formidabilis*, Latin.] Not to be feared; not to be dreaded
Of strength, of courage haughty, and of limb
Heroick built, though of terrestrial mold;
Foe not *informidable*, exempt from wound. *Milton.*
INFORMITY. *n. f.* [from *informis*, Latin.] Shapelessness.
From this narrow time of gestation may ensue a smallness in the exclusion; but this inferreth no *informity*. *Brown.*
INFORMOUS. *adj.* [*informe*, French; *informis*, Latin.] Shapeless; of no regular figure.
That a bear brings forth her young *info mous* and unshapen, which she fashioneth after by licking them over, is an opinion not only common with us at present, but hath been delivered by ancient writers. *Brown's Vulgar Errors.*
INFORTUNATE. *adj.* [*infortuné*, Fr. *infertunatus*, Latin.] Unhappy. See UNFORTUNATE, which is commonly used.
Perkin, feeling himself prisoner, and destitute of all hopes, having found all either false, faint, or *infortunate*, did gladly accept of the condition. *Bacon's Henry VII.*
To INFRACT. *v. a.* [*infractus*, Latin.] To break.
Falling fast, from gradual slope to slope,
With wild *infracted* course and less'n'd roar,
It gains a safer bed. *Thomson's Summer.*
INFRACTION. *n. f.* [*infractio*, French; *infractio*, Latin.] The act of breaking; breach; violation.
By the same gods, the justice of whose wrath
Punish'd the *infraction* of my former faith. *Waller.*
The wolves, pretending an *infraction* in the abuse of their hostages, fell upon the sheep immediately without their dogs. *L'Estrange's Fables.*
INFRA'NGIBLE. *adj.* [in and *frangibile*.] Not to be broken.
These atoms are supposed *infrangible*, extremely compacted and hard, which compactedness and hardness is a demonstration that nothing could be produced by them, since they could never cohere. *Cheyne's Phil. Princ.*
INFREQUENCY. *n. f.* [*infrequentia*, Latin.] Uncommonness; rarity.
The absence of the gods, and the *infrequency* of objects, made her yield. *Brown's Notes on Pope's Odyssey.*
INFREQUENT. *adj.* [*infrequens*, Latin.] Rare; uncommon.
To INFRIGIDATE. *v. a.* [in and *frigidus*, Latin.] To chill; to make cold.
The drops reached little further than the surface of the liquor, whose coldness did not *infrigidate* those upper parts of the glass. *Boyle.*
To INFRINGE. *v. a.* [*infringe*, Latin.] 1. To violate; to break laws or contracts.
Those many had not dar'd to do that evil,
If the first man that did th' edict *infringe*,
Had answer'd for his deed. *Shakespeare.*
Having *infring'd* the law, I wave my right
As king, and thus submit myself to fight. *Waller.*
2. To destroy; to hinder.
Homilies, being plain and popular instructions, do not *infringe* the efficacy, although but read. *Hooker.*
Bright as the deathless gods and happy, the
From all that may *infringe* delight is free. *Waller.*
INFRINGEMENT. *n. f.* [from *infringe*.] Breach; violation.
The punishing of this *infringement* is proper to that jurisdiction against which the contempt is. *Clarendon.*
INFRINGER. *n. f.* [from *infringe*.] A breaker; a violator.
A clergyman's habit ought to be without any lace, under a severe penalty to be inflicted on the *infringers* of the provincial constitution. *Ayliffe's Parergon.*
INFUNDIBULIFORM. *n. f.* [*infundibulum* and *forma*, Lat.] Of the shape of a funnel or tunnell.
INFURIATE. *adj.* [in and *furia*, Latin.] Enraged; raging.
At th' other bore, with touch of fire
Dilated and *infuriate*. *Milton.*
Fir'd by the torch of noon to tenfold rage,
Th' *infuriate* hill forth shoots the pillar'd flame. *Thomson.*
INFUSCA'ION. *n. f.* [*infuscatus*, Latin.] The act of darkening or blackening.
To INFUSE. *v. a.* [*infuser*, French; *infusus*, Latin.]

I N G

1. To pour in; to infill.
Thou almost mak'st me waver in my faith,
To hold opinion with Pythagoras,
That souls of animals *infuse* themselves
Into the trunks of men. *Shakespeare. Merchant of Venice.*
My early mistfess, now my ancient muse,
That strong Circean liquor cease t' *infuse*,
Wherewith thou didst intoxicate my youth. *Denham.*
Why should he desire to have qualities *infused* into his son,
which himself never possessed? *Swift.*
Meat must be with money bought;
She therefore, upon second thought,
Infus'd, yet as it were by stealth,
Some small regard for state and wealth. *Swift.*
2. To pour into the mind; to inspire into.
For when God's hand had written in the hearts
Of our first parents all the rules of good,
So that their skill *infus'd* surpass'd all arts
That ever were before, or since the flood. *Davies.*
Sublime ideas, and apt words *infuse*;
The muse instruct my voice, and thou inspire the muse. *Rafé.*
He *infus'd*
Bad influence into th' unwary breast. *Milton.*
Infuse into their young breasts such a noble ardour as will
make them renowned. *Milton.*
3. To steep in any liquor with a gentle heat; to macerate so as to extract the virtues of any thing.
Take violets, and *infuse* a good pugil of them in a quart of vinegar. *Bacon's Natural History.*
4. To make an infusion with any ingredient; to supply, to tincture, to saturate with any thing infused.
Drink, *infused* with flesh, will nourish faster and easier than meat and drink together. *Bacon's Natural History.*
5. To inspire with.
Thou didst smile,
Infus'd with a fortitude from heav'n. *Shakespeare. Tempest.*
Infuse his breast with magnanimity,
And make him, naked, foil a man at arms. *Shakespeare.*
INFUSIBLE. *adj.* [from *infuse*.] 1. Possible to be infused.
From whom the doctrines being *infusible* into all, it will be more necessary to forewarn all of the danger of them. *Hamm.*
2. Incapable of dissolution; not fusible.
Vitrification is the last work of fire, and a fusion of the salt and earth, wherein the fusible salt draws the earth and *infusible* part into one continuum. *Brown's Vulgar Errors.*
INFUSION. *n. f.* [*infusio*, French; *infusio*, Latin.] 1. The act of pouring in; infiltration.
Our language has received innumerable elegancies and improvements from that *infusion* of Hebraisms, which are derived to it out of the poetical passages in holy writ. *Addison.*
2. The act of pouring into the mine; inspiration.
We participate Christ partly by imputation, as when those things which he did and suffered for us are imputed to us for righteousness; partly by habitual and real *infusion*, as when grace is inwardly bestowed on earth, and afterwards more fully both our souls and bodies in glory. *Hooker.*
They found it would be matter of great debate, and spend much time; during which they did not desire their company, nor to be troubled with their *infusions*. *Clarendon.*
Here his folly and his wisdom are of his own growth, not the echo or *infusion* of other men. *Swift.*
3. The act of steeping any thing in moisture without boiling.
Repeat the *infusion* of the body oftener. *Bacon.*
4. The liquor made by infusion.
To have the *infusion* strong, in those bodies which have finer spirits, repeat the infusion of the body oftener. *Bacon.*
INFUSIVE. *adj.* [from *infuse*.] Having the power of infusion, or being infused. A word not authorized.
Still let my song a nobler note assume,
And sing th' *infusive* force of Spring on man. *Thomson.*
INGATE. *n. f.* [in and *gate*.] Entrance; passage in.
One noble person stoppeth the *ingate* of all that evil which is looked for, and holdeth in all those which are at his back. *Spenser on Ireland.*
INGANNA'ION. *n. f.* [*ingannare*, Italian.] Cheat; fraud; deception; juggle; delusion; imposture; trick; slight. A word neither used nor necessary.
Whoever shall resign their reasons, either from the root of deceit in themselves, or inability to resist such trivial *ingannations* from others, are within the line of vulgarity. *Brown.*
INGATHERING. *n. f.* [in and *gathering*.] The act of getting in the harvest.
Thou shalt keep the feast of *ingathering*, when thou hast gathered in thy labours out of the field. *Ex. xxiii. 16.*
INGE, in the names of places, signifies a meadow, from the Saxon *ing*, of the same import. *Gibson's Camden.*
To INGE'IMATE. *v. a.* [*ingemino*, Latin.] To double; to repeat.
He would often *ingeminate* the word peace, peace. *Clar. n. n.*
INGEMINATION. *n. f.* [in and *geminatio*, Latin.] Repetition; reduplication.

INGENDERER.

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Abridge

ABRIDGE', *verb transitive* abridj', [G. short, or its root, from the root of break or a verb of that family.]

1. To make shorter; to epitomize; to contract by using fewer words, yet retaining the sense in substance - used of writings.

Justin abridged the history of Trogus Pompeius.





2. To lessen; to diminish; as to *abridge* labor; to *abridge* power of rights.

3. To deprive; to cut off from; followed by of; as to *abridge* one of his rights, or enjoyments. to *abridge* from, is now obsolete or improper.

4. In algebra, to reduce a compound quantity or equation to its more simple expression. The equation thus abridged is called a formula.

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Infringe

INFRINGE, *verb transitive* infrinj'. [Latin *infringo*; *in* and *frango*, to break. See Break.]

1. To break, as contracts; to violate, either positively by contravention, or negatively by non-fulfillment or neglect of performance. A prince or a private person infringes an agreement or covenant by neglecting to perform its conditions, as well as by doing what is stipulated not to be done.
2. To break; to violate; to transgress; to neglect to fulfill or obey; as, to *infringe* a law.
3. To destroy or hinder; as, to *infringe* efficacy. [*Little Used.*]

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Exhibit 3

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Bluebook 21st ed.
1805 588 .

ALWD 7th ed.
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", " Massachusetts - Acts & Laws, January Session : 588-589

AGLC 4th ed.
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" 1805 588

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Proof of Fire-Arms.

First meeting. ble inhabitant of said town of *Harrison*, requiring him to notify and warn the inhabitants of said town, who are qualified by law to vote in town affairs, to meet at such time and place as shall be expressed in said warrant, to choose all such officers as other towns within this Commonwealth are required by law to choose in the months of March or April annually; and the officers so chosen shall be qualified as other town officers are.
[This act passed March 8, 1805.]

CHAP. XXXV.

An act to provide for the proof of fire arms manufactured within this Commonwealth.

Preamble. WHEREAS no provision hath been made by law for the proof of fire arms manufactured in this Commonwealth, by which it is apprehended that many may be introduced into use which are unsafe, and thereby the lives of the citizens be exposed, to prevent which

Provers of fire-arms to be appointed. SECT. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That the Governor, by and with the advice and consent of the Council, be, and he hereby is empowered to appoint, in any part of this Commonwealth where the manufacture of fire arms is carried on, suitable persons to be provers of fire arms, not exceeding two in any county, who shall be sworn to the faithful discharge of their trust, whose duty it shall be to prove all musket barrels and pistol barrels, which being sufficiently ground, bored and breeched, shall be offered to him to be proved; who shall prove the musket barrels twice in manner following, viz. first with a charge consisting of one eighteenth part of a pound of powder, one ounce of which, in a five & an half inch howitz, at an elevation of forty five degrees, will carry a twenty four pound shot, eighty yards, with a ball suited to the bore of the barrel; the second proof to be with a charge consisting of one twenty second part of the same powder, with a ball suited to the bore of the barrel; and shall prove the pistol barrels once with a charge consisting of one twenty second part of a pound of powder, one ounce of which, in a five and half inch howitz at an elevation of forty five degrees, will carry a twenty four pound shot seventy yards, with a ball suited to the bore of the barrel; which said powder and ball it shall be the duty of the prover to provide; and if the said musket and pistol barrels shall stand the proof aforesaid, and shall in no respect fail, then it shall be the duty of the said prover to stamp the same on the upper side, and within one and an half inches of the breech of said barrels, with a stamp consisting of the initial letters of the prover's name, and over those letters the letter P. also, in the line of the said initial letters, and further up said barrel the figures designating the year of our Lord in which the proof is made, and over the said figures the letter M. which said letters and figures shall be so deeply impressed on said barrel,

How arms are to be proved.

How approved arms are to be marked.

IN THE YEAR OF OUR LORD, 1805.

589

First Baptist Society in *Limington*.

as that the same cannot be erased or disfigured, and shall be in the form

^{P M}
following ^{AB} 1805; and when any barrels shall burst or shall in any manner fail in the proving as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped, but the said prover shall suffer the owner to take them away; and any prover so proving musket or pistol barrels as aforesaid, shall be entitled to receive from the owner, for each musket barrel *thirty three cents*, and for each pistol barrel *twenty five cents*, whether the same stand proof and are stamped or not. Fees.

SECT. 2. *And be it further enacted*, That if any person, after the first day of June next, shall manufacture within this Commonwealth, any musket or pistol, without having the barrels proved and stamped as aforesaid, except such as are or may be manufactured in the armory of the *United States*, or in fulfilment of some contract made and entered into, or that may hereafter be made and entered into, for the manufacturing of fire arms for the *United States*, shall forfeit and pay for every such musket or pistol the sum of *ten dollars*, to be recovered in an action of debt, before any court proper to try the same, by any person who shall sue for and recover the same, to his own use. Penalty for not having arms proved.

SECT. 3. *And be it further enacted*, That if any person after the said first day of June next, shall sell and deliver, or shall knowingly purchase, any musket or pistol, which shall have been manufactured within this Commonwealth after the said first day of June next, which shall not have the marks of proof above required, the person so selling and the person so purchasing shall each forfeit the sum of *ten dollars*, to be recovered by action of debt before any court proper to try the same, to the use of any person who shall sue for and recover the same. Penalty for selling or buying arms not proved.

SECT. 4. *And be it further enacted*, That if any person shall falsely forge or alter the stamp of any prover of fire arms, so appointed as aforesaid, impressed on any musket or pistol barrel, pursuant to this act, and be convicted thereof before the Supreme Judicial Court, he shall be punished by fine, not exceeding *fifty dollars*, nor less than *twenty dollars*, according to the nature and aggravation of the offence. Penalty for forging stamp.

[This act passed March 8, 1805.]

CHAP. XXXVI.

An act to incorporate a number of the inhabitants in the town of *Limington*, in the county of *York*, into a separate religious society, by the name of *The First Baptist Society in Limington*.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That Ebenezer Clarke, James Marrs, Solomon Stone, William Chick, Barzillai

Exhibit 4

10/18/22, 2:17 PM

1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Tow...



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1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Town of Boston, § 2

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- Storage (<https://firearmslaw.duke.edu/subjects/storage/>)

Jurisdiction(s):

- Massachusetts (<https://firearmslaw.duke.edu/jurisdictions/massachusetts/>)



Year(s):

- 1783 (<https://firearmslaw.duke.edu/years/1783/>)

“That all cannon, swivels, mortars, howitzers, cohorns, fire arms, bombs, grenades, and iron shells of any kind, that shall be found in any dwelling-house, out-house, stable, barn, store, ware-house, shop, or other building, charged with, or having in them any gun-powder, shall be liable to be seized by either of the Firewards of the said Town: And upon complaint made by the said Firewards to the Court of Common Pleas, of such cannon, swivels, mortar, or howitzers, being so found, the Court shall proceed to try the merits of such complaint by a jury; and if the jury shall find such complaint supported, such cannon, swivel, mortar, or howitzer, shall be adjudged forfeit, and be sold at public auction.

10/18/22, 2:17 PM

1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Tow...

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Exhibit 5

#.1992

L A W S

OF THE

STATE OF NEW-YORK,

COMPRISING THE

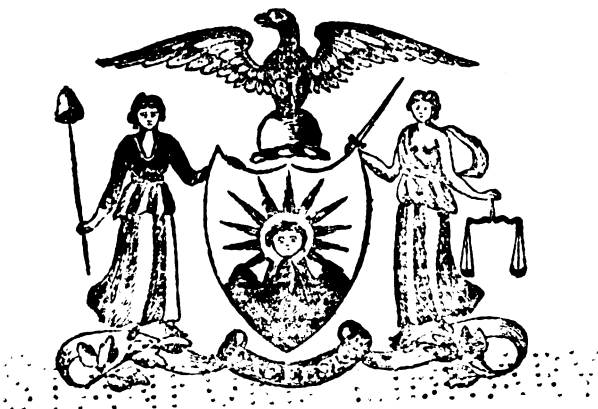
CONSTITUTION,

AND THE

ACTS OF THE LEGISLATURE,

SINCE THE REVOLUTION, FROM THE

FIRST TO THE FIFTEENTH SESSION, INCLUSIVE.



IN TWO VOLUMES.

VOLUME II.

Quum Leges alie super alias accumulatz, eas de integro retractare, et in Corpus sanum et habile redigere, ex Vlo fit.

BACON.

Misera Servitus est ubi Jus est vagum aut incognitum.

4 Inst. 246.

NEW-YORK—PRINTED BY THOMAS GREENLEAF—N, DCC, XC, II.

#1993

Inhabitants at their town-meetings may direct monies to be raised for repairing engines.

it further enacted by the authority aforesaid, That it shall and may be lawful for the freeholders and inhabitants of the said town of Brooklyn residing within the limits aforesaid, at any town-meeting, to direct such sum or sums of money as they shall deem necessary and proper for the purpose aforesaid, to be raised, levied and collected, at the same time, and in the same manner as the monies for the maintenance and support of the poor, within the same town are by law directed to be raised, levied and collected, and to be paid into the hands of the town-clerk of the same town, to be by him paid and applied for the purposes aforesaid, at such time and times, and in such manner as the major part of the firemen aforesaid, shall from time to time direct and appoint.

C H A P. LXXXI.

An ACT to prevent the storing of Gun-Powder, within certain Parts of the City of New-York.

Passed 15th March, 1788.

WHEREAS the practice of storing gun-powder within certain parts of the city of New-York, is dangerous to the safety of the said city ; Therefore,

I. Be it enacted by the people of the state of New-York, represented in senate and assembly, and it is hereby enacted by the authority of the same, That it

No person to keep more than 28 pounds of powder in any one place within one mile of the city-hall, and that to be divided into four parcels.

shall not be lawful for any person or persons, to have or keep any quantity of gun-powder exceeding twenty-eight pounds weight, in any one place, house, store or out-house, less than one mile to the northward of the city-hall of the said city, except in the public magazine at the fresh-water, which said quantity of twenty-eight pounds, shall be separated in four stone jugs or tin canisters, each of which shall not contain more than seven pounds ; and if any person or persons shall keep any greater quantity than twenty-eight pounds, in any one place, house, store or out-house, or if the same gun-powder so permitted to be kept as aforesaid, shall not be separated in the manner herein above directed, he, she or they shall forfeit all such gun powder so kept, contrary to the true intent and meaning of this act, or so permitted to be kept, and which shall not be separated as aforesaid ; and shall also forfeit the sum of fifty pounds for every hundred weight of powder, and in that proportion for a greater or less quantity, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue for the same. Provided always, That all actions and suits to be commenced, sued or prosecuted, against any person or persons for any thing done contrary to this act, shall be commenced, sued or prosecuted within two calendar months next after the offence committed, and not at any time thereafter.

II. And to avoid dangers from gun-powder laden on board of any ship or other vessel, arriving from sea ; Be it further enacted by the authority aforesaid, That the commander or owner or owners of every

Commanders of vessels to land and store gun-powder within 24 hours after their arrival.

ship or other vessel arriving from sea, and having gun-powder on board, shall, within twenty-four hours after her arrival in the harbour, and before such ship or other vessel be hauled along side of any wharf, pier or key within the said city, land the said gun-powder, by means of a boat or boats, or other small craft at any place on the East-

#1994

River, east of the wharf now building by Thomas Buchanan, or at any place on the North-River, to the northward of the air-furnace, which may be most contiguous to any of the magazines, and shall cause the same to be stored in one of the magazines now built, or hereafter to be built for that purpose, on pain of forfeiting all such gun-powder to any person or persons who will sue and prosecute for the same to effect, in manner aforesaid.

III. And to prevent any evil consequences which may arise from the carriage of gun-powder, *Be it further enacted by the authority aforesaid, That* all gun-powder which shall be carried through the streets of the said city, by carts, carriages, or by hand, or other wise, shall be in tight casks, well headed and hooped, and shall be put into bags or leather cases, and entirely covered therewith, so that no powder may be spilled or scattered in the

passage thereof, on pain of forfeiting all such gun-powder as shall be conveyed through any of the streets aforesaid, in any other manner than is hereby directed; and it shall and may be lawful for any person or persons, to seize the same to his or their own use and benefit, and to convey the same to one of the magazines aforesaid, and thereupon to prosecute the person or persons offending against this act before the mayor or recorder, and any two aldermen of the said city; and such gun-powder shall upon conviction be condemned to the use of the person or persons seizing the same.

IV. *And be it further enacted by the authority aforesaid, That* it shall and may be lawful for the mayor or recorder, or any two aldermen of the said city, upon application made by any inhabitant or inhabitants of the said city, and upon his or their making oath of reasonable cause of suspicion (of the sufficiency of which the said mayor or recorder, or

aldermen, is and are to be the judge or judges) to issue his or their warrant or warrants, under his or their hand and seal, or hands and seals, for searching for such gun-powder, in the day time, in any building or place whatsoever, within the limits aforesaid, or in any ship or other vessel, within forty-eight hours after her arrival in the harbour, or at any time after such ship or other vessel shall and may have hauled along side any wharf, pier or key, within the limits aforesaid: And that upon any such search it shall be lawful for the persons finding any such gun-powder, immediately to seize, and at any time within twelve hours after such seizure, to convey the same to one of the magazines aforesaid; and the same gun-powder being so removed, to detain and keep, until it shall be determined by the mayor or recorder and any two aldermen of the said city, whether the same is forfeited by virtue of this act: And the person or persons so detaining the same, shall not be subject or liable to any action or suit for the detention thereof. Provided always, That nothing in this clause of this act contained, shall be construed to authorise any person having such warrant, to take advantage of the same, for serving any civil process of any kind whatsoever. Provided also, That nothing in this act contained shall extend to ships of war, or packets in the service of the United States or any of them, or of any foreign prince or state; nor to authorise the searching for gun-powder on board of any such ship or vessel while laying in the stream, and upwards of one hundred yards from the wharf or shore.

V. *And be it further enacted by the authority aforesaid, That* if any gun-powder, exceeding twenty-eight pounds, shall be found in the custody of any person, during any fire or alarm of fire, in the said city, by any fireman of the said

Gun-powder exceeding 28lb. found during a fire, may be seized without warrant.

city, it shall be lawful for him to seize the same, without warrant from the mayor, or recorder or aldermen, and to cause the same to be condemned, in manner aforesaid, to his own use; any thing in this act to the contrary notwithstanding.

C H A P. LXXXII

An ACT to prevent the Destruction of Deer.

Passed 15th March, 1788.

I. *Be it enacted by the people of the state of New-York, represented in senate and assembly; and it is hereby enacted by the authority of the same,*

Any person killing a deer in January, February, March, April, May, June or July, to forfeit 3*l*.

That if any person or persons shall kill or destroy any wild buck, doe or fawn, or any other sort of deer whatsoever, at any time in the months of January, February, March, April, May, June or July, every such person shall, for every buck, doe or fawn, or other deer so killed or destroyed as aforesaid, contrary to the true intent and meaning of this act, forfeit and pay the sum of three pounds, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue and prosecute for the same; the one moiety of which forfeiture, when recovered, to be paid to the overseers of the poor of the town or place where the offence shall be committed for the use of the poor thereof; and the other moiety to such person or persons as shall sue and prosecute for the same as aforesaid.

II. *And be it further enacted by the authority aforesaid,* That every person in whose custody shall be found, or who shall expose to sale any green deer skin, fresh venison, or deer's flesh, at any time in any of the months before mentioned, and shall be thereof convicted before any justice of the peace, by the oath of one credible witness, or by the confession of the party, shall, unless such party shall prove that some other person killed such buck, doe, fawn, or other deer, be deemed and adjudged guilty of the said offence.

III. *And in order the more easily to convict offenders against this act, Be it further enacted by the authority aforesaid,* That it shall be lawful for any justice of the peace in any county of this state, and every such justice is hereby required, upon demand made by any person, assigning a reasonable cause of suspicion, upon oath (of the sufficiency of which the said justice is to judge) at any time in any of the months before mentioned, to issue his warrant under his hand and seal, to any constable of any town or place in the same county, for searching in the day time in any house, store, out-house, or other place whatsoever, where any green deer skin, fresh venison or deer's flesh, is suspected to be concealed: And in case any green deer skin, fresh venison or deer's flesh, shall upon such search be found, the person in whose custody the same shall be found, or who concealed the same, shall forfeit the sum of three pounds, to be recovered and applied in manner aforesaid.

IV. *And be it further enacted by the authority aforesaid,* That if any person or persons shall at any time hunt, pursue or destroy any wild buck, doe, or fawn, or other deer (except in the county of Suffolk) with any blood-hound or blood-hounds, beagle or beagles, every such person shall, for every such offence, forfeit and pay the sum of three pounds, to be recovered and applied as aforesaid. Provided, That nothing in this clause of this act contained, shall be construed to prevent any person or persons from mak-

Any person hunting or killing deer with blood-hounds or beagles, except in Suffolk county, to forfeit three pounds.

Exhibit 6

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Subject(s):

- Storage (<https://firearmslaw.duke.edu/subjects/storage/>)

Jurisdiction(s):

- Maine (<https://firearmslaw.duke.edu/jurisdictions/maine/>)

Year(s):

- 1821 (<https://firearmslaw.duke.edu/years/1821/>)


Be it further enacted, That it shall, and may be lawful for any one or more of the Selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefor according to law.



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CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Boland, et al. v. Bonta*

Case No.: 8:22-cv-01421-CJC(ADSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

DECLARATION OF ALEXANDER A. FRANK IN SUPPORT OF PLAINTIFFS' COURT-ORDERED SUPPLEMENTAL BRIEFING IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Robert L. Meyerhoff, Deputy Attorney General

robert.meyerhoff@doj.ca.gov

Gabrielle D. Boutin

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Charles J. Sarosy

charles.sarosy@doj.ca.gov

300 South Spring Street, Suite 1702

Los Angeles, CA 90013-1230

I declare under penalty of perjury that the foregoing is true and correct.

Executed February 24, 2023.


Christina Castron