No. 24-1046

In the
Supreme Court of the United States

JASON WOLFORD, ET AL.,

Petitioners,

v.

ANNE E. LOPEZ, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF HAWAII,

Respondents.

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

BRIEF OF AMICUS CURIAE SECOND AMENDMENT LAW CENTER, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC., DELAWARE STATE SPORTSMEN'S ASSOCIATION, HAWAII RIFLE ASSOCIATION, GUN OWNERS OF CALIFORNIA, FEDERAL FIREARMS LICENSEES OF ILLINOIS, SECOND AMENDMENT DEFENSE AND EDUCATION COALITION, MINNESOTA GUN OWNERS CAUCUS, OPERATION BLAZING SWORD-PINK PISTOLS, AND THE NATIONAL RIFLE ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

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AMICUS CURIAE STATEMENT OF INTEREST

The Second Amendment Law Center ("2ALC") is a nonprofit corporation in Henderson, Nevada. The Center defends the individual rights to keep and bear arms as envisioned by the Founders. 2ALC also educates the public about the social utility of firearm ownership and provides accurate historical, criminological, and technical information to policymakers, judges, and the public.[1]

Founded in 1875, the California Rifle & Pistol Association, Incorporated, ("CRPA") is a nonprofit organization that seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. CRPA works to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting shooting sports, providing education, training, and competition for adult and junior shooters. CRPA's members include law enforcement officers, prosecutors, professionals, firearm experts, and members of the public. In service of these ends, CRPA regularly participates as a party or amicus in firearm-related litigation.

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[1] No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The Parties were notified that this brief would be filed on April 8, 2025, in compliance with Rule 37.2.

The Delaware State Sportsmen's Association, Inc. ("DSSA") is a Delaware non-stock, not-for-profit Delaware members corporation established for the specific purpose of serving as the official state affiliate of the National Rifle Association of America, Inc. in Delaware. Its total aggregate membership exceeds 5,000 members residing in Delaware and several other states. DSSA has been protecting and defending the rights and servicing the needs of Delaware's sportsmen and women, gun owners, hunters, collectors and competitive shooters since 1968.

Hawaii Rifle Association is a non-profit organization, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Its mission is to protect Hawaiians' Second Amendment right to keep and bear arms, and to protect Hawaii's hunting and shooting traditions

Gun Owners of California ("GOC")[2] is a 501(c)(4) not-for-profit entity founded in 1975 to oppose infringements on Second Amendment rights. GOC is dedicated to the unequivocal defense of the Second Amendment and America's extraordinary heritage of firearm ownership. Its advocacy efforts regularly

[2] Both CRPA and GOC are plaintiffs in the challenge to California's related "sensitive places" carry ban, Senate Bill 2, *May v. Bonta*. The *May* Plaintiffs prevailed in the district court but had several portions of that victory undone by the Ninth Circuit with its flawed ruling in this matter, as the *May* case was consolidated with *Wolford* on appeal. With en banc review recently denied by the Ninth Circuit over the dissent of eight judges, the *May* plaintiffs will head back to the district court to seek a final judgment, but further guidance from this Court is welcome in the meantime, and they support the *Wolford* plaintiffs in that effort.

include participation in Second Amendment litigation.

The Second Amendment Defense and Education Coalition, Ltd. ("SADEC"), is an Illinois not-for-profit corporation. SADEC is dedicated to the defense of human and civil rights secured by law including, in particular, the right to bear arms. SADEC's activities are furthered by complementary programs of litigation and education.

Federal Firearms Licensees of Illinois ("FFL-IL") is an Illinois not-for-profit corporation that represents federally licensed gun dealers across the State of Illinois.

Minnesota Gun Owners Caucus ("MGOC") is a 501(c)(4) non-profit organization incorporated under the laws of Minnesota with its principal place of business in Shoreview, Minnesota. MGOC seeks to protect and promote the right of citizens to keep and bear arms for all lawful purposes. MGOC serves its members and the public through advocacy, education, elections, legislation, and legal action. MGOC's members reside both within and outside Minnesota.

Operation Blazing Sword–Pink Pistols ("OBSPP") comprises two organizations, Operation Blazing Sword and Pink Pistols, which together advocate on behalf of lesbian, gay, bisexual, transgender, and queer firearm owners, with specific emphasis on self-defense issues. Operation Blazing Sword maintains a network of over 1,800 volunteer firearm instructors in nearly a thousand locations across all fifty states. Pink Pistols, which was incorporated into

Operation Blazing Sword in 2018, is a shooting society that honors gender and sexual diversity and advocates for the responsible use of firearms for self-defense. Membership is open to anyone, regardless of sexual orientation or gender identity, who supports the rights of LGBTQ firearm owners.

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

SUMMARY OF ARGUMENT

If this Court denies certiorari, there will be no meaningful right to carry in Hawaii for at least several years while the litigation proceeds. Individuals who have gone through the trouble of getting a concealed carry permit ("CCW") will be limited to carrying on some streets and sidewalks, in banks, and in certain parking lots. Everything else is off limits—including 96.4% of the publicly accessible land in Maui County. App. 174a (VanDyke, J., dissenting from denial of rehearing en banc). So much for the "general right to publicly carry arms for self-defense" this Court recognized. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 31 (2022).

For those Americans fortunate to live within the jurisdiction of circuits that respect the Second Amendment, this ruling may seem shocking, given that this Court ruled less than three years ago in *Bruen* that the Second Amendment protects the very right that Hawaii now effectively destroys. How could it be that what was so recently confirmed as a "general right" has become the rare exception to a no-carry default?

But gun owners living on the West Coast or in Hawaii were hardly surprised by the result. The Ninth Circuit's hostility toward the Second Amendment is well-documented, having recorded an "undefeated, 50-0 record" of upholding gun laws before *Bruen*. *United States v. Rahimi*, 602 U.S. 680, 712 (2024) (Gorsuch, J., concurring). *Bruen* changed nothing for the Ninth Circuit, and the *Wolford* ruling is not even the most recent example of that court giving "a judicial middle finger to" this Court. *Duncan v. Bonta*, No. 23-55805, 2025 WL 867583, at *28 (9th Cir. Mar. 20, 2025) (R. Nelson, J., dissenting). So brazen has the Ninth Circuit's defiance become that even when the *Wolford* panel disgracefully relied on a racist Black Code to justify Hawaii's law, the Ninth Circuit refused to correct it, denying en banc review over the dissents of eight judges. App. 169a.

Unfortunately, the Ninth Circuit has been encouraged by this Court's reluctance to take Second Amendment cases in an interlocutory posture. *See, e.g.*, *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024); *Antonyuk v. James*, No. 24-795, 2025 WL 1020368 (U.S. Apr. 7, 2025). But if there was ever the perfect case in which to make an exception to this Court's

preference of not deciding interlocutory matters, it would be this one. Even the Respondents have conceded that there is nothing left to be litigated and thus no benefit to further factual development.[3] It is a purely legal dispute ripe to be decided now.

This brief will summarize why the Ninth Circuit's analysis of the private property default rule was wildly off the mark. It will also elaborate on how the *Wolford* analysis misapplies *Bruen* and *Rahimi* elsewhere as well, using Hawaii's ban on carrying firearms in parks as an example. Finally, the brief will explain why the analytical inquiry must not ignore, as both the Second Circuit and Ninth Circuit have, the differences between modern CCW permit regimes and the permitless carry that was the standard practice before 1900.

This Court should grant certiorari to avoid the near-total destruction of the right to carry in Hawaii. But if the Court is not inclined to review the case in an interlocutory posture, it should at least stay the Ninth Circuit's ruling and put back in place the district court's original preliminary injunction until a final judgment is reached.

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[3] When Judge Schroeder asked "what else is there to be litigated?" in the case after the preliminary injunction appeal was decided, Hawaii confirmed there is nothing left to litigate, despite the preliminary injunction posture. Oral Argument at 12:02, *Wolford v. Lopez* (9th Cir. April 11, 2024) (No. 23-16164), https://www.youtube.com/watch?v=iHVtW6Pfraw&t=740s.

ARGUMENT

I. THE PRIVATE PROPERTY "DEFAULT" RULE WAS INVENTED TO UNDERMINE THE RIGHT TO CARRY AND LACKS LEGITIMATE HISTORICAL SUPPORT

A. The "default" has only changed for those with CCW permits.

In fiction, vampires could not enter a place unless invited. *See* Bram Stoker, *Dracula* 287 (Canterbury Classics 2012) (1897) ("He may not enter anywhere at the first, unless there be some one of the household who bid him to come…."). Hawaii, California, and other states hostile to the right to bear arms have recently adopted a similar approach for CCW permit holders, requiring that they obtain consent before entering ordinary places (like fast food restaurants, gas stations, or grocery stores) while carrying.

States with such laws euphemistically call the requirement a new "default" rule, but Amici reject that nomenclature. The "default" has not changed for anyone except those with CCW permits. For example, California Penal Code section 26230's restricted locations only apply to CCW permit holders. Others who lawfully carry concealed are exempt from its provisions because they are exempt from California's CCW regime in general, including police officers, *retired* police officers, certain individuals working in the film industry, those going to hunter safety courses, those going to firing ranges, and others. *See* Cal. Penal Code §§ 25450, 25510, 25520, 25540. The Hawaii law at issue operates similarly, applying only to those with CCW permits. *See* Haw. Rev. Stat. §§ 134-9, 134-9.5.

It is only the law-abiding citizen carrying pursuant to a CCW permit who must, like a vampire, obtain consent to enter. Amici and others thus refer to the "default" rule as the "Vampire Rule," as the law treats law-abiding citizens like those mythical monsters.

The Vampire Rule was explicitly conceived to undermine the right to carry, as its main academic proponents have written that the rule's very purpose was to make carry inconvenient, so fewer people will choose to exercise their rights. Ian Ayres & Spurthi Jonnalagadda, *Guests with Guns: Public Support for "No Carry" Defaults on Private Land*, 48 J.L. Med. & Ethics 183, 184 (2020) ("Reducing the number of places available for gun carriers to travel freely with their firearms might have knock-on effects, reducing preferences to carry and possess firearms more generally, as it becomes increasingly inconvenient to do so."). This malicious strategy attempts to exploit a perceived "constitutional loophole to nullify the practical effect of *Bruen*." Robert Leider, *Pretextually Eliminating the Right to Bear Arms through Gerrymandered Property Rules*, Duke Ctr. for Firearms Law (Dec. 23, 2022), https://firearmslaw.duke.edu/2022/12/pretextually-eliminating-the-right-to-bear-arms-through-gerrymandered-property-rules/.

But this half-baked effort fails because the Vampire Rule is grossly underinclusive. By not switching the property default rule for gun carrying as it pertains to politically favored groups, like retired and off-duty police, the Vampire Rule is not "actually making a generally applicable default rule that a person may not bring a gun onto another person's

property without express consent. Instead, these laws target gun carry by one group only: civilians without prior law enforcement experience." *Id.*

B. The Ninth Circuit erred by relying on just two outlier historical laws, one of which has shameful provenance.

The Ninth Circuit panel upheld Hawaii's Vampire Rule because it allows for any form of affirmative consent, but it struck down California's rule for expressly prescribing that the only acceptable method of consent is a sign. App. 63a. As Judge VanDyke explained in a dissent joined by five other judges, "[t]he panel's distinction between the two states' presumption-flipping rules may give the illusion of analytical precision, but it strains the proverbial gnat while swallowing the camel." App. 180a (VanDyke, J., dissenting from denial of rehearing en banc).

To be clear, this case does not involve trespass onto private premises where the property owner has decided to affirmatively prohibit carry with a "no guns allowed" sign. Rather, Hawaii has decided, for all property owners, that certain people should be prohibited by default. This, it cannot do. Places of business held open to the public are, "by positive law and social convention, presumed accessible to members of the public *unless the owner manifests his intention to exclude them*." *Oliver v. United States*, 466 U.S. 170, 193 (1984) (Marshall, J., dissenting) (emphasis added). *See also, e.g.*, Cal. Penal Code § 602 (requiring posted "no trespassing" signs or a verbal order to leave before the elements of a trespass have been satisfied).

Our historical tradition of firearm regulation likewise adheres to this social convention, as indeed almost all the historical laws that required consent to enter armed were anti-poaching laws that focused on *enclosed private lands*, not businesses open to the public. Even the Ninth Circuit admitted as much: "We acknowledge that the first set of laws likely was limited to only a subset of private property; those laws likely did not apply to property that was generally open to the public. Similarly, the primary aim of some of those laws was to prevent poaching." App. 61a (VanDyke, J., dissenting from denial of rehearing en banc). But ignoring that clear majority tradition, the panel focused on just *two* laws to uphold Hawaii's ban—one, a New Jersey colonial law, and the other, a notorious "Black Code" from the then-recently defeated Confederate state of Louisiana.

Before examining the substance of those laws, it must be noted that a single Ratification-era enactment and a single Reconstruction-era enactment are simply *not* "well-established and representative" analogues under any reasonable measure. *Bruen*, 597 U.S. at 30 (emphasis added). Courts may not uphold a modern law just because the government is able to pluck one or two arguably similar laws from the past. *Id.* Doing so "risk[s] endorsing outliers that our ancestors would never have accepted." *Id.* (quoting *Drummond v. Robinson Twp.*, 9 F.4th 217, 226 (3d Cir. 2021)). Both *Heller* and *Bruen* were clear about this.

Indeed, in *Heller*, this Court rightly refused to "stake [its] interpretation of the Second Amendment upon a single law, in effect in a single city, that

contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms for defense." *District of Columbia v. Heller*, 554 U.S. 570, 632 (2008). Likewise, in *Bruen*, this Court rejected "a single state statute and a pair of state-court decisions" as insufficient to establish a representative historical tradition. *Id.* at 65-66. It is unclear, then, why the Ninth Circuit thought two dissimilar laws, enacted a century apart, could justify Hawaii's Vampire Rule. It is especially surprising because the two laws contradict the overwhelming weight of evidence that, historically, the consent requirement was limited to enclosed private property that was *not* open to the public. *See Heller*, 554 U.S. at 632.

But even setting aside the fact that these laws were outliers that bucked the established norm and assuming (but not conceding) that two laws are enough to build a historical tradition, the laws on which the panel relied fail to justify Hawaii's law on their own terms. *Bruen* instructs that, when comparing modern laws to potential historical analogues, "how *and why* the regulations burden a law-abiding citizen's right to armed self-defense" are critical questions. 597 U.S. at 29 (emphasis added). The "whys" behind the historical laws on which the Ninth Circuit decision relies are simply not comparable to the reasons Hawaii adopted its modern-day Vampire Rule.

First, the very title of the 1771 New Jersey law that barred persons from carrying guns "on any lands not his own" describes why the colony adopted the law

in the first place.[4] Labeled "An Act for the Preservation of Deer, and other game, and to prevent trespassing with guns, this enactment was plainly not aimed at stopping peaceable armed citizens from entering a public inn or tavern. It "was an antipoaching and antitrespassing ordinance—not a broad disarmament statute." App. 186a (VanDyke, J., dissenting from denial of rehearing en banc).

The genesis of the panel's second purported historical analogue is downright repugnant. After the Civil War, defeated Confederate states sought to enact racial apartheid. One such enactment was the 1865 Louisiana law on which the panel relied. As another court recognized in discussing this very law, Louisiana "created these laws as part of their discriminatory 'Black Codes,' which sought to deprive African Americans of their rights." *Kipke v. Moore*, 695 F. Supp. 3d 638, 659 (D. Md. 2023) (citing *McDonald v. City of Chicago*, 561 U.S. 742, 850 (2010) (Thomas, J., concurring in the judgment)). The law was never intended to be enforced against White residents. In fact, the former Governor of Louisiana, who served from 1868 to 1872, confirmed in his memoir that the law "of course, was aimed at the freedman." Henry Clay Warmoth, *War, Politics, and Reconstruction: Stormy Days in Louisiana* 278 (2nd ed., Univ. of S. Carolina Press 2006).

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[4] *Laws of the State of New-Jersey, Revised and Published Under the Authority of the Legislature* 25-26 (Trenton, N.J., Joseph Justice, 1821), *available at* https://firearmslaw.duke.edu/laws/charles-nettleton-laws-of-the-state-of-new-jersey-page-26-image-53-1821-available-at-the-making-of-modern-law-primary-sources.

The panel shockingly characterized this law as "uncontroversial." App. 62a. But in fact, it was *extremely* controversial; efforts to disarm freedmen were one of the postbellum problems the Freedmen's Bureau was created to address. *See McDonald*, 561 U.S. at 773. Indeed, the Southern legislatures' efforts to disarm newly freed Black Americans are well documented. President Grant even lamented to Congress that the Ku Klux Klan's objectives were "by force and terror, to prevent all political action not in accord with the views of the members, *to deprive colored citizens of the right to bear arms* ... and to reduce the colored people to a condition closely akin to that of slavery." H. Journal, 42nd Cong., 2d Sess. 716 (1872) (emphasis added). "Louisiana's 1865 law is part of *that* invidious tradition and, far from being indicative of the Constitution's meaning, is 'probative of what the Constitution does *not* mean.'" App. 189a. (VanDyke, J., dissenting from denial of rehearing en banc) (citing *Rahimi*, 602 U.S. at 720 (Kavanaugh, J., concurring)).

This is why citing Southern laws from just after the Civil War—as Hawaii and California have frequently done in these cases—is ill-advised. While such laws *may* be a part of a national tradition, it is not a tradition that informs the Second Amendment's meaning. "[C]ourts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind." *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring).

The fact that the 1771 and 1865 laws were not explicitly ruled unconstitutional at the time does not

save the panel's analysis. In *Bruen*, the Supreme Court acknowledged that a Texas law, having been upheld by the state courts, supported New York's position. But it, along with a similar West Virginia law, was nonetheless an outlier. *See Bruen*, 597 U.S. at 65 ("[T]he Texas statute, and the rationales set forth in *English* and *Duke*, are outliers. In fact, only one other State, West Virginia, adopted a similar public-carry statute before 1900."). Given that two state laws were insufficient in *Bruen* to save New York's law, there is no reason that a similar duo should be sufficient to save Hawaii's Vampire Rule, particularly given the shameful provenance of the Louisiana law.

II. THE NINTH CIRCUIT'S ANALYSIS AS TO OTHER PLACES, SUCH AS PARKS, IS LIKEWISE FILLED WITH ERRORS

While the Petitioners understandably focus on the very worst of the Ninth Circuit's abuses—upholding the Vampire Rule—as well as its errant reliance on late 19th-century historical laws, the panel's analysis also botches the *Bruen* analysis as to many of the places it examined. There are too many to cover them all here.[5] But one notable aspect of the ruling that is especially damaging for Hawaii, in particular, is the panel's treatment of state parks.

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[5] Amici did closely examine places that serve alcohol in their amicus brief in the *Antonyuk* matter, and the Ninth Circuit made several of the same mistakes the Second Circuit did in that case. *See* Brief for Second Amendment Law Center, et al. as Amici Curiae Supporting Petitioners at 13-19, *Antonyuk v. James*, No. 24-795 (U.S. Feb. 21, 2025).

Under the Ninth Circuit's ruling, Hawaii and California may ban permit holders from every park in the state, from urban parks to the empty wilderness of state parks. But most parks are not "sensitive," and the historical record at most supports restrictions in specific urban parks, not all parks. *See* App. 34a (citing examples of only particular urban-park bans in the 19th century); *but see* App. 195a (VanDyke, J., dissenting from denial of rehearing en banc) (noting that parks existed in the Founding era without banning carry, which should have been the end of the analysis).

Under *Bruen*, this dramatically different degree of burden on the right means modern laws banning carry in every park are not sufficiently analogous. 597 U.S. at 29 (instructing that "whether modern and historical regulations impose a comparable burden" on the right to carry is a central consideration of the analogical inquiry). While the panel did also claim to cite various 19th-century laws banning carry in all parks in a city, App. 34a, it ignored the *May* Plaintiffs' briefing that most such laws restricted only *hunting or discharge* of firearms in parks, not *carry*. For example, the panel claimed that St. Louis banned the carry of *firearms* in its parks in 1881. *Id.* But what that law actually did was prohibit *slings, crossbows, and air guns* on any "street, alley, walk or park" in the city. *The Revised Ordinances of the City of St. Louis* 635, art. XI, § 3 (St. Louis, Mo., M.J. Sullivan, 1881). It did not mention *firearms* at all, and it was nestled under an article titled "Protection of *Birds*." Both the "why" (protecting birds) and the "how" (not applying to firearms) are entirely different from Hawaii's modern law.

There is not sufficient space here to examine every law the panel cited. But if this Court does so upon granting certiorari, it will find that historical park carry restrictions were generally unconcerned with firearm carry for self-defense and instead applied to hunting and illegal discharge.

Yet even if the panel were correct that this smattering of post-Reconstruction sources constitutes a tradition of banning peaceable carry of firearms for self-defense in urban parks, these historical ordinances still would not support banning carry on *every* beach and in *every* state park. For example, one of the *May* Plaintiffs is the President of the San Diego County Wildlife Federation, and often hikes alone through public lands, including rural state parks. Complaint at 5, *May v. Bonta*, No. 8:23-cv-01696 (C.D. Cal. Sept. 12, 2023), ECF No. 1. Under the panel's ruling, he will have to do so unarmed. Such a restriction is patently unconstitutional, as nothing could be further away from a "sensitive place" than the wilderness. Even the Second Circuit agreed, implying its ruling would have been different on the question of rural parks specifically. *Antonyuk v. James*, 120 F.4th 941, 1025 (2d Cir. 2024) (doubting that the historical record "could set forth a well-established tradition of prohibiting firearm carriage in rural parks"). That question was squarely presented in the *May* matter that was consolidated on appeal with *Wolford*, and the panel should have resolved it correctly.

Further, while Amici are willing to humor Hawaii's resort to post-Reconstruction restrictions (given that the State should lose even if 19th Century history is

wrongly given the most weight), Petitioners are, of course, correct that the panel should have focused on the Founding era. "Despite the undeniable presence of recreational-use parks at the Founding, the panel—and California and Hawaii—fail to provide any Founding-era laws prohibiting firearms in those places ... their failure to do so should be dispositive." App. 195a (VanDyke, J., dissenting from denial of rehearing en banc). This Court can now correct that error by guiding the Ninth Circuit to focus on Founding-era history.

III. THE NINTH CIRCUIT IGNORES A CRITICAL DIFFERENCE BETWEEN HAWAII'S MODERN CARRY REGULATIONS AND THE HISTORICAL ANALOGUES IT CITES

While most states (29 in total) have adopted some form of permitless or "constitutional" carry under which anyone who may legally possess a firearm may carry it without a permit, Hawaii has not done so. Like 20 other states, including California, it only allows carry if the person has gone through the process to get a concealed handgun license. Applicants for CCW permits are extensively vetted, usually submitting to a police interview, background check, firearms safety training course, reference checks, and more.

The result of this process is that state-level data proves that Americans with CCW permits are exceptionally law-abiding, much more so than the general population as a whole. In their own litigation challenging California's law, Amici presented extensive data to that effect, and the district court acknowledged it in its ruling. "Simply put, CCW permitholders are not the gun wielders legislators

should fear." *May v. Bonta*, 709 F. Supp. 3d 940, 969 (9th Cir. 2023), *aff'd in part, rev'd in part sub nom. Wolford*, 116 F.4th at 959.[6] So law-abiding are those with permits that several major police organizations in California submitted an amicus brief in support of Amici in their case challenging California's law. "In California, CCW permit holders are some of the most highly vetted, trained, responsible and law-abiding citizens, who do not jeopardize public safety." *See* Amicus Brief of Peace Officers Research Association of California, et al. at 6, *May v. Bonta*, No. 23-4356 (9th Cir. Feb. 23, 2024), ECF No. 57.1. At least one research organization that typically argues for more gun control, RAND, has recognized the same: "[E]vidence generally shows that, as a group, license holders are particularly law abiding and rarely are convicted for violent crimes." Rosanna Smart, et al., *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effect of Gun Policies in the United States* 427 (4th ed. 2024), available at https://www.rand.org/pubs/research_reports/RRA243-9.html.

This is critical to the sensitive places analysis. Up until the 20th century, almost any citizen could carry firearms openly in public without government vetting or licensing. While some towns and cities had permitting requirements in the late 19th century,

[6] Other courts have found the same. "[T]he vast majority of conceal carry permit holders are law abiding." App. 163a; *Koons v. Platkin*, 673 F. Supp. 3d 515, 577 (D.N.J. 2023) ("[D]espite ample opportunity for an evidentiary hearing, the State has failed to offer any evidence that law-abiding responsible citizens who carry firearms in public for self-defense are responsible for an increase in gun violence.").

those usually only applied to concealed carry, while open carry was almost always an option without a permit ever being required. Today, by contrast, Hawaii does not allow for open carry in most instances, so concealed carry with a CCW permit is the only way for citizens to exercise their rights.

The Ninth Circuit disregarded this critical difference in "how" the modern laws at issue operate compared to proposed historical analogues, ruling that "[i]f a particular place is a 'sensitive place' such that firearms may be banned, then firearms may be banned—for everyone, including permit holders—consistent with the Second Amendment." App. 31a. That conclusion skips the Bruen analysis altogether because "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are 'central' considerations when engaging in an analogical inquiry." 597 U.S. at 29.

Considering the extensive vetting burden on permit holders in present-day Hawaii that was absent before 1900, the modern location restrictions and the proposed historical analogues are plainly not "comparably justified." Moreover, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700. Hawaii has not shown (because it cannot) that the people to whom it grants CCW permits are in any way dangerous. It's just the opposite; their most distinct shared characteristic is that they do not pose any notable criminal threat, as

Hawaii is allowed to confirm before even issuing them a permit.

To be sure, this does not mean that some truly sensitive places cannot also prohibit those with CCW permits from carrying. As this Court has confirmed, the historical record supports "relatively few" places where carry could be prohibited, but the three examples it provided were legislative assemblies, polling places, and courthouses. *Bruen*, 597 U.S. at 30. In their haste to try to ban carry in as many places as possible, Hawaii and California ignored the real "why" behind those historical restrictions.

The shared "principle that underpin[s] our regulatory tradition," *Rahimi*, 602 U.S. at 692, is a limitation on carrying arms *where the deliberative business of governance is conducted*. That is what legislative assemblies, polling places, and courthouses all have in common under *Rahimi*'s approach, and what the places at issue here do not. The fear was not the typical criminal violence that CCW permit vetting requirements are meant to guard against, but the heightened passions and political intimidation that could arise if armed men could enter a polling place or courthouse (particularly in an era where arms were carried openly). In sum, our history supports that "governments may restrict firearms possession in places where important and legally definitive governmental decisions are regularly made." *United States v. Ayala*, 711 F. Supp. 3d 1333, 1347 (M.D. Fla. 2024). Modern analogues might include restrictions on carry in places like city council chambers or voter registration centers, but they would not include the sorts of places people go to as part of their daily lives,

such as run-of-the-mill parks or restaurants that offer beer or wine with dinner.

Hawaii's law thus differs in "how" it operates compared to historical laws (everyone must go through a rigorous application process before carrying), and "why" it restricts carry (a fear of routine crime versus a fear of political violence and intimidation).

IV. THE NINTH CIRCUIT ERRONEOUSLY RELIED ON THIS COURT'S DICTA TO UPHOLD SEVERAL DISSIMILAR LOCATION RESTRICTIONS.

The *Wolford* panel based much of its analysis on a location restriction that was not at issue in any case before it: schools. Specifically, it claimed that "[t]he Supreme Court held that schools qualify as sensitive places because of localized, non-controversial laws that prohibited firearms at a few schools, and those laws were first enacted in 1824—more than three decades after the ratification of the Second Amendment." App. 28a. But the panel's conclusion was wrong because this Court did not "hold" that schools were sensitive places, as that question was not before it in *Heller* or any other case. That discussion was dicta.

Moreover, the 1824 "law" the panel refers to was nothing of the sort. It was a school *rule* at the University of Virginia that applied *only to students*, not adults, as a recent district court ruling noted: "these early university bans ... were not regulations on carrying weapons in 'sensitive places.' Rather, they banned certain persons—students—from carrying weapons.... Neither … applied to faculty members or

to members of the community...." *United States v. Metcalf*, No. CR 23-103-BLG-SPW, 2024 WL 358154, at *7 (D. Mont. Jan. 31, 2024). State bans on carrying in school buildings would mostly only start to arise towards the end of the 19th century in just a handful of states and Western Territories. *Id.* at *8 (discussing six laws ranging from 1871 to 1903); *but see Bruen*, 597 U.S. at 61 (describing a "a teacher from a Freedmen's school in Maryland" who carried to school "'a revolver' for his protection").

The Ninth Circuit nonetheless relied on its contrived comparison to schools as further support to uphold several location restrictions in places that are not schools. For example, its analysis of libraries, which existed in the Founding era, was simply that because some libraries are also located in schools and courthouses, the presumptive restriction applicable to those places is, therefore, constitutionally permissible as to libraries. The fact that the overwhelming majority of public libraries are *not* located within schools or courthouses was not acknowledged or analyzed. App. 47a-48a. The panel's analysis in this regard fails to apply *Bruen* in any meaningful way, conducting a "similar things" analysis without determining the importance of those similarities—e.g., applying a metric of "things that are green" even if green isn't the important metric—that *Bruen* discouraged. *See* 597 U.S. at 29.

That a nonsensitive place is sometimes located in a sensitive place does not identify a similarity of significant import in the analogical analysis to declare all such nonsensitive places sensitive. Were that the proper analysis, then virtually all of the challenged

areas that the panel did get right—banks, hospitals, churches, public gatherings, public transportation—would also be sensitive places using the panel's logic regarding libraries. Some banks are in government buildings; some hospitals and churches are located on military bases; some public gatherings occur at schools; and some public transportation runs to, onto, or through government buildings, military bases, and schools. The faithful application of *Bruen* does not merit analogizing the few to the whole in these instances, yet, for libraries, the Ninth Circuit concluded it somehow does.

The dearth of Founding-era school carry restrictions makes it a weak foundation on which to base so many of the Ninth Circuit's conclusions. And the inconsistency in which it applied its arguments about school restrictions to venues other than schools underscores the fatal errors in the panel's opinion. These facial inconsistencies must be corrected.

CONCLUSION

Without this Court's intervention, the right to carry in Hawaii will be effectively eliminated for years. The Court should grant the petition for a writ of certiorari. Alternatively, if this Court is not inclined to review the case now, it should at least restore the original district court injunction in full until final judgment is reached.

May 2, 2025

Respectfully submitted,

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No. 24-1046

IN THE
Supreme Court of the United States

JASON WOLFORD, ET AL.,
Petitioners,

v.

ANNE E. LOPEZ, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF HAWAII,
Respondents.

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

BRIEF OF AMICUS CURIAE SECOND AMENDMENT LAW CENTER, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC., DELAWARE STATE SPORTSMEN'S ASSOCIATION, HAWAII RIFLE ASSOCIATION, GUN OWNERS OF CALIFORNIA, FEDERAL FIREARMS LICENSEES OF ILLINOIS, SECOND AMENDMENT DEFENSE AND EDUCATION COALITION, MINNESOTA GUN OWNERS CAUCUS, OPERATION BLAZING SWORD-PINK PISTOLS, AND THE NATIONAL RIFLE ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 5,753 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Sworn to and subscribed before me this 2nd day of May 2025.

AZA SALINDER DONNER
NOTARY PUBLIC
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My commission expires April 30, 2029.

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Respondents.

AFFIDAVIT OF SERVICE

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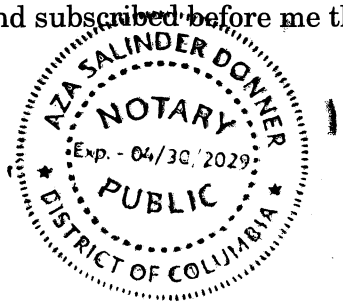

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My commission expires April 30, 2029.