No. 24-1185

IN THE
Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.,
Petitioner,
v.
MARK GLASS, in his Official Capacity as Commissioner of the Florida Department of Law Enforcement, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Brief *Amicus Curiae* of Gun Owners of America, Gun Owners Fdn., Gun Owners of CA, Firearms Regulatory Accountability Coalition, Coalition of NJ Firearm Owners, Grass Roots NC, TN Firearms Association, TN Firearms Fdn., VA Citizens Defense League, VA Citizens Defense Fdn., Rights Watch Int'l, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioners

JOHN I. HARRIS III
Nashville, TN 37203

OLIVER M. KRAWCZYK
Carlisle, PA 17013

*Counsel of Record

ROBERT J. OLSON*
WILLIAM J. OLSON
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
Attorneys for Amici Curiae

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Firearms Regulatory Accountability Coalition, Inc., Coalition of New Jersey Firearm Owners, Grass Roots North Carolina, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, Rights Watch International, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

STATEMENT OF THE CASE

In 2018, after a tragic school shooting perpetrated by a lone 19-year-old, the Florida legislature enacted Fla. Stat. § 790.065(13). This statute violates the rights of all adults from ages 18 to 20 in the State of

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Florida, flatly prohibiting that entire class of persons from purchasing firearms, as follows:

> A person younger than 21 years of age may not purchase a firearm. The sale or transfer of a firearm to a person younger than 21 years of age may not be made or facilitated by a licensed importer, licensed manufacturer, or licensed dealer. A person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The prohibitions of this subsection do not apply to the purchase of a rifle or shotgun by a law enforcement officer or correctional officer, as those terms are defined in § 943.10(1), (2), (3), (6), (7), (8), or (9), or a servicemember as defined in § 250.01. [Fla. Stat. § 790.065(13) (emphasis added).]

Petitioners filed suit alleging violations of their right to keep and bear arms under the Second and Fourteenth Amendments. Following years of litigation and an intervening clarification in the applicable constitutional standard from this Court, the Eleventh Circuit *en banc* upheld the challenged statute, concluding that it "is consistent with our historical tradition of firearm regulation." Pet.App.3a. Yet, the Eleventh Circuit identified not one relevant "*firearm regulation*" in support of its decision. Rather, the *en banc* court relied almost exclusively on Founding-era common-law principles regarding legal infancy, some of which applied to those under the age of 21, but none of which prohibited the purchase or possession of firearms. Pet.App.14a-19a. Nevertheless, the

Eleventh Circuit upheld Florida's prohibition on the purchase of firearms by *adults* based on little more than an assumption that persons classified as *infants* in a prior era "lacked cash and the capacity to contract." Pet.App.28a. It was not until the Reconstruction era that the Eleventh Circuit could find express restrictions on the sale of weapons to those under 21. Pet.App.24a. This approach drew sharp criticism, as four circuit judges dissented in three different opinions, with each calling into question the majority's faithfulness to this Court's methodological approach to Second Amendment cases. Pet.App.2a.

SUMMARY OF ARGUMENT

If the years since this Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), have revealed anything, it is that the lower courts resist this Court's textualist and originalist approach in increasingly inventive ways. Pre-*Heller*, the courts reasoned that a right which belongs to "the people" in fact does not protect people at all. Post-*Heller*, almost all lower courts interest-balanced the Second Amendment into oblivion, despite this Court's explicit warning not to do so. And post-*Bruen*, interest balancing only went underground. Indeed, some courts have contrived convoluted tests to deny challengers even a *presumption* of constitutional protection for *obvious* Second Amendment conduct. Others claimed that 1791's Second Amendment is best understood according to a public meaning that postdates the Civil War. But the Eleventh Circuit below devised an entirely new approach — upholding

a *firearm* regulation not according to a historical tradition of *firearm* regulation, but rather based on an assumption about the application of contract law to Founding-era economic activity. Without this Court's regular intervention in Second Amendment cases, it appears that the lower courts will continue to exercise increasing creativity to narrow the right to keep and bear arms, as old habits die hard.

This Court should grant certiorari for all the reasons advanced in the Petition, and, in addition, three further reasons. First, this case will allow the Court to clarify that the Second Amendment's plain text *obviously* covers those acts necessary to the right's exercise, such as the *acquisition* of firearms, a predicate and necessary act deserving of constitutional protection, yet which the lower courts nevertheless dispute. Some courts rightly hold that acquisition is an ancillary and concomitant right to "keeping" and "bearing" that the Second Amendment must protect; other courts deny this right altogether; others engage in convoluted interest balancing; and some avoid the question entirely.

Second, this Court should clarify that *Bruen* meant what it said — a historical tradition of *firearm regulation* means the government must proffer *firearm regulations*, not a historical hodgepodge of vague principles and assumptions entirely untethered to the *firearm* prohibition the Eleventh Circuit upheld. Indeed, to uphold a prohibition on the ability of legal adults to purchase firearms, the Eleventh Circuit should have required a true analogue — one that explicitly prohibited purchases of firearms. It failed to

do so, and leaving this error uncorrected will only inspire more deviation from *Bruen*, not less.

Third, the Eleventh Circuit's indulgent exposition detailing a mass-shooting tragedy deserves a response. The role of courts is to say what the law is, and then apply it to facts. When judicial opinions devolve into emotion-laden narratives rationalizing the reasonableness of the firearm regulations they then strain to uphold, the public loses confidence that judges are deciding constitutional cases objectively. This Court should reiterate that *Heller*, *Bruen*, and *Rahimi* call for an *objective* textual and historical standard applied by neutral and detached judges — nothing more.

ARGUMENT

I. THIS CASE PRESENTS A CRITICAL OPPORTUNITY TO CLARIFY THE SECOND AMENDMENT'S TEXTUAL PROTECTION OF THE ANCILLARY AND CONCOMITANT RIGHTS OF FIREARM ACQUISITION AND PURCHASE.

The Second Amendment guarantees "the right of the people to keep and bear Arms." Analyzing the common meaning of these terms in *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court explained that to "keep Arms" means to "have" or own them, while to "bear Arms" means to "carry" them "upon the person or in the clothing or in a pocket." *Id.* at 582, 584 (cleaned up). Thus, according to its plain text, the Second Amendment clearly protects the act of

possessing weapons. But in order for the right to have any force, it also must protect those "closely related acts necessary to [its] exercise," *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment), such as the threshold act of acquisition, whether by purchase, manufacture, gift, or bequest.

Indeed, "[w]ithout protection for these closely related rights, the Second Amendment would be toothless," as the government could simply ban *all acquisitions* of firearms, so long as it left undisturbed the literal acts of *keeping* and *bearing* existing weapons. *Id.* at 27. In that case, firearms would go to the grave with their owners, as the only part of "the people" entitled to "keep and bear Arms" would be those gun owners at the time of the Second Amendment's adoption in 1791. Clearly, the Founders did not intend the right to keep and bear arms to be snuffed out in just a few generations.

For its part, the Eleventh Circuit rightly observed — albeit on an implicit basis — that the Second Amendment's text covers the purchase of firearms, whether via commercial transaction or private sale. Pet.App.9a. This was true even though the Second Amendment's text says nothing of "purchase" or "acquisition" on its face. Rather, the Eleventh Circuit understood that these threshold acts constitute "arms-bearing conduct" as this Court has used the term, and that a regulation of such conduct requires examination of "the historical tradition of firearm regulation in our nation to delineate the contours of the right." Pet.App.9a (cleaned up) (quoting *United States v. Rahimi*, 602 U.S. 680, 691 (2024)).

What the Eleventh Circuit assumed implicitly,[2] this Court should declare explicitly. Although the Eleventh Circuit's implicit finding was correct — the Second Amendment's text *obviously* protects the right to acquire firearms — it highlights where many other lower courts have gone off the rails. Indeed, even after *Bruen*, the lower courts are in disarray with respect to what sort of textual analysis this Court requires. Thus, in addition to resolving the question presented, this case presents a critical opportunity for this Court to set the record straight and explain that the Second Amendment's text necessarily covers those ancillary and concomitant rights that give effect to its enumerated acts.

Curiously, pre-*Bruen* interest-balancing decisions seemed far more open to recognizing the ancillary right to acquire arms — perhaps because judges still believed they retained the wiggle room to uphold all manner of firearm regulation. *See, e.g., Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("The right

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[2] Recently, the Fourth Circuit, like the Eleventh Circuit below, simply assumed without deciding the question. In *McCoy v. BATFE*, 2025 U.S. App. LEXIS 15056 (4th Cir. June 18, 2025), that court noted that "the parties do not dispute that appellees' intended action — purchasing a handgun for lawful purposes — is part of the 'conduct' protected by the Amendment," and merely "assume[d] without deciding that appellees are part of 'the people' and are therefore covered by the Amendment's text." *Id.* at *11. The Fourth Circuit ultimately upheld the federal prohibition on the commercial sale of handguns to legal adults under the age of 21 for much the same reason as the Eleventh Circuit below. *Id.* at *13 ("The infancy doctrine imposed a severe burden on a minor's ability to purchase goods, including firearms, during the founding era.").

to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective."); *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) ("This right must also include the right to *acquire* a firearm...."); *Bezet v. United States*, 276 F. Supp. 3d 576, 605 (E.D. La. 2017) (noting that restrictions on the "importation of firearms or the use of imported parts to assemble a firearm … likely impinge on the rights of law-abiding, responsible citizens under the Second Amendment to possess and carry firearms because they inhibit the ability to acquire such weapons"), *aff'd*, 714 F. App'x 336 (5th Cir. 2017); *Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (noting the "right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms"). So uncontroversial was this pre-*Bruen* consensus that, in 1871, the Tennessee Supreme Court explained that "[t]he right to keep arms[] necessarily involves the right to purchase them." *Andrews v. State*, 50 Tenn. 165, 178 (1871).

Yet suddenly, following this Court's explication of its Second Amendment standard in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the lower courts have failed to reach a consensus as to whether the Second Amendment *even presumptively protects* the basic acquisition of a firearm. Indeed, shortly after *Bruen* was decided, one district court triumphantly declared that this "Court looks at the Second Amendment's plain text; it does not consider 'implicit' rights that may be lurking beneath the surface of the

plain text." *United States v. King*, 646 F. Supp. 3d 603, 607 (E.D. Pa. 2022). With this misunderstanding of this Court's methodology, the *King* court held that the Second Amendment does *not* protect "buying and selling firearms" at all. *Id.* Another district court recently reiterated this startling proposition, purporting to consider the "'normal and ordinary' meaning of the Second Amendment's language" to conclude that "'the Second Amendment's plain text' does not cover purchasing firearms." *Ortega v. Grisham*, 741 F. Supp. 3d 1027, 1072 (D.N.M. 2024) (cleaned up). And, having latched onto this restrictive approach, the *Ortega* court then went one step further, claiming that "to possess or carry does not mean to *obtain or acquire*." *Id.* (emphasis added).

In contrast with the Pennsylvania and New Mexico district courts, a Delaware district court succinctly observed that "the right to keep and bear arms implies a corresponding right to manufacture arms." *Rigby v. Jennings*, 630 F. Supp. 3d 602, 615 (D. Del. 2022). Thus, the *Rigby* court found that the private manufacture of "untraceable firearms" was "protected by the Second Amendment," and proceeded to the historical analysis that *Bruen* instructed. *Id.* Likewise, a Texas district court exposed the absurdity of arguments to the contrary with the following hypothetical:

> [I]f buying (receiving) a gun is not covered by the Second Amendment's plain text, neither would selling one. So according to the Government, Congress could throttle gun ownership without implicating Second

> Amendment scrutiny by just banning the buying and selling of firearms. What a marvelous, Second Amendment loophole! [*United States v. Hicks*, 649 F. Supp. 3d 357, 360 (W.D. Tex. 2023).]

And in *Reese v. BATFE*, 127 F.4th 583 (5th Cir. 2025), the Fifth Circuit recently adopted a similar approach, explaining that "the right to 'keep and bear arms' surely implies the right to purchase them." *Id.* at 590. As that court explained:

> The threshold textual question is not whether the laws and regulations impose reasonable or historically grounded limitations, but whether the Second Amendment "covers" the conduct (commercial purchases) to begin with. Because constitutional rights impliedly protect corollary acts necessary to their exercise, we hold that it does. To suggest otherwise proposes a world where citizens' constitutional right to "keep and bear arms" excludes the most prevalent, accessible, and safe market used to exercise the right.[3] The baleful implications of limiting the right at the outset by means of narrowing regulations not implied

[3] Indeed, by leaving 18-to-20-year-old Floridians at the mercy of others' good graces in order to lawfully acquire firearms via *gift*, the Florida statute "perversely assures that when such young adults obtain handguns, they do not do so through licensed firearms dealers, where background checks are required, but they go to the unregulated market." *NRA v. BATFE*, 714 F.3d 334, 346 (5th Cir. 2013) (Jones, J., dissenting from denial of rehearing *en banc*) (citation omitted).

> in the text are obvious; step by step, other limitations on sales could easily displace the right altogether. [*Id.*]

The Sixth Circuit is in accord, having explained on more than one occasion that "[r]eceiving a firearm, of course, is protected because it is a logical antecedent to 'keep[ing]' a firearm." *United States v. Gore*, 118 F.4th 808, 813 (6th Cir. 2024); *see also United States v. Knipp*, 2025 U.S. App. LEXIS 12054, at *7 (6th Cir. May 19, 2025) ("[A]lthough the Second Amendment's text does not spell out the right to obtain firearms, it nonetheless 'covers' that right.").

But if a simple split on the acquisition question was not enough, other courts have devolved into *interest-balancing* away the Second Amendment's plain text, employing a convoluted "it depends" approach to presumptive protection under *Bruen*. For example, the Fifth Circuit is internally fractured on the issue, seemingly adopting whatever standard reaches the desired result. Indeed, in an earlier pre-*Reese* opinion, a prior panel of the Fifth Circuit claimed that, "on its face[,] 'keep and bear' does not include purchase." *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024). But rather than finding *no presumptive right* to purchase firearms, the *McRorey* court acknowledged that "[t]he right to 'keep and bear' *can implicate* the right to purchase," and so it would "prohibit[] shoehorning restrictions on purchase," but only if they resulted in "functional prohibitions on keeping." *Id.* at 838 (emphasis added). In other words, *McRorey* would acknowledge a right to

purchase only if the right was *destroyed entirely*.[4] In contrast, a mere "burden" on the right apparently would be unworthy of historical analysis — a stunning conclusion that a subsequent Fifth Circuit panel swept under the rug in a footnote. *See Reese* at 590 n.2.

Restating the Fifth Circuit's *McRorey* approach in far more "judge-empowering" terms (*Bruen* at 22), the Ninth Circuit recently claimed that "the Second Amendment only prohibits *meaningful constraints* on the right to acquire firearms." *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 118 (9th Cir. 2024) (emphasis added). Thus, under the Ninth Circuit's approach, judges once again become arbiters of such amorphous notions as "meaningfulness" and "severity," even though analysis of "'the severity of the law's burden on that right'" was the ubiquitous "second step" that *Bruen* repudiated. *Bruen* at 18. And yet for some courts, it seems that all roads lead to "a judge-empowering 'interest-balancing inquiry'" (*Heller* at 634), in spite of this Court's repeated rejection of just such an approach. *See Chavez v. Bonta*, 2025 U.S. Dist. LEXIS 56624, at *12 (S.D. Cal. Mar. 26, 2025) ("[A] ban on all sales of a certain type of gun in a region is a *meaningful constraint* implicating the Second Amendment, but a '*minor constraint* on the

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[4] *But see Jackson v. City & County of San Francisco*, 576 U.S. 1013, 1016 (2015) (Thomas, J., dissenting from denial of certiorari) ("[N]othing in our decision in *Heller* suggested that a law must rise to the level of the absolute prohibition at issue in that case to constitute a 'substantial burden' on the core of the Second Amendment right.").

precise locations within a geographic area where one can acquire firearms [is] not.'") (emphasis added).

Finally, one circuit has supplanted constitutional text with dicta, concluding that it may rely on this Court's prior untested assumptions to decide Second Amendment questions at their threshold, and without resort to *Bruen*'s historical framework. In *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), the Tenth Circuit ducked the question of whether "purchasing a firearm is a necessary concomitant of the right to 'keep and bear,'" on the theory that certain unnamed "'longstanding' … 'conditions and qualifications on the commercial sale of arms' — are 'presumptively lawful.'" *Id.* at 118 (quoting *Heller* at 626-27 & n.26). Rejecting this Court's warning that "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment" and "there will be time enough to expound upon the historical justifications … if and when those exceptions come before us," *Heller* at 626, 635, the Tenth Circuit found that such preliminary statements in fact constitute a "safe harbor" from consideration of the Second Amendment's textual scope. *Rocky Mountain Gun Owners* at 119.

These divergent approaches denying a Second Amendment right to even acquire firearms fail to comport with this Court's approach to constitutional rights. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), this Court explained that:

> [t]he right of freedom of speech and press includes not only the right to utter or to print,

> but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach - indeed the freedom of the entire university community. Without those peripheral rights the specific rights would be less secure. [*Id.* at 482-83 (citations omitted).]

See also Bruen at 70 ("The [Second Amendment] is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'"). Indeed, it is axiomatic that, "when a text authorizes a certain act, it implicitly authorizes whatever is a necessary predicate of that act." A. Scalia & B.A. Garner, Reading Law: The Interpretation of Legal Texts at 96 (Thomson/West: 2012). The Second Amendment therefore must protect such "peripheral rights" — such as the acquisition of firearms, and more specifically their purchase — to allow "the people" to exercise the enumerated acts of keeping and bearing. This case presents an excellent opportunity for this Court to state just that. Such guidance is critically important to repudiating the untenable approaches courts have begun to employ below. Such "reasoning is a virus that may spread if not promptly eliminated." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71, 75 (2024) (Alito, J., dissenting from denial of certiorari).

II. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THAT A HISTORICAL TRADITION OF *FIREARM* REGULATION MUST BE GROUNDED IN ACTUAL "*FIREARM* REGULATIONS."

When this Court reaffirmed *Heller*'s textual and historical standard in *Bruen*, it declared in no uncertain terms that the "government must demonstrate that [its] regulation is consistent with this Nation's historical tradition of *firearm regulation*." *Bruen*, 597 U.S. at 17 (emphasis added). So central was the notion of requiring historical *gun laws* to uphold a modern *gun law* that this Court reiterated variations of the term "firearm regulation" seven more times throughout its majority opinion. *See id.* at 17-67. And this Court's most recent pronouncement on the Second Amendment did not deviate. *Rahimi* upheld a federal statute temporarily disarming those "who threaten physical harm to others" because, "[s]ince the founding, our Nation's *firearm laws* have included provisions preventing individuals" from doing just that. *Rahimi*, 602 U.S. at 690 (emphasis added). *Mano a mano*, firearm law to firearm law.

Contrast this Court's logical approach to constitutional analysis with the head-scratching approach of the opinion below. When this Court seeks to ascertain the original meaning of the Establishment Clause, it "analyz[es] certain historical elements of *religious establishments*" and "look[s] to their 'place … in the *First Amendment's* history.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (emphases added). When this Court analyzes the

original meaning of the Second Amendment, it "review[s] the history of American *gun laws* extensively," just as it did "in *Heller* and *Bruen*." *Rahimi*, 602 U.S. 693 (emphasis added). And even when this Court consults the common law to accomplish this task, it still seeks relevant regulations, such as "surety laws," which "targeted the misuse of firearms," and "prohibitions on going armed and affrays." *Id.* at 695-97. The same is true when this Court consults the "common law of the founding era" when analyzing searches and seizures under the Fourth Amendment. *Virginia v. Moore*, 553 U.S. 164, 168 (2008). Indeed, such inquiry into "common-law trespass" looks to the norms of how people treated *property* in order to determine the boundaries of the Fourth Amendment vis-à-vis the police. *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (collecting cases).

The Eleventh Circuit's opinion respected none of these constitutional guideposts. In the apparent absence of an affirmative Founding-era tradition of *firearm regulations* prohibiting 18-to-20-year-olds from purchasing firearms, the opinion below latched onto the common law of *contract*. Pet.App.17a. Theorizing that, because "a person was an 'infant[]' or a 'minor[]' in the eyes of the law until age 21," and that those under 21 were subject to "many legal disabilities" for their own protection, the lower court invoked the "'general rule'" that such "contracts for the purchase of 'personal property'" would be "'voidable.'" Pet.App.14a, 17a. But "voidable" does not mean "void" and, in order to square this circle, the Eleventh Circuit cited a *secondary source* for the proposition that, "[b]y the early nineteenth century, … 'it became *almost*

impossible for children to form *any* contracts.'" Pet.App.17a (quoting Holly Brewer, By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority 271 (2005)). Finally seeking to relate this "almost impossibility" to *firearms*, the Eleventh Circuit theorized that "'contracts were more important for the basic transactions of society' than today," speculating that the purchase of firearms "required the ability to contract because people *often bought* goods on credit," and that Founding-era 18-to-20-year-olds must have "lacked cash." Pet.App.17a, 18a, 28a (emphasis added). In other words, the Eleventh Circuit's historical tradition was not grounded in an explicit *firearm regulation*, but rather an assumption based on a purportedly common economic practice. *See also McCoy* at *13 (applying contract/infancy doctrine). Of course, "[t]he members of the first Congress were ignorant of thermal heat imaging devices; with late teenage males, they were familiar." *NRA* at 342 (Jones, J., dissenting from denial of rehearing *en banc*). Young adults have always "lacked cash," but that is no reason to deny them Second Amendment rights.

Not only does this mode of analysis bear no resemblance to the robust collection of *actual gun laws* that this Court demanded in *Heller*, *Bruen*, and *Rahimi*, but it also fails one of *Bruen*'s most central analytical precepts. As *Bruen* made clear, "the text controls" over even contradictory history. *Bruen* at 36. Accordingly, because the Second Amendment's prefatory militia clause "announces a purpose," the operative term "the people" must include, *at minimum*, those who belonged to the militia at the Founding.

Heller at 577. And the militia *always* included 18-to-20-year-olds, each of whom had to "provide himself, at his own Expense, with a good Musket or Firelock." *United States v. Miller*, 307 U.S. 174, 181 (1939). *See also* Militia Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, 271 (defining the militia to include persons "who [are] or shall be of the age of eighteen years...."). The historical tradition therefore supports *Petitioners*.

And in any case, irrespective of whether those under the age of 21 were considered "infants" with various legal disabilities at the Founding, that is no longer true today. Indeed, individuals ages 18 to 20 are *adult* members of "the people" today, and suffer from none of the legal disabilities that inhered in common-law infancy. Rejecting the Eleventh Circuit's reliance on "[a]rguments of this type," the Eighth Circuit recently explained that, "focusing on the original contents of a right instead of the original definition — i.e., that only those people considered to be in the political community in 1791 'are protected by the Second Amendment,' instead of those meeting the original definition of being within the political community — [is] 'bordering on the frivolous.'" *Worth v. Jacobson*, 108 F.4th 677, 690 (8th Cir. 2024).

Taken to its logical conclusion, the Eleventh Circuit's reasoning would allow purported history to reign supreme over constitutional text. For instance, at the Founding, "slaves and Native Americans" were "'distrusted,'" "thought to pose more immediate threats to public safety and stability[,] and were disarmed as a matter of course." *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting). In other

words, these disfavored groups were not considered to belong to "the people" at the time of the Second Amendment's enactment. But as time has passed, American society's notion of who constitutes "the people" has expanded to include many disenfranchised groups that originally were not protected at the Founding. And no one would claim that a Founding-era historical tradition of racist disarmament would justify similar race-based regulation today. Contrary historical practice "'cannot overcome or alter that text.'" *Bruen* at 36.

By relying on so few firearm regulations, the Eleventh Circuit's errors were manifold. In addition to answering the question presented, this Court should grant certiorari to clarify that *Bruen*'s requirement of a "historical tradition of firearm regulation" means just that — *firearm* regulations are required.

III. THIS COURT SHOULD REPUDIATE THE JUDICIAL APPEALS TO EMOTION THAT PERMEATED THE DECISION BELOW AND ARE CLOUDING THE LOWER COURTS' *BRUEN* ANALYSES.

As this Court explained in *Heller*, the "very enumeration" of a constitutional right "takes out of the hands of government — even the Third Branch of Government — the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller* at 634. In other words, analysis of a provision of the Bill of Rights must be an *objective* inquiry into original meaning — one that is devoid of personal predilections or the influence of policy preferences. It

is such "reliance on history to inform the meaning of constitutional text" that is "more legitimate, and more administrable, than asking judges to 'make difficult empirical judgments' about 'the costs and benefits of firearms restrictions,' especially given their 'lack [of] expertise' in the field." *Bruen* at 25. Indeed, when left to their own devices, judges engaging in deferential interest balancing inevitably will decide cases not according to higher principle, but rather their own preferences.

Perhaps one of the greatest indicators of this sort of prohibited subjectivity is the use of emotionally charged language in legal opinion writing. Consider its analytical purpose — none. Judicial tugs on proverbial heartstrings do not advance a court's mission of elucidating the meaning of legal terms. Nor do they aid in applying law to facts. To the contrary, appeals to emotion serve only to justify seemingly predetermined results.

The Eleventh Circuit's introduction to its opinion all but gave away how the court would rule. Rather than beginning with a simple recitation of the procedural facts and legal standard — or even the *text of the Second Amendment* — the court opted instead to begin with an indulgent eight-paragraph narration of a mass shooting that had precipitated the enactment of the challenged statute. The details were macabre. *See* Pet.App.3a-6a. The court seemed to impute the actions of the tragedy's sole perpetrator on an entire class of people — 18-to-20-year-old adults. Having thus painted Florida's purchase ban as *reasonable* — it might have stopped a *mass shooting*, after all — only

then did the opinion actually begin its purported constitutional analysis. *But see Bruen* at 72 (Alito, J., concurring) ("Why, for example, does the dissent think it is relevant to recount the mass shootings that have occurred in recent years? … Does the dissent think that laws like New York's prevent or deter such atrocities?").

The introduction to the opinion below employed no principled approach to analyzing the right to keep and bear arms. According to the Second Amendment's text, and as elucidated by this Court in *Bruen*, if a member of "the people" wishes to "keep" or "bear" a protected "Arm," then the ability to do so "shall not be infringed." Period. There are no "ifs, ands, or buts," and it does not matter (even a little bit) how important, significant, compelling, or overriding is the government's justification for or interest in infringing the right. It does not matter whether a government restriction "minimally" versus "severely" burdens (infringes) the Second Amendment. There are no relevant statistical studies to be consulted. There are no sociological arguments to be considered. "Modern medical research" is entirely inapposite. Pet.App.84a (Rosenbaum, J., concurring). And the ubiquitous problems of crime or the density of population do not affect the equation. The only appropriate inquiry then, according to *Bruen*, is what the "public understanding of the right to keep and bear arms" was during the ratification of the Second Amendment in 1791. *Bruen* at 36-38.

This Court should clarify that the objective textual and historical framework it endorsed in *Heller* and

Bruen leaves no room for emotional decisionmaking or backdoor interest balancing. To that end, this Court should direct the lower courts to "center[] on constitutional text and history" (*Bruen* at 22), and to leave storytelling for other creative outlets. The "traditions of the American people … demand[] our unqualified deference" (*id.* at 26), and modern appeals to emotion serve only to distract from the historical deference that is owed.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

JOHN I. HARRIS III
SCHULMAN, LEROY & BENNETT, PC
3310 West End Ave.
Suite 460
Nashville, TN 37203

OLIVER M. KRAWCZYK
AMBLER LAW OFFICES, LLC
115 S. Hanover St., Ste.100
Carlisle, PA 17013

ROBERT J. OLSON*
WILLIAM J. OLSON
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
*Counsel of Record
Attorneys for Amici Curiae
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