SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-001947-24 (AM-000276-24)

STATE OF NEW JERSEY, Plaintiff-Respondent, v. EMMANUEL J. LOPEZ, Defendant-Appellant. _____	:	CRIMINAL ACTION Ind. No. 22-05-00360-I On Leave to Appeal from an Opinion of the Superior Court of New Jersey, Criminal Division Sat Below: Thomas K. Isenhour, J.S.C.

DEFENDANT-APPELLANT'S BRIEF

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

At approximately 4:15 PM on Friday, November 26, 2021, Elizabeth Police Detective James Heller, accompanied by Lt. Turner and Officer Matthew Charles Fonseca, were patrolling Fifth Street and East Jersey Street in Elizabeth in a "Burgundy Jeep" that is known on social media as a police vehicle. (Ma3-4)[2] Detective Heller observed a group of five to six males standing on the sidewalk in front of 542 East Jersey Street who seemed to notice the Burgundy Jeep. (Ma3-4) Emmanuel Lopez began walking west on East Jersey Street toward 554 East Jersey Street, his home. (Ma3-4)

Detective Heller stopped and detained Mr. Lopez at 550 East Jersey Street and began to pat him down, finding a handgun and three bags of suspected marijuana. (Ma4-5). The handgun was a Taurus brand Model PT 1911 .45 caliber and contained 4 ball rounds in the magazine. (Ma5) Mr. Lopez was placed under arrest without incident. (Ma5) The handgun's serial number was

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[1] Due to the interrelated nature of the procedural history and statement of facts in this case, the two sections have been combined for clarity.

[2] The following abbreviations are used:
Ma – Defendant's Motion Appendix in support of his Motion for Leave to Appeal (filed February 2, 2025)
Da – Defendant's Plenary Appendix (filed simultaneously with this brief)
1T – June 23, 2023
2T – April 22, 2024
3T – October 28, 2024
4T – December 9, 2024

run on NCIC and found not to be stolen. (Ma5) Mr. Lopez did not have a permit to carry a firearm. (Ma5) A Union County grand jury issued Indictment 22-05-360-I, charging Mr. Lopez with one count of second-degree unlawful possession of a handgun without a permit contrary to N.J.S.A. 2C:39-5(b)(1). (Ma1) Mr. Lopez was nineteen years old on the date of his arrest. (Ma3)

On March 13, 2023, Mr. Lopez filed a motion to dismiss the single count of the indictment, alleging that because he was exercising his constitutional right to carry a handgun, it violated the Second and Fourteenth Amendments of the United States Constitution to prosecute him for doing so without first obtaining a permit to carry a handgun because the State of New Jersey prohibits people under the age of twenty-one like Mr. Lopez from obtaining a permit. (Ma2, Ma6) In support of his motion, he submitted a certification that he would have been eligible for a carry permit under N.J.S.A. 2C:58-4 but for the challenged age-based eligibility requirement. (Ma6-9) He also certified that he was thoroughly familiar with the safe operation of a handgun and that three reputable people who knew him for at least three years who would have endorsed his application for a permit and certified that he was a person of good moral character and behavior. (Ma8-9) Those three people submitted separate certifications that they would have indeed endorsed his application. (Ma10-16)

On November 15, 2023, Judge Thomas K. Isenhour issued an order and

opinion denying Mr. Lopez's motion, finding that Mr. Lopez lacked standing to challenge the constitutionality of his prosecution for possession of a handgun under State v. Wade, 476 N.J. Super. 490 (App. Div.), leave to appeal denied, 255 N.J. 492 (2023), as he had never applied for a permit. (Ma27, 52-53) Mr. Lopez a motion for reconsideration after the Third Circuit found Pennsylvania's similar age-based restriction to violate the Second Amendment, but the Court denied this motion on April 30, 2024. (Ma64-72) Mr. Lopez filed another motion for reconsideration after Essex County Vicinage Superior Court Judge Christopher S. Romanyshyn issued an order dismissing charges under N.J.S.A. 2C:39-5(b)(1) for three defendants between the ages of eighteen and twenty, finding that New Jersey's age-restriction on handgun carry permits violated the Second Amendment and these defendants had standing unlike the defendants in Wade. (Ma73-78) (citing State v. Jeron Phillips, Essex Co. Ind. 22-03-534-I (Law. Div. May 8, 2024) and State v. Kyreed Pinkett, Essex Co. Ind. 22-10-2698-I (Law. Div. May 8, 2024)). Judge Isenhour denied this motion on December 10, 2024. (Ma89)

On February 2, 2025, Defendant filed a motion for leave to appeal along with a motion for leave to file his motion for leave to appeal as within time. On March 7, 2025, this Court granted Defendant's motion for leave to appeal. This brief follows.

LEGAL ARGUMENT

POINT I

BECAUSE ALL FEDERAL COURTS THAT REVIEWED STATE PERMITTING SCHEMES BARRING EIGHTEEN-TO-TWENTY-YEAR-OLDS FROM OBTAINING HANDGUN CARRY PERMITS HAVE HELD THAT THESE AGE RESTRICTIONS VIOLATE THE SECOND AMENDMENT, AND BECAUSE THE TRIAL COURT MISAPPLIED FEDERAL STANDING JURISPRUDENCE, THIS COURT SHOULD REVERSE AND REMAND FOR AN ORDER DISMISSING THE INDICTMENT. (Ma27, 52-53)

This Court should reverse and remand for the entry of an order dismissing the indictment because prosecuting Mr. Lopez for carrying a handgun without a permit violates the Second Amendment. Mr. Lopez is charged with the second-degree crime of carrying a handgun without a permit contrary to N.J.S.A. 2C:39-5(b)(1), but New Jersey prohibits the issuing of handgun carry permits to persons under twenty-one years of age under N.J.S.A. 2C:58-3(c)(4) and N.J.S.A. 2C:58-4(c). In other words, the only basis for criminalizing Mr. Lopez's conduct was that he did not have a carry permit, but New Jersey law made him statutorily ineligible for said permit because he was nineteen years old on the date he possessed the handgun. Because New Jersey's law that disqualifies eighteen-to-twenty-year-olds from carry permits violates the Second Amendment, and it is that law in combination with

N.J.S.A. 2C:39-5(b)(1) that made Mr. Lopez's conduct criminal, his criminal prosecution under that provision also violates the Second Amendment.

Following N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), all three federal courts that have considered state laws prohibiting eighteen-to-twenty-year-olds from publicly carrying handguns have held that these laws violate the Second Amendment. Lara v. Comm'r Pennsylvania State Police, 125 F.4th 428, 431 (3d Cir.), reh'g en banc denied, 130 F.4th 65 (3d Cir. 2025)[3]; Worth v. Jacobson, 108 F.4th 677, 683 (8th Cir 2024), cert. denied, __ S.Ct. __, 2025 WL 1151242 (Apr. 21, 2025) (Da20); Firearms Pol'y Coal., Inc. v. McCraw, 623 F. Supp. 3d 740, 758 (N.D. Tex.), appeal dismissed sub nom., Andrews v. McCraw, 2022 WL 19730492 (5th Cir. Dec. 21, 2022). (Da21) Most recently, the United States Supreme Court denied certiorari of the Eighth Circuit's opinion in Worth, leaving intact the Eighth Circuit's affirmance of the district court's order granting summary judgment and finding that Minnesota's law prohibiting eighteen-to-twenty-year-olds from receiving handgun carry permits violated the second amendment; the Supreme Court's

[3] The Commissioner of the Pennsylvania State Police submitted an application to the Supreme Court to extend the time to file a petition for a writ of certiorari, which was granted by Justice Alito, extending the deadline for submission of a petition to June 26, 2025. (Da22)

denial of certiorari means that Minnesota is now permanently enjoined from enforcing its age restriction.

Despite this clearly persuasive and uniform body of law demonstrating that New Jersey's provision prohibiting eighteen-to-twenty-year-olds from obtaining handgun carry permits is unconstitutional, Judge Isenhour never reached the merits of Mr. Lopez's constitutional claim. Instead, Judge Isenhour held that Mr. Lopez lacked standing to challenge New Jersey's age restriction because he had never applied for a permit. (Ma52-53) Judge Isenhour simply "adopt[ed] the Appellate Division's rationale in [Wade]" regarding standing. (Ma52-53)

Wade observed that, "[g]enerally, to establish standing to challenge an allegedly unconstitutional permit statute, the challenger must have applied for a permit or license under the statute." 476 N.J. Super. at 505 (citing United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012); Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022)). However, Wade also recognized that there is an "exception to the submission requirement if the challenger can 'make a substantial showing that submitting to the government policy would [have been] futile.'" Id. at 506 (quoting Kendrick, 586 F. Supp. 3d at 308)

Despite Wade's recognition of the futility exception to the application requirement to establish standing to challenge a permitting scheme, Judge

Isenhour did not analyze Mr. Lopez's arguments distinguishing his case from Wade; the court merely rejected his arguments in a single sentence stating that the court did "not find them persuasive in distinguishing" Wade. (Ma52-53)

This Court should reverse the trial court's holding that Mr. Lopez lacked standing to bring his Second Amendment challenge for the three reasons set forth in Part A. First, Mr. Lopez met the requirements for standing as articulated by the panel in Wade: (1) Unlike the Wade defendants, Mr. Lopez definitively established that it would have been futile for him to have applied for a permit because the age restriction rendered him statutorily ineligible; and (2) also unlike the Wade defendants, Mr. Lopez submitted sworn certifications demonstrating that he would have qualified for a carry permit excluding the age requirement. (Part A.1) Second, Wade was incorrect in its articulation of the futility exception to application requirement; every case interpreting the futility exception states that a challenger simply needs to show that the challenged criterion made it a foregone conclusion that he would have been denied a permit based on the challenged criterion, and none require a challenger to show he met all the other permit criteria. (Part A.2) Third, Mr. Lopez has standing because he brought a facial challenge. (Part A.3)

Because Mr. Lopez has standing to challenge New Jersey's age restriction for handgun carry permits, this Court should reach the merits of his

Second Amendment claim. As set forth in Part B, New Jersey's law prohibiting eighteen-to-twenty-year-olds from publicly carrying handguns for self-defense is not consistent with the nation's historical tradition of firearm regulation. Accordingly, this Court should hold that this restriction violates the Second Amendment and remand for an order dismissing the indictment.

If this Court concludes that: (1) Mr. Lopez has standing to challenge the constitutionality of New Jersey's age restriction for carry permits; (2) New Jersey's age restriction violates the Second Amendment; but (3) a trial court should in the first instance assess Mr. Lopez's evidence to determine whether he would have met all the qualifications for a carry permit other than the age requirement, this Court should remand to the trial court for such a determination. (Part C).

A. Mr. Lopez Has Standing To Challenge The Constitutionality Of New Jersey's Age Restriction On Handgun Carry Permits Without Having First Applied For Permits Because: (1) He Satisfied Wade's Requirement To Demonstrate The Challenged Provision Made It Futile For Him To Apply And That He Was Otherwise Qualified; (2) Even If He Had Not, Wade's Futility Test Is Wrong; And (3) He Brought A Facial Challenge To The Permitting Scheme.

Under Rule 3:10-2(d), a criminal defendant may "raise a defense that the crime charged in an indictment or accusation is based on a statute or regulation . . . which is unconstitutional or invalid in whole or in part." Wade, 476 N.J. Super. at 505. In a motion to dismiss the indictment, Mr. Lopez raised the

defense that the crime charged in his indictment is based on a statute, N.J.S.A. 2C:39-5(b)(1), which is unconstitutional in part in so far as it only criminalizes the carrying of a handgun "without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4," and 2C:58-4 incorporates the unconstitutional restriction in N.J.S.A. 2C:58-3(c)(4) that a person under twenty-one may not be issued a permit to purchase or carry a handgun.

Mr. Lopez has standing to challenge New Jersey's twenty-one-year minimum age requirement for handgun carry permits for three reasons. First, he met Wade's articulation of the futility test. (Part 1) Second, even if he had not met Wade's test, Wade's added requirement that a challenger show he would have qualified but for the challenged provision is inconsistent with the established doctrine of futility. (Part 2) Third, Mr. Lopez has standing because he raised a facial challenge to New Jersey's minimum age requirement for carry permits. (Part 3)

1. Mr. Lopez met Wade's futility test because he was statutorily ineligible for a permit due to the challenged age-restriction and he would have qualified for a permit but for this restriction.

Under New Jersey's prohibition on giving a carry permit to anyone under twenty-one years old, it was preordained that at nineteen years old Mr. Lopez's application would have been denied. As noted, the panel in Wade

acknowledged that while, "[g]enerally, to establish standing to challenge an allegedly unconstitutional firearm permit statute, the challenger must have applied for a permit or license under the statute," "there is a recognized exception to the submission requirement if the challenger 'can make a substantial showing that submitting to the government policy would have been futile.'" 476 N.J. Super. at 505-06 (emphasis added) (quoting Kendrick, 586 F. Supp. 3d at 308). "

For "challenges to a licensing rule regarding eligibility," "futility refers to the denial of an application," "i.e., whether the result is preordained." Antonyuk v. James, 120 F.4th 941, 979 (2d Cir. 2024). A person can establish that an application for a permit would be futile, even though they "never applied for a New [Jersey] handgun license," if they were "statutorily ineligible for a carry license." Bach v. Pataki, 408 F.3d 75, 82 (2d Cir. 2005); see also Decastro, 682 F.3d at 164 (approvingly citing Bach for the assertion that a criminal defendant can establish standing to challenge a handgun licensing scheme by proving he was statutorily ineligible), cited with approval in Wade, 476 N.J. Super at 506.

Wade cited with approval the Second Circuit case, Decastro, which affirmed that the futility exception is equally sufficient to establish standing to challenge the constitutionality of a licensing scheme upon which a criminal

charge is based, even if the defendant never applied for that license. 682 F.3d at 164. Decastro was convicted of violating 18 U.S.C. § 922(a)(3) by transporting into New York (his state of residence) a firearm he purchased in Florida. Id. at 161. He argued that New York's restrictive licensing scheme in combination with the prohibition in 922(a)(3) on transporting into New York a firearm acquired elsewhere made it virtually impossible for him to obtain a handgun for self-defense. Ibid.

While the Court found that Decastro's failure to apply for a license deprived him of standing to challenge New York's licensing scheme in his particular case, it noted that "[f]ailure to apply for a license would not preclude Decastro's challenge if he made a 'substantial showing' that submitting an application 'would have been futile.'" Id. at 164 (quoting Jackson-Bey v. Hanslmaier, 115 F.3d 1091, 1096 (2d Cir. 1997). The Court found that Decastro had failed to make a substantial showing of futility because the only evidence of futility he offered was a "hearsay statement of an unidentified police desk officer who had no apparent connection to the licensing process, and whose view [wa]s incompatible with the NYPD report that Decastro submitted." Ibid. The Court also reiterated Bach's conclusion that a party may demonstrate futility if "he was statutorily ineligible for a license." Ibid. (citing Bach, 408 F.3d at 82-83).

Mr. Lopez made a substantial showing of futility because he was statutorily ineligible for a carry permit under N.J.S.A. 2C:58-4(c) and N.J.S.A. 2C:58-3(c)(4) by virtue of being under twenty-one years of age. This case is thus distinct from Wade, because Daandre Wade failed to "establish[] the factual basis" for demonstrating futility in challenging the "justifiable need" requirement and thus "the record does not reflect that it would have been futile for Wade to have applied for a permit." Wade, 476 N.J. Super. at 506-7. There are two justifications for the Court's conclusion in Wade, both of which are distinguishable from Mr. Lopez. First, the only factual record was a certification submitted by Wade's counsel representing that Wade "would have qualified to receive a permit but for the justifiable need requirement," which was inadequate because (1) it was hearsay and thus "insufficient to establish facts in dispute" and (2) it did not even allege or explain that Wade would be unable to satisfy the justifiable need requirement. Id. at 506.

Second, even if the certification had been signed by Wade and explained why he lacked a justifiable need, it is doubtful that this would have been sufficient to make a "substantial showing" that his application would have been denied based on the justifiable need criterion. A "justifiable need" required demonstrating an "urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to

the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun." Ibid. (quoting N.J.S.A. 2C:58-4(c) (2018)). This criterion thus requires a discretionary evaluation by the police chief and a Superior Court judge to determine whether the applicant can satisfy it. The justifiable need requirement is therefore unlike the objective eligibility requirement of age. For that reason, it is doubtful that a defendant challenging the justifiable need requirement who never applied for a permit could ever make a "substantial showing" that his application would have been futile—i.e. that it would have inevitably been denied—due to the justifiable need requirement. This clear difference demonstrates why Mr. Lopez made a substantial showing of futility whereas Wade did not.

In addition to the requirement that a challenger to a permit scheme demonstrate he would have inevitably been denied based on the challenged provision, the Wade panel added an additional requirement—that the challenger "would have qualified for a gun-carry permit excluding the [challenged] requirement." 476 N.J. Super. at 506. The certification submitted by Wade's attorney did "not establish that Wade would have qualified for a gun-carry permit excluding the justifiable need requirement" because it did not assert that Wade was "thoroughly familiar with the safe handling and use of handguns," nor did Wade "submit certifications from 'three reputable persons

who ha[d] known [him] for at least three years' and who certified that he was 'a person of good moral character and behavior.'" Id. at 506-07 (quoting N.J.S.A. 2C:58-4(b) (2018)).

Recently, another panel of this Court issued an unpublished opinion in State v. Pinkett, No. A-3121-23 and State v. Phillips, No. A-3122-23) (App. Div. May 1, 2025), citing Wade, held that defendants lacked standing because they failed to apply for carry permits. Pinkett (slip op. at 17-18). (Da17-18) Specifically, this Court noted that the record in that case "contains no evidence that any of the defendants would have satisfied the numerous statutory requirements other than the age requirement had they applied for a handgun carry permit" and thus this Court was "unable to find that defendants' purported right to carry a handgun in public was abridged by the statutes' age requirement or that they have standing to challenge the constitutionality of the weapon possession charges they face." Id. (slip op. at 17).

In contrast to the defendants in Wade and in Pinkett, Mr. Lopez submitted a certification that he had visited firing ranges on multiple occasions during which a Range Safety Officer taught him to and observed him safely load, operate, and unload a handgun. (Ma7-8) He also attached the certifications of people who knew him for at least three years at the time of the incident and certified he is a person of good moral character and behavior.

(Ma10-15) Thus, Mr. Lopez did establish that he was eligible for a carry permit but for the age requirement. Rather than evaluating this evidence or the distinctions from Wade, however, Judge Isenhour simply ruled that under Wade Mr. Lopez did not have standing to challenge the charge of N.J.S.A. 2C:39-5(b)(1), stating that he did not find Mr. Lopez's supplemental arguments "persuasive in distinguishing this ruling" without further explanation. (Ma53) This Court should reverse this decision and hold that Mr. Lopez has met Wade's standing test.

Mr. Lopez anticipates that the State might nonetheless point to the following dicta in Wade in support of its position that this Court should reject Mr. Lopez's challenge: "The insufficient record supporting defendants' constitutional challenge illustrates why a motion to dismiss criminal charges is not the proper venue for demonstrating that defendants would have been granted a gun-carry permit but for the justifiable need requirement." 476 N.J. Super. at 507. This argument fails for several reasons.

First, this sentence is clearly dicta. Because the record in Wade was insufficient to demonstrate that the defendants were otherwise qualified for carry permits and thus insufficient to demonstrate that the defendants had standing, the Wade panel was not required to directly confront and answer the question of whether a defendant who established a record that he was

otherwise qualified could raise this argument in a motion to dismiss. Second, even if this sentence were not dicta, this Court is "not bound by [its] earlier decisions because [it] do[es] not sit en banc." Liberty Mut. Ins. v. Rodriguez, 458 N.J. Super. 515, 521 (App. Div. 2019) (citing Pressler and Verniero, Current N.J. Court Rules, cmt. 3.3 on R. 1:36-3 (2019)).

Third, Wade was wrong because there is absolutely no reason that a judge evaluating a defendant's motion to dismiss is incapable of evaluating whether a defendant met the requirements for a carry permit other than the challenged requirement. Superior Court judges have been evaluating whether carry permit applicants meet the permit criteria since the Criminal Code took effect in 1979:

> [T]he County Court of the county in which the applicant resides . . . shall issue the permit to the applicant if, but only if, it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3, that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.
>
> [L.1978, c. 95, codified at N.J.S.A. 2C:58-4(d).]

While in 2022 the Legislature removed the requirement that every carry permit must be approved by a Superior Court judge before it is issued, L.2022, c. 131, § 3, Superior Court judges remain charged with hearing all appeals of permit denials. N.J.S.A. 2C:58-4(e).

Additionally, there is nothing particularly difficult or unusual about requiring a judge to determine whether a defendant would have met the other carry permit requirements had he (counterfactually) applied. Criminal courts are charged with answering counterfactuals in a number of different scenarios. For example, when a defendant files a motion to suppress the fruits of an unreasonable warrantless search under the Fourth Amendment, the State can attempt to avoid suppression by proving that the evidence would have inevitably been discovered. To prove the inevitable discovery exception, the State must prove:

> (1) proper, normal and specific investigatory procedures would have been pursued in order to complete the investigation of the case; (2) under all of the surrounding relevant circumstances the pursuit of those procedures would have inevitably resulted in the discovery of the evidence; and (3) the discovery of the evidence through the use of such procedures would have occurred wholly independently of the discovery of such evidence by unlawful means.
>
> [State v. Sugar, 100 N.J. 214, 238 (1985).]

Thus, a criminal trial judge is perfectly well equipped to evaluated whether a defendant would have been able to meet the other permit requirements at the time he was arrested for possessing the handgun. The dicta in Wade suggesting otherwise is not persuasive and should not be followed by this Court.

In sum, because Mr. Lopez demonstrated that he met the requirements for a handgun permit other than the age requirement, he satisfied Wade's test for standing; this Court should thus reverse the decision of the trial court and hold that Mr. Lopez has standing to bring his Second Amendment challenge.

2. If this Court is not satisfied that Mr. Lopez demonstrated he was otherwise qualified for a carry permit but for the age requirement, it should still find he had standing based on his demonstration of futility because futility does not require the challenger to show he was otherwise qualified for the permit.

Even if this Court does not agree that Mr. Lopez demonstrated he met all the carry permit criteria other than the age requirement, this Court should nonetheless find that he has standing because he met the futility exception to the application requirement. While the Wade panel interpreted the futility exception to require that an applicant demonstrate he "would have qualified for a gun-carry permit excluding the [challenged] requirement," 476 N.J. Super. at 506, this is incorrect and inconsistent with every case applying the futility test. Futility requires only a showing that a defendant's application would have inevitably been denied based on the challenged criteria, not that it inevitably would have been granted but for the challenged criteria.

First, even a close reading of Wade itself reveals that its articulation of the futility test does not make sense. Wade begins by recognizing that there is

an "exception to the submission requirement if the challenger can 'make a substantial showing that submitting to the government policy would [have been] futile.'" Id. at 506 (quoting Kendrick, 586 F. Supp. 3d at 308). But Wade then confuses futility with its desired "otherwise qualified" test. The panel wrote that Wade's certification "does not establish that Wade would have qualified for a gun-carry permit excluding the justifiable need requirement," but then concludes that "the record does not reflect that it would have been futile for Wade to have applied for a permit even in the absence of the justifiable need provision." Id. at 506-07. These two sentences express diametrically opposed frames of analysis; if Wade had been qualified for a permit excluding the justifiable need requirement, he would have succeeded in obtaining a permit in the absence of the justifiable need requirement and thus it would not have been futile for him to have applied in the absence of the justifiable need requirement.

The Wade panel's confusion is clarified when examining the futility test that has been applied in all other cases. In its recent consideration of a Bruen challenge in Antonyuk, the Second Circuit elaborated upon the proper application of the futility exception test, explaining that "'futility' refers to the outcome of the contemplated application, i.e., whether the result is preordained." Antonyuk, 89 F.4th at 310. The Court provided several

additional iterations of the futility test: whether an application "would have been denied"; whether applicant was "statutorily ineligible" for the permit; and whether "it is obvious that [applicant] could not have" had his application granted. Ibid. (citing Decastro, 682 F.3d at 164; Bach, 408 F.3d at 82-83; Image Carrier Corp. v. Beame, 567 F.2d 1197, 1201-02 (2d Cir. 1977)). In short, "[f]utility refers to the denial of an application." Ibid.

This last definition of futility highlights an important distinction between the proper application of futility in federal law and the mistaken application of futility in Wade. That is, the federal futility exception test asks whether a given application would have inevitably been denied because of the challenged provision, and it does not ask whether a given application would have inevitably been granted in the absence of the challenge provision. "The Supreme Court has held that there is standing where 'the challenged action of the [government] stands as an absolute barrier' that will be removed 'if [the plaintiff] secures the . . . relief it seeks,'" Tweed-New Haven Airport Auth. v. Tong, 930 F.3d 65, 71 (2d Cir. 2019) (alterations in original) (quoting Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 261 (1977), even if a ruling striking down the challenged provision "would not guarantee [the p]laintiffs' success." Mhany Mgmt., Inc. v. County of Nassau, 819 F.3d 581, 602 (2d Cir. 2016).

Thus, the Wade panel was incorrect to conclude that defendants need to prove their application for a carry permit would have been granted in the absence of the age restriction in order to demonstrate futility. The Appellate Division effectively applied a test for futility that was more restrictive than the one employed in federal law, thereby violating the principle that New Jersey cases "tak[e] a more liberal approach on the issue of standing than [] federal cases." Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 101 (1971). Because application of the futility exception in Wade and the Appellate Division's opinion is contradicted by the very federal cases it cites, this panel should reject the Wade panel's erroneous articulation of the futility standard. Cf. Liberty Mut. Ins., 458 N.J. Super. at 521 (holding that the opinion of one panel of the Appellate Division does not bind another panel).

If this panel applies the correct version of the futility test by examining whether Mr. Lopez's carry permit application would have inevitably been denied under the age requirement that he challenges, it is clear that Mr. Lopez has established futility. Thus, this panel should hold that Mr. Lopez had standing to bring his Second Amendment challenge regardless of whether he could demonstrate that he was otherwise qualified but for the age requirement.

3. Mr. Lopez has standing to challenge the age requirement because he is arguing that the age requirement is facially void.

Beyond the question of the federal futility doctrine, a defendant always has standing to challenge the constitutionality of a statute "where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right." Smith v. Cahoon, 283 U.S. 553, 562 (1931). A "long line of precedent" confirms this point. See, e.g., City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 755-57 (1988) (collecting cases). In both the Fourteenth Amendment and First Amendment contexts, the Supreme Court has held when a challenged "ordinance is void on its face, it [is] not necessary for appellant to seek a permit under it. She [is] entitled to contest its validity in answer to the charge against her." Lovell v. City of Griffin, 303 U.S. 444, 452-53 (1938) (citing Smith, 283 U.S. at 562); see also City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 89 (1958); Plummer v. United States, 983 A.2d 323, 342 (D.C. 2009) (holding that under Smith and Atchison a defendant charged with violating a firearm licensing scheme has standing to bring a facial challenge to the licensing scheme despite not having applied for a license). This is true even where defendants waited to raise the issue until they were "prosecuted for failure to procure" a license. Thornhill v. Alabama, 310 U.S. 88, 97 (1940). And it is true even if

defendants' "conduct could be proscribed by a properly drawn statute." Freedman v. Maryland, 380 U.S. 51, 56 (1965).

The Wade panel relied on a District of New Jersey case, Kendrick, which observed: "'While First Amendment cases have permitted standing for plaintiffs who have not sought permits, Second Amendment cases have not.'" Wade, 476 N.J. Super. at 508 (quoting Kendrick, 586 F. Supp. 3d at 309). It should be noted that Kendrick's decision not "to import First Amendment case law wholesale" into Second Amendment jurisprudence came before Bruen. Bruen clearly held that the "Second Amendment standard accords with how we protect . . . . the freedom of speech in the First Amendment." 597 U.S. at 24. Bruen could not have been any clearer that the Second Amendment "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,'"—the Second Amendment must receive the same protection as the First Amendment. Id. at 70 (quoting McDonald v. City of Chicago, 561 U.S. 742, 780 (2010)).

Moreover, unlike Smith, Lovell, and Plummer, in which defendants were prosecuted under the challenged scheme, Kendrick was a civil case in which plaintiffs who wanted to buy firearms filed a suit challenging lengthy permit wait times. 586 F.Supp.3d at 304. While the Kendrick plaintiffs "argue[d] that they intend to purchase firearms without first acquiring [permits], exposing

themselves to prosecution," the Kendrick court noted that "[t]his argument has been evaluated and rejected by circuit courts," as it does not constitute "a credible threat of prosecution." Id. at 309 (quoting Maryland Shall Issue, Inc. v. Hogan, 971 F.3d 199, 218 (4th Cir. 2020)). Thus, the Kendrick plaintiffs failed to "show[] an injury in fact" from the challenged policy. Id. at 308.

In contrast, the defendants in Smith, Lovell, and Plummer all suffered an injury in fact in the form of their prosecution under the challenged permitting scheme. Mr. Lopez does not argue that these cases stand for the proposition that anyone has standing to challenge a permitting scheme so long as they bring a facial challenge; rather, Mr. Lopez argues that these cases stand for the proposition that "where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right" through a criminal prosecution, Smith, 283 U.S. at 562, the defendant is "entitled to contest [the statute's] validity in answer to the charge against her." Lovell, 303 U.S. at 452-53. Thus, because Mr. Lopez is being prosecuted under the challenged statutory scheme, he has shown an injury in fact just like Smith, Lovell, and Plummer, whereas the Kendrick plaintiffs did not.

The panel in Wade also relied on Borough of Collingswood v. Ringgold, 66 N.J. 350 (1975) for its assertion that "law-abiding citizens are not free to ignore a statute and presume that they would have been granted a permit but

for one potentially invalid provision of a permit statute." 476 N.J. Super. at 507. Defendants in Ringgold were convicted of violating "the Borough of Collingswood's Ordinance No. 601, prohibiting canvassing or soliciting without first registering with the Chief of Police." Id. at 354. Defendants had engaged in canvassing Collingswood residents to survey the residents' "preference for radio stations" without having first obtained a permit from the police chief. Ibid. On appeal, they argued that the ordinance violated the First Amendment because: (1) the First Amendment does not permit any "registration requirement whatsoever;" and (2) the ordinance was overbroad and permitted the denial of permission to canvass "for arbitrary or otherwise improper reasons." The Court held that registration requirement was constitutional because it was limited to canvassing and did not give the Police Chief "virtually unbridled and absolute power to" deny a canvassing application; it provided that canvassers would be granted permission so long as they first identified themselves to the Police Chief. Id. at 365-66.

While Ringgold note "[p]arenthetically" that the ordinance was "sufficient on its face so that it could not properly be ignored with impunity by these defendants," id. at 364 (citing Poulos v. New Hampshire, 345 U.S. 395 (1953)), it does not defeat Mr. Lopez's standing argument in this case. First, Ringgold did not hold that the defendants in that case lacked standing to bring

their First Amendment challenge; it did not mention standing at all. Instead, the Court actually adjudicated—and rejected—the defendant's constitutional challenge on the merits—something it need not have done had it concluded they lacked standing to bring the challenge. Id. at 362-69. Ringgold did not state that it would have affirmed defendants' convictions even if had agreed with their First Amendment arguments.

Moreover, Ringgold is not at all analogous to this case. While the Ringgold defendants argued that it was unconstitutional to require them to seek a permit altogether, Mr. Lopez does not argue that the State may not require that persons obtain a handgun carry permit to be able to carry a handgun. While the Ringgold defendants incorrectly argued that the ordinance in that case gave unlimited discretion to the police chief to deny a request for a permit, they did not even argue that this supposed discretion would have led to a denial of a canvassing permit had they requested one. In contrast, Mr. Lopez challenges a mandatory, non-discretionary provision that indisputably would have resulted in a rejection of his carry permit application.

Because Mr. Lopez made a substantial showing that applying for a carry permit would have been futile in light of his age and he asserted a facial challenge to New Jersey's age restriction, he established standing without any need to show he was otherwise eligible for a carry permit. But even if he did

need to demonstrate he met all the other requirements for a carry permit, he did so. Thus, this Court should reverse the decision of the trial court and hold that Mr. Lopez has standing to bring his Second Amendment claim.

B. New Jersey's Law Prohibiting Eighteen-To-Twenty-Year-Olds From Publicly Carrying Handguns For Self-Defense Is Not Consistent With The Nation's Historical Tradition Of Firearm Regulation.

All three federal courts that have reviewed other laws prohibiting eighteen-to-twenty-year-olds from publicly carrying handguns have held that those laws violate the Second Amendment. The Third Circuit found unconstitutional Pennsylvania's scheme that, "through the combined operation of three statutes, the Commonwealth of Pennsylvania effectively bans 18-to-20-year-olds from carrying firearms outside their homes during a state of emergency." Lara, 125 F.4th at 431. The Eight Circuit, reviewing Minnesota's scheme that criminalizes carrying handguns by ordinary people in "a public place" unless they have a permit-to-carry and requires that permit-to-carry applicants be "at least 21 years old," found that Minnesota's scheme violates the Second Amendment. Worth, 108 F.4th at 683. And a District Court found unconstitutional Texas's statutory scheme that prohibited eighteen-to-twenty-year-olds from carrying a handgun outside the home. Firearms Pol'y Coal., 623 F. Supp. 3d at 758.

The decisions of all three courts flow directly from the Supreme Court's

decision in Bruen, which held that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." 597 U.S. at 10. The Court articulated a test for evaluating firearms restrictions against the Second Amendment: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Id. at 24. This test has been described as a two-step inquiry, where step one assesses the conduct against the plain text of the Second Amendment, and step two assesses the challenged regulation against proposed historical analogues. Lara, 125 F.4th at 434.

Applying this test to the defendants, it is clear that their conduct of carrying a handgun outside their home constitutes "bearing" an "arm" and is thus covered by the plain text of the Second Amendment. States seeking to defend their age restrictions have attempted to argue that persons under twenty-one are not part of "the people" protected by the Second Amendment because twenty-one was the age of majority at the time of the founder and minors had no rights independent of their parents. All courts that considered this argument have rejected it and found that eighteen-to-twenty-year-olds are part of "the people" protected by the Second Amendment. Reese v. Bureau of

Alcohol, Tobacco, Firearms, and Explosives, 127 F.4th 583, 590-95 (5th Cir. 2025); Lara, 125 F.4th at 435-38; Worth, 108 F.4th at 689; Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 116 (10th Cir. 2024); Brown v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 704 F. Supp. 3d 687, 701 (N.D.W. Va. 2023); Fraser v. Bureau of Alcohol Tobacco Firearms & Explosives, 672 F. Supp. 3d 118, 130-36 (E.D. Va. 2023); Firearms Pol'y Coal., 623 F. Supp. 3d at 748-51.

The reasons all courts have found eighteen-to-twenty-year-olds are part of "the people" are quite compelling. First, even if eighteen-to-twenty-year olds were excluded from the "people" at the time the Second Amendment was passed either by virtue of being legal minors or the corresponding fact that they were not part of the "political community" because they could not vote, they are clearly part of "the people" today by virtue of being legal adults[4] and being constitutionally entitled to vote via the Twenty-Sixth Amendment to the United States Constitution. If the meaning of "the people" were locked in time to what it meant in 1791, it "would consist solely of white, landed men, and that is obviously not the state of the law." Lara, 125 F.4th at 437. Indeed, the Supreme Court has been clear that another term in the Second Amendment—"arms"—is not limited to weapons that were in existence and understood to be

[4] See, e.g., N.J.S.A. 9:17B-3.

"arms" at the time of the Founding. District of Columbia v. Heller, 554 U.S. 570, 582 (2008) ("The Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."). Second, persons under twenty-one are clearly protected by the First and Fourth Amendments—which also refer to the right "of the people"—and basic tenets of textual interpretation require interpreting the same terms consistently throughout the text. Lara, 125 F.4th at 437. Third, "the Second Militia Act, passed by Congress on May 8, 1792, a mere five months after the Second Amendment was ratified on December 15, 1791," "required all able-bodied men to enroll in the militia and to arm themselves upon turning 18." Id. at 443. Heller makes clear that the militia is a subset of "the people." 554 U.S. at 580, 595-97; see also Reese, 127 F.4th at 590-95.

Because the plain text of the Second Amendment protects the defendants' conduct, the burden falls on the State to "justify its [age-restriction] by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Bruen, 597 U.S. at 24. Although the State need not identify "regulations identical to ones that could be found in 1791," "[a] court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit." United States v. Rahimi, 602 U.S. 680, 692 (2024) (quoting Bruen, 597 U.S. at 29). The reviewing court must

look at "[w]hy and how the regulation burdens the right." Ibid. The "why" considers whether "laws at the founding regulated firearm use to address particular problems." Ibid. The "how" considers the extent of the restriction on the right to bear arms. Ibid.

In the three federal cases to consider this question, all have found that the governments' proposed historical analogues were not "relevantly similar" and thus failed to justify a categorical ban on the public carrying of handguns by eighteen-to-twenty-year-olds. Lara, 125 F.4th at 439-45; Worth, 108 F.4th at 692-698; Firearms Pol'y Coal., 623 F.Supp.3d at 754-56.

In Lara, the Third Circuit noted "that the Commissioner cannot point us to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns." 125 F.4th at 444. In Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives, 5 F.4th 407, 437 (4th Cir.), vacated as moot, 14 F.4th 322 (4th Cir. 2021), the Fourth Circuit observed, "[w]hile some gun regulations existed at the Founding, there were no regulations restricting minors' ability to possess or purchase weapons until two states adopted such laws in 1856." There, the list of historical laws and sources cited by the government "reveal[ed] that near the time of ratification there were no laws restricting the sale of firearms to 18-year-olds" and that "[t]he earliest laws cited were passed over 60 years after ratification, and most were enacted

after the Civil War." Ibid.

In Firearms Pol'y Coal., Texas attempted to justify its similar prohibition by pointing to founding-era "'laws regulating the store of gun powder,' 'administering gun use in the context of militia service,' and 'prohibiting the use of firearms on certain occasions and in certain places.'" 623 F. Supp. 3d at 754 (quoting Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 199 (5th Cir. 2012)). The District Court held that those regulations were "not sufficient historical analogs to Texas's statutory scheme that prohibits law-abiding 18-to-20-year-olds from carrying a handgun for self-defense outside the home." Ibid. (citing Heller, 554 U.S. at 632). The District Court also found that "laws that targeted particular groups for public safety reasons"— namely the "longstanding prohibitions on the possession of firearms by felons and the mentally ill"— were insufficient analogs; while those prohibitions were triggered by some fact specific to the individual related to public safety—i.e. that a specific person had committed a felony or suffered from a mental illness that made him dangerous—the age-based restriction disqualified all persons under twenty-one years of age without reference to any specific dangerousness-related facts about an individual. Id. at 754-55 (internal quotations omitted).

In Worth, Minnesota first cited "college rules restricting students from

possessing guns on campus." 108 F.4th at 695. The Eighth Circuit rejected the proposed analogy to Minnesota's statewide categorical ban because (1) "universities had guardianship authority in loco parentis" and (2) "[u]niversities had many practices that if compelled by the government, would have violated students' constitutional rights" and (3) "a restriction on the possession of firearms in a school (a sensitive place) is much different in scope than a blanket ban on public carry." Id. at 695-96. Minnesota also cited three municipal ordinances, two of which "fine[d] anyone who discharges a weapon within the city" regardless of age but had enhanced penalties for minors of an increased fine or seizure of the weapon. Id. at 696. "The third ordinance prohibited the sale of gunpowder (but not firearms) to minors" but was "enacted more than 60 years after 1791." Ibid. The Eighth Circuit found that these ordinances were all different from the "how" of Minnesota's categorical carry ban. Ibid.

Finally, the Commissioner of the Pennsylvania State Police attempted to analogize Pennsylvania's ban to a 1721 Pennsylvania law that "prohibited carry[ing] any gun or hunt[ing] on the improved or inclosed lands of any plantation other than his own." Lara, 125 F.4th at 442 (alterations in original) (internal quotation marks omitted). The Third Circuit noted that this law differed from the "why" of Pennsylvania's age restriction because "the 1721

statute appears to be primarily focused on preventing Pennsylvanians from hunting on their neighbors' land, not on restricting the right to publicly carry a gun." Id. at 443. The Court also noted that the 1760 statute which superseded the 1721 statute "prevented fir[ing] a gun on or near any of the King's highways, which indicates that carrying a firearm in public places was generally not restricted," and neither law "singl[ed] out 18-to-20-year-olds, or any other subset of the Pennsylvania population." Ibid. (alterations in original) (internal quotation marks omitted).

It appears that the most relevant founding-era law is actually the Militia Act of 1792, in which Congress "required all able-bodied men to enroll in the militia and to arm themselves upon turning 18." Lara, 125 F.4th at 443. The Militia Act of 1792 is prima facie evidence that eighteen-to-twenty-year-olds were allowed to keep firearms at home and carry them to and from mustering without restriction. Reese, 127 F.4th at 596. Thus, the "government must overcome this clear and germane evidence that eighteen-to-twenty-year-olds enjoyed the same Second Amendment rights as their twenty-one-year-old peers at the founding." Ibid. All Courts to have reviewed this question, considering myriad proffered historical analogues by numerous attorneys representing various levels of the federal and state governments, have found that "founding-era analogues do not meet [the] burden to demonstrate that the Nation's

historical tradition of firearm regulation supports" barring eighteen-to-twenty-year-olds from "keeping" or carrying handguns. Worth, 108 F.4th at 696; Lara, 125 F.4th at 445; Firearms Pol'y Coal., 623 F.Supp.3d at 756. Quite the contrary, "Founding-era laws reflect the principle that 18-to-20-year-olds are 'able-bodied men' entitled to exercise the right to bear arms." Lara, 125 F.4th at 441.

Even if this Court looks at Reconstruction-era laws, they fail to satisfy the "how" and "why" requirements for historical analogues. There are about "20 state laws from the Reconstruction-era and late 19th Century that in some way limit the Second Amendment rights of those under 21 years old." Worth, 108 F.4th at 697 (citing NRA v. BATFE, 700 F.3d 185, 202 (5th Cir. 2012)). But while, "several prohibited only concealed carry," "as Bruen clarifies, these 'concealed-carry prohibitions were constitutional only if they did not similarly prohibit open carry.'" Ibid. (quoting Bruen, 597 U.S. at 53). Many of the other regulations criminalized only "the sale or furnishing of weapons to minors, meaning they could publicly bear arms subject to generally applicable concealed-carry rules." Ibid. Of these, "[s]everal included exceptions for parental permission, . . . or self-defense," "[a]nd others prohibited the sale of only easily concealable weapons." Ibid. See 1856 Tenn Pub. Acts 92; 1878 Miss. Laws 175-76. Thus, "'[n]one of these historical limitations on the right

to bear arms approach' the burden of [New Jersey's] Carry Ban" for eighteen-to-twenty-year-olds. Ibid. (quoting Bruen, 597 at 60). And perhaps most important, these "laws were passed too late in time to outweigh the tradition of pervasively acceptable firearm ownership by eighteen-to-twenty-year-olds at" the time of the Founding. Reese, 127 F.4th at 599. As noted by Heller, "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." 554 U.S. at 634-35; see also Bruen, 597 U.S. at 34.

The actual "how" and "why" of the nineteenth century laws reflects the judgment of legislatures that because parents maintain "authority over" minors' lives, parents should have a say in the firearms to which their children have access. Because New Jersey no longer affords parents any legal authority over their children once they reach the age of eighteen, the "how" and "why" of these nineteenth century laws do not support categorical prohibition on the carrying of firearms by eighteen-to-twenty-year-olds, who are presently legally adults.

This analysis of the "how" and "why" behind the nineteenth century laws explains why federal courts have unanimously struck down laws that prohibit persons under twenty-one from carrying handguns, whereas there is a

split among federal courts that have considered laws that prohibit the sale of firearms to or purchase of firearms by persons under twenty-one. On one side of the ledger, courts have upheld the Florida, Colorado, and California state have laws that prohibit sale to or purchase by persons under twenty-one but allow such persons to acquire firearms through other means and do not prohibit persons under twenty-one from publicly carrying firearms.

In Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1122 (11th Cir. 2025), the Eleventh Circuit found that a Florida law prohibiting persons under twenty-one from purchasing firearms was "consistent with our regulatory tradition in why and how it burdens the right of minors to keep and bear arms" because it, like the nineteen century analogues, "allows them to receive firearms from their parents or another responsible adult."

Two other courts took a different route in upholding similar state laws in Colorado and California. These courts relied on Heller's "recognition that certain 'longstanding' regulations—including 'laws imposing conditions and qualifications on the commercial sale of arms'—are 'presumptively lawful.'" Rocky Mountain Gun Owners, 121 F.4th at 118 (upholding Colorado's law that sets twenty-one as the minimum age for the sale and purchase of guns in Colorado) (quoting Heller, 554 U.S. at 626-27); see also Chavez v. Bonta, __ F. Supp. 3d __, __ , 2025 WL 918541, at *5-7 (S.D. Cal. Mar. 26, 2025)

(upholding California's law that prohibits licensed firearms dealers "from selling firearms to persons under 21 years of age with certain exceptions"). Both courts emphasized that these laws only restricted the purchase and sale of firearms but did not categorically prohibit the public carrying of firearms by persons under twenty-one or the acquisition of firearms through means other than purchase. Rocky Mountain Gun Owners, 121 F.4th at 105 (observing that the law "neither prohibits individuals aged 18 to 20 from possessing and using firearms—for self-defense or otherwise—nor bars them from otherwise acquiring, inheriting, or receiving firearms as gifts"). Chavez, 2025 WL 918541 at *6 (noting that the California law "does not prohibit 18-to-20-year-olds from owning, possessing, or carrying firearms" and allows persons under twenty one to "acquire firearms from immediate family members 'by gift, bequest, intestate succession, or other means from one individual to another'").

On the other side of the ledger, three courts have found unconstitutional the confluence of "18 U.S.C. §§ 922(b)(1) and (c)(1), which together prohibit Federal Firearms Licensees from selling handguns to eighteen-to-twenty-year-old adults." Reese, 127 F.4th at 586; see also Brown, 704 F. Supp. 3d at 706; Fraser, 672 F. Supp. 3d at 145-46. Each of these courts found that the purported historical analogues were not sufficient to demonstrate that 18

U.S.C. §§ 922(b)(1) and (c)(1) are consistent with our nation's history and tradition of firearms regulation.

The upshot of the nine relevant federal cases reveals the following concerning historical analogues in this sphere. When it comes to restrictions on the sale of firearms to or purchase by persons eighteen-to-twenty-years-old, the courts are split, with three courts finding that these laws are consistent with our historical tradition of firearm regulation because they have a similar "how"—while prohibiting commercial sales or purchases, they still allow some means by which eighteen-to-twenty-year-olds can acquire firearms and do not prohibit the possession of firearms by eighteen-to-twenty-year-olds. See Nat'l Rifle Ass'n, Rocky Mountain Gun Owners, and Chavez. However, it is equally plausible to look at such laws and find that they are inconsistent with our historical tradition and are thus unconstitutional. See Reese, Brown, and Fraser. But regardless of one's views on the question of laws restricting sales or purchases, courts are unanimous that outright bans on the public carry of handguns by eighteen-to-twenty-year-olds are not consistent with the Nation's historical tradition of firearm regulation because historical restrictions on the ability of minors to purchase firearms does not match the "how" of these categorical bans. See Worth, Lara, and Firearms Pol'y Coal.

Thus, it is clear that no historical analogue is relevantly similar to New Jersey's carry ban, and New Jersey's carry ban accordingly violates the Second Amendment.

C. If This Court Holds That A Defendant Must Demonstrate He Was Otherwise Qualified In Order To Have Standing And Cannot Determine From The Record Whether Mr. Lopez Was Otherwise Qualified, It Should Remand For The Trial Court To Make That Assessment.

If this Court were to hold that Mr. Lopez must establish he was otherwise eligible for a carry permit but for the age restriction in order to ultimately secure dismissal of the indictment, but determines that a trial court should assess Mr. Lopez's qualifications in the first instance, this Court should remand for a determination as to whether defendants would have met the other permit requirements. This has been the approach taken by courts in several other jurisdictions where defendants have challenged their criminal prosecutions under a firearm permitting scheme where they did not apply for a permit. See People v. Sovey, 179 N.Y.S.3d 867, 871 (N.Y. Sup. Ct. 2022); Jackson v. United States, 76 A.3d 920, 944-48 (D.C. App. 2013); Plummer v. United States, 983 A.2d 323 (D.C. 2009).

In Plummer, the D.C. Court of Appeals held that a criminal defendant had standing to challenge the constitutionality of the firearm permitting scheme as a defense against his prosecution for unlawfully possessing a

handgun without a license. 983 A.2d at 341-42. There, the Court first noted that "[i]n light of the handgun registration and licensing scheme in effect at the time of the incident in this case, Mr. Plummer could not have registered his handgun, but registration was a prerequisite to obtaining a license." Id. at 341. The Court then rejected the government's argument that in order to establish standing, Plummer was required to first seek a license and then challenge the denial of that license. Id. at 340-42. Because D.C. had made it impossible for Plummer to obtain a license, the Court found that Plummer "had standing to raise the Second Amendment issue as a defense to the criminal charges against him by moving to dismiss the indictment, even though he did not attempt to obtain a registration certificate and license for his handgun prior to his arrest." Id. at 341-42. However, because Plummer had not challenged the other qualifications for obtaining a registration certificate, the court held it was "constrained to remand this case to the trial court with instructions to hold a hearing to determine whether, prior to the imposition of charges in this case, Mr. Plummer would have been able to satisfy the then existing and applicable statutory and regulatory requirements for obtaining a registration certificate and license for his handgun." Id. at 342. Jackson and Sovey, cited above, remanded for similar determinations. Jackson, 76 A.3d at 948; Sovey, 179 N.Y.S.3d at 872.

Thus, if this Court determines that proof that a defendant would have met New Jersey's other carry permit requirements aside from the age restriction is necessary to obtain the remedy of dismissal, it should first hold that Mr. Lopez had standing to raise his Second Amendment claim, rule on that claim, and thereafter order a remand for the trial court to determine whether he met the other permit requirements.

CONCLUSION

Three federal courts have held that categorically barring eighteen-to-twenty-year-olds from publicly carrying handguns for self-defense violates the Second Amendment, and the United States Supreme Court denied certiorari of the Eighth Circuit's opinion with the effect that Minnesota is now permanently enjoined from enforcing its age restriction. Against this compelling backdrop of federal decisions, the trial court in this case found that New Jersey's age restriction—indistinguishable from those considered by the federal courts—is likewise unconstitutional. But the trial court denied Mr. Lopez's motion without ever addressing the merits of this argument because it applied an incorrect rule of standing that is inconsistent with federal jurisprudence. This Court should thus grant leave to appeal to correct this error and reach the merits of defendants' constitutional claims.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No.: A-1947-24T3
Ind. No.: 22-05-00360

STATE OF NEW JERSEY,	:	
Plaintiff-Respondent,	:	Criminal Action
v.	:	On Motion for Leave to Appeal from an Order of the Superior Court
EMMANUEL J. LOPEZ,	:	of New Jersey, Law Division, Union County, Denying Defendant's
Defendant-Appellant	:	Motion for Reconsideration.
	:	Sat Below: Hon. Thomas K. Isenhour, J.S.C.

AMENDED BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

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DATED: July 10, 2025

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COUNTER-STATEMENT OF PROCEDURAL HISTORY[1]

On May 11, 2022, a Union County Grand Jury returned Indictment No. 22-05-00360, charging defendant-appellant Emmanuel J. Lopez with one count of second-degree unlawful possession of a handgun without a permit, contrary to N.J.S.A. 2C:39-5b(1). (Ma1).

On or about March 13, 2023, defendant filed a Motion to Dismiss the Indictment. (Ma2). On November 15, 2023, the Honorable Thomas K. Isenhour, J.S.C., by way of a written decision and order denied defendant's motion.[2] (Ma27; Ma28 to 64).

On February 16, 2024, defendant filed a Motion for Reconsideration. (Ma65). On April 22, 2024, the parties appeared before the court for argument. On April 30, 2024, the trial court denied defendant's motion.

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[1] "Ma" refers to defendant's motion appendix;
"Da" refers to defendant's appendix to his merits brief;
"Ra" refers to the respondent State's appendix to its merits brief;
"Db" refers to defendant's brief.

[2] The trial court consolidated several motions to dismiss filed by various defendants who were similarly charged with violating N.J.S.A. 2C:39-5(b)(1), after the United States Supreme Court's holding in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), which found New York's requirement that an applicant for a carry permit have "proper cause," violated the Second Amendment of the Constitution.

(Ma72). On August 14, 2024, defendant filed a second Motion for Reconsideration. (Ma75). On October 29, 2024 and December 9, 2024, the parties appeared before the court for argument on the motion. On December 10, 2024, Judge Isenhour issued an order denying defendant's motion. (Ma89).

On February 2, 2025, defendant filed a Motion for Leave to Appeal with this Court. On March 7, 2025, this Court granted leave to appeal. The State's response follows.

COUNTER-STATEMENT OF FACTS

On November 16, 2021, Elizabeth Police Officers were patrolling the area of Fifth Street and East Jersey Street when they observed a group of men gathered at an intersection. (Ma30).[3] Officers noticed a man in a red coat break away from the group and make a motion to his waistband area, shifting the area towards the center of his body. Ibid. The officers believed the man's behavior indicated he was armed. Ibid. Officers conducted a stop and identified the man as nineteen-year-old defendant, Emmanuel Lopez. Ibid. Officers instructed defendant to interlock his fingers and place them on the

[3] The State relies upon the Statement of Facts set forth in the November 15, 2023, decision of Judge Isenhour denying defendant's Motion to Dismiss the Indictment. (Ma28 to 64).

back of his head. Ibid. Upon doing this, officers observed the handle of a silver and black handgun protruding from defendant's waistband. Officers recovered a Taurus Model PT 1911 .45 caliber handgun, with four ball round .45 automatic TulAmmo bullets on defendant's person. Ibid. Defendant Lopez did not have a permit to purchase a firearm or a firearms purchaser identification card.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO DISMISS THE INDICTMENT WHERE DEFENDANT LACKED STANDING TO BRING HIS SECOND AMENDMENT CHALLENGE. (Ma27 to 64; Ma89)

The trial court properly denied defendant's Motion to Dismiss the Indictment after correctly finding that defendant does not have standing to challenge the permit statute, N.J.S.A. 2C:58-4. (Ma20 to 27; relying on State v. Daandre J. Wade, et. al., 476 N.J. Super. 490 (App. Div. 2023)). Thus, the trial court's order denying defendant's Motion to Dismiss the Indictment should be affirmed.

Defendant claims that the trial court erred in denying his motion to dismiss the indictment because he would otherwise qualify to obtain a permit

to carry a handgun in New Jersey but for the unconstitutional provision prohibiting eighteen to twenty-year-old individuals from publicly carrying a handgun. (Db6). However, in this case, defendant did not apply for a carry permit under N.J.S.A. 2C:58-4, and therefore the trial court properly found, in accordance with this Court's decision in State v. Wade, 476 N.J. Super. 490 (App. Div. 2023), defendant does not have standing to challenge his prosecution for unlawful possession of a handgun. (N.J.S.A. 2C:39-5(b)). Similarly, defendant has failed to establish that the age limiting provision of the statute is inconsistent with our Nation's historical tradition of firearm regulation and a violation of his Second Amendment right. Accordingly, defendant's claim is without merit and should be denied.

Embedded in our legal tradition is the principle that statutes are presumed constitutional. State v. Comer, 249 N.J. 359, 384 (2022). The burden of establishing otherwise rests "on the party challenging [the statute's] validity." State v. Auringer, 335 N.J. Super. 94, 99-100 (App. Div. 2000) (citations omitted). A defendant may raise a defense that the crime charged in an indictment or accusation "is based on a statute or regulation ... which is unconstitutional or invalid in whole or in part." R. 3:10-2(d).

This is no easy feat. See Williams v. State, 375 N.J. Super. 485, 506 (App. Div. 2005) (describing the burden as "onerous."), aff'd sub nom. In re

P.L. 2001, C. 362, 186 N.J. 368 (2006). Our Supreme Court has explained that this is "a heavy burden" to bear; "Indeed, from the time of Chief Justice Marshall, case law has steadfastly held to the principle that every possible presumption favors the validity of an act of the Legislature." State v. Buckner, 223 N.J. 1, 14 (2015) (citations and marking omitted). The reason is "solid and clear: the challenged law represents the considered action of a body composed of popularly elected representatives," and so "courts exercise the power to invalidate a statute on constitutional grounds with extreme self-restraint." Ibid. (internal markings and citations omitted).

For a court to cast aside such restraint and strike down considered action by the people's body, the challenger must show "unmistakably" that the enactment's "repugnancy" to the Constitution is "clear beyond reasonable doubt." Ibid. (citations omitted). If reasonable people "might differ," the challenge fails, and the will of the citizenry, as announced by their representatives, prevails. Id. at 15 (internal markings and citations omitted). As the Supreme Court has recognized, "[w]hen legislation and the Constitution brush up against each other," a court's "task is to seek harmony, not to manufacture conflict." United States v. Hansen, 599 U.S. 762, 781 (2023).

To make that challenge, a defendant must have standing to raise the constitutional objection. Wade, 476 N.J. Super. at 505, citing State v.

Saunders, 75 N.J. 200, 208-09 (1977). Accordingly, the defendant "must show sufficient injury before his [or her challenge] will be heard." State v. Varona, 242 N.J. Super. 474, 487 (App. Div. 1990). "Th[is] rule limits a criminal defendant to constitutional claims related to his [or her] own conduct [and] rests on the principle that legislative acts are presumptively valid and will not be overturned on the basis of hypothetical cases not actually before the court." Saunders, 75 N.J. at 208-09.

Generally, to establish standing to challenge an allegedly unconstitutional permit statute, the challenger must have applied for a permit or license under the statute. See, e.g., United States v. DeCastro, 682 F.3d 160, 164 (2d Cir. 2012)(defendant failed to apply for a gun license in New York and therefore lacked standing to challenge the licensing laws); Westfall v. Miller, 77 F.3d 868, 872-73 (5th Cir. 1996); Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022)(dismissing plaintiff's claim for relief, noting "a plaintiff must submit to a government policy in order to have standing to challenge that policy").

However, as the trial court observed, there are two exceptions to the rule: 1) when the statute is facially unconstitutional; and, 2) submitting to the government policy would have been futile. (Ma20). See also Bruck, 586 F. Supp. 3d at 308 (citing Ellison v. Am. Bd. of Orthopedic Surgery, 11 F.4th

200, 206 (3d Cir. 2021)); see also DeCastro, 682 F.3d at 164; Jackson-Bey v. Hanslmaier, 115 F.3d 1091, 1096 (2d Cir. 1997). Because defendant has failed to meet either of these exceptions, the trial court correctly denied defendant's requested relief.

To have standing to challenge the constitutionality of a permitting or licensing scheme, the defendant "must have applied for a permit or license under the statute." Wade, 476 N.J. Super. at 505-06; accord Bruen, 597 U.S. at 15-16. A narrow exception to this rule exists if a defendant can "'make a substantial showing that submitting to the government policy would [have been] futile.'" Wade, 476 N.J. Super. at 506 (quoting Kendrick v. Bruck, 586 F. Supp. 3d at 308) (emphasis added).

What a challenger may not do, however, is take the law into his or her own hands, disregard the permitting or licensing scheme and engage in the conduct for which the permit or license is a prerequisite, and then, after being criminally charged, mount some post hoc constitutional attack on the scheme itself. Such "collateral attacks" on permitting schemes have long been prohibited. See, e.g., Poulos v. New Hampshire, 345 U.S. 395, 409 (1953); Borough of Collingswood v. Ringgold, 66 N.J. 350, 364 (1975). Simply put, "a motion to dismiss criminal charges is not the proper venue for

demonstrating that defendants would have been granted [the] permit but for the [challenged] requirement." Wade, 476 N.J. Super. at 507.

This Court in Wade addressed the standing issue in circumstances almost identical to those here. There, defendants Wade and Stringer challenged their charges under the UPW statute on the ground that Bruen had invalidated New Jersey's justifiable-need requirement in then-N.J.S.A. 2C:58-4c. Wade, 476 N.J. Super. at 495. But, at the outset, this Court found the defendants lacked standing to bring their challenge "because neither defendant had applied for a permit to carry a handgun." Ibid. The Appellate Division observed, "Wade's counsel submitted a certification representing that Wade had no other disqualifying factors and that he would have qualified to receive a permit but for the justifiable need requirement[, and] Stringer and his counsel did not submit a certification concerning Stringer's qualifications for a permit" at all. Id. at 506. As such, the court found that neither defendant "established the factual basis for challenging New Jersey's gun-permit statutes. Stringer has provided no factual basis whatsoever. The certification submitted by Wade's counsel is not based on counsel's personal knowledge; rather, it is based on information received from his client and, therefore, is insufficient to establish facts in dispute." Id. at 506 (citing, among other things, R. 1:6-6). Since "[n]othing in the record establishes that Wade [or Stringer] would have been

able to comply with [all of the other statutory] requirements….the record does not reflect that it would have been futile for Wade to have applied for a permit even in the absence of a justifiable need provision." Id. at 506-07.

Importantly, the Appellate Division noted in a per curiam opinion issued on March 6, 2023, in State v. Reeves, No. A-0921-20 (App. Div. Mar. 6, 2023), that "a criminal prosecution is not the proper venue for demonstrating that defendant would have been granted an unrestricted permit if the justifiable-need requirement did not exist." (Slip op. at 7-8; Ra61), certif. denied, 254 N.J. 176 (2023) (June 6, 2023).[4] Indeed, this Court in Reeves stated, "[c]itizens are not free to act as if they possess an unrestricted permit simply because they may be eligible to obtain such a permit through proper channels." Ibid. Holding otherwise, particularly as it relates to the age requirement of the statute at issue here, would transform every criminal prosecution for unlawful possession into a permit adjudication proceeding in which defendants would be allowed to submit a retroactive public carry application to show that they would have met all the criteria for a permit, when

[4] While unpublished opinions do not constitute precedent and are not binding on any court, they can be instructive as "secondary authority." R. 1 :36-3; Pressler & Verniero, Current N.J. Court Rules (Gann), comment 2 on R. 1 :36-3, p. 333 (2022).

the trial court is not able to or authorized to investigate a defendant's background as required by the permitting statute, N.J.S.A. 2C:58-4(c).

Subsequently in State v. Pinkett, Nos. A-3121-23, A-3122-23, 2025 (App. Div. May 1, 2025), this Court faced similar facts as this case and as in Wade, and reached the same conclusion. In Pinkett, the trial court granted the motions of three defendants (who were under twenty-one), and dismissed their indictments, finding that the statutes criminalizing possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1), and the permit statute prohibiting the issuance of a handgun carry permit to those under twenty-one, violated the Second Amendment as interpreted by N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, supra. Pinkett, (Slip op. at 3; Da3). The Appellate Division reversed the trial court's order finding that the defendants did not have standing to challenge the constitutionality of the age requirement of the permitting statute because they had not applied for same under N.J.S.A. 2C:58-4. The Pinkett court observed that the record contained no evidence that any of the defendants would have satisfied the numerous statutory requirements other than the age requirement had they applied for a handgun carry permit. In Pinkett, as in this case, two of the defendants submitted certifications in support of their dismissal motions, however neither certification addressed the statutory requirements for a handgun carry permit; the third defendant did not submit a

certification at all. As a result, the Appellate Division was unable to find that defendants' purported right to carry a handgun in public was abridged by the statutes' age requirement or that they have standing to challenge the constitutionality of the weapon possession charges they face. Citing to its holding in Wade, the Pinkett court stated:

> The insufficient record supporting defendants' constitutional challenge illustrates why a motion to dismiss criminal charges is not the proper venue for demonstrating that defendants would have been granted a gun-carry permit but for the justifiable need requirement. If defendants had applied for gun-carry permits, there would be a complete record of why they were not granted the permits. In other words, we would not be left to speculate that defendants were denied the permits because of the justifiable needs requirement.
>
> [Slip op. at 17; Da17, citing Wade, 476 N.J. Super. at 507.]

The court emphasized, "The absence of a record establishing defendants would have been denied a handgun carry permit solely because of their ages underscores the reason for the longstanding rule that 'law-abiding citizens are not free to ignore a statute and presume that they would have been granted a permit but for one potentially invalid provision of a permit statute.'" (Slip Op. at 18; Da18 (Emphasis added), quoting Wade, 476 N.J. Super. at 507; citing Borough of Collingswood v. Ringgold, 66 N.J. 350 (1975)).

Here, defendant's claims fail for the same reason: the record here lacks any proof, and certainly not a "substantial showing[,]" Wade, 476 N.J. Super. at 506; Bruck, 586 F. Supp. 3d at 308, that had defendant applied for a permit, he would have satisfied every other statutory requirement.

Foremost, defendant in this case acknowledges that he did not apply for a permit to carry a gun. Indeed, defendant did not even provide a Firearms Purchaser Identification Card (FPIC) to demonstrate that he had taken serious steps toward legally owning a firearm (albeit other than a handgun). See N.J.S.A. 2C:58-3(c)(4). Rather, in support of his claim that he would have been issued a carry permit, he submitted to the trial court his certification that he satisfies the requirements of N.J.S.A. 2C:58-4 and he is not subject to the disabilities set forth in N.J.S.A. 2C:58-3; three certifications attesting to defendant's moral character and behavior, and his self-report that he has fired a handgun at a range on several occasions. (Ma6 to 9; Ma10 to 15). However, defendant's hearsay statements and self-reporting that he met these requirements does not suffice. Indeed, in 2021 (when defendant was arrested), the statute required:

> [T]he chief police officer, or the superintendent, as the case may be, shall cause the fingerprints of the applicant to be taken and compared with any and all records maintained by the municipality, the county in which it is located, the State Bureau of Identification

> and the Federal Bureau of Identification. He shall also determine and record a complete description of each handgun the applicant intends to carry.
>
> No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in subsection c. of N.J.S.A. 2C:58-3, that he is thoroughly familiar with the safe handling and use of handguns ... .
>
> [N.J.S.A. 2C:58-4(c)]. (Emphasis added).

Further, the statute provides that the reviewing law enforcement officer may also deny a permit where "issuance would not be in the interest of the public health, safety or welfare." N.J.S.A. 2C:58-4(c)(5). If any of these requirements are not met, the applicant could not have obtained a permit. Ibid. In other words, for someone who could not have met all of these other conditions, the invalidity of the "justifiable need" or age requirement is irrelevant: the "justifiable need" and age requirement and its constitutional infirmity come into play only if an individual would have received a permit but for failing to meet those requirements. However, without seeking a permit and submitting the critical documentation and investigation of the applicant's background and fitness, N.J.S.A. 2C:58-4(b), there is no record to establish that defendant would have qualified for a permit but for the "justifiable need" and age requirements. This case is illustrative of that fact.

Moreover, the fact that the statute requires an applicant to demonstrate he is not subject to any of the disabilities set forth in N.J.S.A. 2C:58-3(c) and that he is thoroughly familiar with the safe handling and use of handguns clearly indicates that the legislature intended for a more rigorous examination into an individual's background, mental fitness and capabilities than merely a self-serving certification. Here, defendant has not submitted any evidence, but for his certification, (Ma45 to 49), that he is "thoroughly familiar with the safe handling and use of handguns" because he has fired a weapon on several occasions. Notably absent from defendant's self-reported history with guns are any safety classes he has taken or certifications he has received by certified gun instructors as to defendant's ability to properly handle a firearm. Nor does defendant's self-proclamation that he meets the mental and physical health requirements for obtaining a permit, which are independent and indisputably-constitutional requirements, sufficient to satisfy the statute. N.J.S.A. 2C:58-4(b), (c). Without such a record, supported by an investigation by the appropriate municipal law enforcement officer, the court cannot evaluate whether defendant would have been refused a permit on a ground other than the requirement he now challenges.

Clearly defendant has failed to produce any evidence that would constitute a "substantial showing" that, but for his age, he would have been

granted a permit to carry a handgun. Moreover, allowing criminal defendants to challenge aspects of the civil scheme as invalid after flouting its requirements outright is inconsistent with Bruen's assurance that States can maintain a permitting process with "narrow, objective, and definite standards" like age restrictions. 597 U.S. at 38 n. 9. To ignore the scheme and carry an unlicensed firearm, and only bring a challenge after being arrested, would be to in effect abolish the permitting scheme altogether and leave it to individual defendants and trial courts to sort out later who should and should not be able to carry a handgun. This logic would foster a dangerous environment where, with the court's imprimatur, individuals are free to violate the law with the expectation that they would be able to show they would have satisfied the permitting requirements after the fact. This reverse process, however, is wholly unnecessary as an individual is free to bring his or her constitutional challenge just as the plaintiffs in Bruen, i.e., by applying for a carry permit and, if denied solely on the basis of age, challenge the constitutionality of the requirement on appeal. 597 U.S. at 15-16.

Nonetheless, defendant claims the Wade court's reasoning with regard to standing was flawed because Law Division judges are capable of, and have been, evaluating whether a defendant has met the requirements for a carry permit other than the challenged requirement. Defendant asserts that the

Criminal Code previously provided Superior Court judges with approving applications (a duty that was repealed in 2022) and now with hearing appeals of carry permit denials. (Db16, citing N.J.S.A. 2C:58-4(e)). Defendant's reasoning however, misses a critical requirement set forth in the statute, namely that there be an investigation, conducted by a designated law enforcement official, as to whether an applicant has met the statutory criteria. This investigation includes fingerprinting, criminal record check, a description of the handgun the applicant intends to carry, an interview of the applicant and the individuals endorsing the applicant, a review of the applicant's online posts and an investigation as to whether the applicant has experienced mental health issues. See, N.J.S.A. 2C:58-4(c).

Further, the legislature recognized the importance of such an investigation into an applicant's fitness to carry that it limited the permit period to two years, after which an applicant must renew the permit, "in the same manner and subject to the same conditions as in the case of original applications." N.J.S.A. 2C:58-4(a). It is this important information that is required for a Superior Court judge to make its determination as to whether someone should be granted a permit to carry a handgun. It's this important information that is ostensibly absent from this case.

Additionally, in reversing the Law Division order dismissing the indictment on nearly identical facts as are here, this Court in Pinkett stated that it was:

> error for the motion court to not have applied the holding in Wade, a precedential opinion factually "indistinguishable" from the matters that were before the court, to deny defendant's motion.
>
> [Pinkett, supra, Slip Op. at 18; Da18.]

This Court's comment makes clear that the holding in Wade as it relates to similar standing issues, must be applied as it is precedent and binding. Thus, the trial court correctly applied the holding in Wade, and found, because defendant had not applied for a permit, he does not have standing to challenge the constitutionality of the age restriction in the permitting statute.

Finally, defendant claims that he still has standing to challenge the statutory age requirement because he is claiming that the requirement is facially void. Defendant's argument, however, again must fail.

Even accepting defendant's claim that the age requirement of the statute is unconstitutional, N.J.S.A. 1:1-10 permits the remaining, constitutional provisions to be enforced. N.J.S.A. 1:1-10 provides:

> If any title, subtitle, chapter, article or section of the Revised Statutes, or of any statute or any provision thereof, shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court

> of competent jurisdiction, such title, subtitle, chapter, article, section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining titles, subtitles, chapters, articles, sections or provisions.

In fact, when enacting the criminal code, the Legislature anticipated the possibility that one of its provisions would be deemed unconstitutional and provided that "no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the title, or of any subtitle, chapter, article or section of the code." N.J.S.A. 2C:1-1(h). Ostensibly, the Legislature did not intend that "one defective timber would bring the whole structure down." State v. Natale, 184 N.J. 458, 485 (2005).

When necessary, courts have engaged in "'judicial surgery'" to save an enactment that otherwise would be constitutionally doomed. Natale, 184 N.J. at 485, citing Town Tobacconist v. Kimmelman, 94 N.J. 85, 104, 462 (1983). (a court has the power to engage in 'judicial surgery' in order to 'restore the statute to health.'); N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 75 (1980) ("[i]n appropriate cases, a court has the power to engage in 'judicial surgery' or the narrow construction of a statute to free it from constitutional doubt or defect"). In light of the strong stance our State has taken with regard to gun safety, it is more than likely that

the Legislature would prefer that, if found to be unconstitutional, the age requirement be severed in order to save the remaining requirements of the permitting statute.

Here, when defendant was apprehended with a handgun, there were other valid statutory criteria set forth in N.J.S.A. 2C:58-3 that were separate from the age requirement. Thus, the statute in effect at that time was not dependent on the age provision. Accordingly, because he did not apply for a permit to carry and gone through the required procedures, he cannot establish that but for the age requirement he would have been granted a permit. He therefore does not have standing to challenge the constitutionality of the provision.

The trial court properly relied upon this Court's holding in State v. Wade, supra, and found that defendant does not have standing to challenge the constitutionality of the provisions of N.J.S.A. 2C:58-4 and N.J.S.A. 2C:58-3, setting forth the age requirement to obtain a permit to carry a handgun. Accordingly, the order of the trial court denying defendant's Motion to Dismiss the Indictment should be affirmed on appeal.

POINT II

THE PERMITTING STATUTES' 21-YEAR-OLD AGE MINIMUM IS CONSTITUTIONAL.

As set forth above, the trial court correctly applied this Court's holding in Wade, supra, and found that defendant did not have standing to challenge the constitutionality of the permitting statutes. In its decision, he trial court's analysis ends at that conclusion and does not address the merits of defendant's claim. As a result, the trial court record is incomplete with respect to the nation's historical tradition of firearm regulation for persons eighteen years old, an essential element of the legal analysis of whether the State firearm regulation challenged by defendant violates the Second Amendment. See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). Accordingly, if this Court determines that defendant does have standing, it respectfully is requested that this case be remanded to the trial court for further findings.

That being said, if this Court reaches the merits of defendant's claim in this appeal, it should uphold the age criterion. Although the Second Amendment protects the right to keep and bear arms, it is "not unlimited." District of Columbia v. Heller, 554 U.S. 570, 626 (2008). Instead, governments may still adopt firearms-related measures that are consistent with

the Second Amendment's "text, as informed by history," or with "the Nation's historical tradition of firearm regulation." Bruen, 597 U.S. at 19, 24. In canvassing the historical tradition, the United States Supreme Court recently emphasized that courts need not ask whether a modern firearms law is a "historical twin" or a "dead ringer" to prior firearms restrictions. United States v. Rahimi, 602 U.S. 680, 692 (2024). Instead, the question that courts must ask is "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." Ibid. (emphasis added); see also Id. at 1904 (Sotomayor, J., concurring) (noting a "regulation 'must comport with the principles underlying the Second Amendment,' but need not have a precise historical match"); Id. at 1925 (Barrett, J., concurring) ("Historical regulations reveal a principle, not a mold."). New Jersey law, which restricts "any person under the age of 21 years" from receiving a permit to purchase or publicly carry handguns, N.J.S.A. 2C:58-3(c); 2C:58-4(c), is consistent with that historical tradition. The defendant's contrary conclusions misunderstand the law and the history.

There is a longstanding historical tradition of restricting the access of firearms for those younger than 21. At the Founding, "[t]he age of majority at common law was 21." Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives , 700 F.3d 185, 201 (5th Cir. 2012)

("NRA"), abrogated on other grounds by Bruen, 597 U.S. 1; see also 1 William Blackstone, Commentaries on the Laws of England 451 (1765) ("[F]ull age in male or female, is twenty one years, … who till that time is an infant, and so styled in law."). This meant those under 21—"minors," or "infants"—were unable to exercise "the right of petition," vote, or serve on juries. Megan Walsh & Saul Cornell, Age Restrictions and the Right to Keep and Bear Arms, 1791-1868, 108 Minn. L. Rev. 3049, 3063-65(2024). Similarly, "[t]heir ability to enter contracts was severely restricted," such that they could usually not enter into binding contracts. Id. at 3057, 3065; accord 1 Blackstone, Commentaries, at 453. And they were often grouped with "madmen," including in being deemed ineligible to serve as peace officers. See Walsh & Cornell, supra, at 3086.

To the Founders, minors suffered from an "inability … to take care of themselves; and this inability continue[d], in contemplation of law, until the infant ha[d] attained the age of twenty-one years." 2 James Kent, Commentaries on American Law 233 (2d ed. 1832). For instance, John Adams explained that those under 21 could not vote because they lack "[j]udgment and "[w]ill" and were not "fit to be trusted by the "[p]ublic." Letter from John Adams to James Sullivan, 26 May 1776. (Ra2). Gouverneur Morris, a signer of the Constitution and drafter of its Preamble, similarly warned that minors

"want[ed] prudence" and "ha[d] no will of their own." James Madison's Notes of the Constitutional Convention, August 7, 1787, Yale L. Sch. Avalon Project. (Ra7). Given that widespread social understanding, until minors reached 21 (the age of majority), "authority over their lives rested with other decision-makers," including parents, educators, and militia superiors. Walsh & Cornell, supra, at 3068.

That impacted the circumstances under which those under 21 could access firearms. The "total parental control over children's lives extended into the schools," Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 830 (2011) (Thomas, J., dissenting), included exercising power to forbid minors from possessing guns and other weapons on university campuses, see Walsh & Cornell, supra, at 3069-72. For instance, the University of Georgia (founded in 1785) decreed in August 1810, that "no student shall be allowed to keep any gun, pistol, Dagger, Dirk[,] sword cane[,] or any other offensive weapon in College or elsewhere, neither shall they or either of them be allowed to be possessed of the same out of the college in any case whatsoever." The Minutes of the Senate Academicus of the State of Georgia, 1799-1842, (Ra13); see also Acts of the General Assembly and Ordinances of the Trustees, for the Organization and Government of the University of North Carolina 15 (Raleigh, Off. of the Raleigh Reg. 1838) ("No Student shall keep … firearms, or

gunpowder."), (Ra19). Thomas Jefferson, an "ardent defen[der] of an expansive vision of the right to keep and bear arms," and James Madison, "the drafter of the Second Amendment," Walsh & Cornell, supra at 3072, likewise forbade students at the University of Virginia from "keep[ing] or us[ing] weapons or arms of any kind," University of Virginia Board of Visitors Minutes (October 4-5, 1824), Encyclopedia Va. (Dec. 7, 2020), (Ra33 to 35). These "regulations of student gun ownership and possession during and after the Founding era confirm that the public understanding of the Second Amendment accepted age limitations." Jones v. Bonta, 705 F. Supp. 3d 1121, 1137 (S.D. Cal. 2023) (collecting other examples).

Founding Era militia laws similarly "underscore[d] minors' inability to act independently outside of the context of adult supervision." Walsh & Cornell, supra, at 3076. Several States excluded 18-to-20-year-olds from militia service entirely—including New Jersey. See Id. at 3084 (citing Act of Nov. 6, 1829, § 1, 1829 N.J. Laws 3, 3; 1843 Ohio Acts 53, § 2); see also Opinion of the Justices, 39 Mass. (22 Pick.) 571, 576 (1838) ("[I]t is competent for the State legislature by law to exempt from enrollment in the militia, all persons under twenty-one."). Indeed, even when minors were allowed or required to enroll in State militias, they were often exempted from having to furnish their own arms. See Walsh & Cornell, supra, at 3080-84

(citing, e.g., 1792 N.H. Laws 436, 447; Act of Mar. 6, 1810, ch. CVII, § 28, 1810 Mass. Acts 151, 176; Act of Jun. 18, 1793, ch. XXXVI, § 2, II Del. Laws 1134, 1135 (1793)). Rather, "[p]arents, guardians, or, at times, the local government were responsible in the event a minor appeared without sufficient weaponry." Ibid. If minors had an established right to keep and bear arms on the same terms as adults, it would be odd for these militia laws to require parents or guardians to instead obtain arms for them. In short, "the founding generation would have shared the view that public-safety-based limitations of juvenile possession of firearms were consistent with the right to keep and bear arms." United States v. Rene E., 583 F.3d 8, 15 (1st Cir. 2009).

Restrictions on firearms possession by persons under 21 continued—and expanded—in the nineteenth century. See Heller, 554 U.S. at 605 (describing sources in this period as "a critical tool of constitutional interpretation"). The increase in regulations on firearms possession were brought about by "dramatic technological changes," Bruen, 597 U.S. at 27, as by "the mid-19th century," "[i]mprovements in weapons technology contributed to [a] rise in interpersonal violence," Bianchi v. Brown, 111 F.4th 438, 464-65 (4th Cir. 2024) (en banc) (explaining that during the Founding era, "there was little regulation of firearms in America, as they were seldom used in homicides that grew out of the tensions of daily life"). Thus, "civilians"—including minors—

"had easy access to more portable and precise firearms than ever before." Id. at 465. This "easier access and potential abuse of firearms by minors" led governments to respond, including restricting minors' access. Walsh & Cornell, supra, at 3088-89.

Even before the Civil War, Alabama, Tennessee, and Kentucky limited minors' access to firearms. See Act of Feb. 2, 1856, no. 26, § 1, 1856 Ala. Acts 17, 17 (prohibiting selling, giving, or lending "to any male minor, a bowie knife, … or air gun or pistol"), (Ra46); 1856 Tenn. Acts 92, 92 (similarly prohibiting selling, giving, or lending "to any minor a pistol, bowie-knife, dirk or Arkansas tooth-pick"), (Ra47 to 48); Act of Jan. 12, § 23, 1860 Ky. Acts 241, 245 (prohibiting "any person, other than the parent or guardian" from selling, giving, or lending "any pistol, dirk, bowie-knife, … or other deadly weapon"), (Ra49). Importantly, those three States understood "minors" to cover those under 21 at that time. See, e.g., Saltonstall v. Riley, 28 Ala. 164, 172 (1856) (describing "a minor under the age of twenty-one years"); Seay v. Bacon, 36 Tenn. 99, 102 (1856) (distinguishing "minors" from those that "had attained the age of twenty-one years"); Newland v. Gentry, 57 Ky. 666, 671 (1857) (explaining that an infant's "minority" lasted until "he attains the age of twenty-one"); see also NRA of Am. v. Bureau of Alcohol, 700 F.3d 185, 201 (5th Cir. 2012) (explaining that "it was not until the 1970s that States enacted

legislation to lower the age of majority to 18"). That is, if defendant was correct, New Jersey could not restrict firearms in 2024 in the very manner multiple states restricted before the Civil War, precisely the opposite of what Bruen and Rahimi's methodology suggests.

The trend only intensified during Reconstruction—the period in which the States adopted the Fourteenth Amendment, which made the Second Amendment applicable to them for the first time. See McDonald v. City of Chicago, 561 U.S. 742, 758, 764-65 (2010) (plurality op.). During that period, "[t]he number of restrictions on minors' access to firearms increased dramatically." Walsh & Cornell, supra, at 3090-93 (collecting 14 such statutes enacted between 1875 and 1885). By "the end of the 19th century, nineteen States and the District of Columbia had enacted laws expressly restricting the ability of persons under 21 to purchase or use particular firearms, or restricting the ability of 'minors' to purchase or use particular firearms while the state age of majority was set at age 21." NRA, 700 F.3d at 202 & n.14 (citing 1856 Ala. Acts 17; 16 Del. Laws 716 (1881); 27 Stat. 116-17 (1892) (District of Columbia); 1876 Ga. Laws 112; 1881 Ill. Laws 73; 1875 Ind. Acts 86; 1884 Iowa Acts 86; 1883 Kan. Sess. Laws 159; 1873 Ky. Acts 359; 1890 La. Acts 39; 1882 Md. Laws 656; 1878 Miss. Laws 175–76; Mo.Rev.Stat. § 1274 (1879); 1885 Nev. Stat. 51; 1893 N.C. Sess. Laws 468–69; 1856 Tenn. Pub.

Acts 92; 1897 Tex. Gen. Laws 221–22; 1882 W. Va. Acts 421–22; 1883 Wis. Sess. Laws 290; 1890 Wyo. Sess. Laws 1253).

Tellingly, these restrictions were seen as comfortably constitutional by those to consider the issue. Thomas Cooley, the author of a "massively popular" treatise, Heller, 554 U.S. at 616, concluded that "the State may prohibit the sale of arms to minors." Thomas M. Cooley, Treatise on Constitutional Limitations 740 n.4 (5th ed. 1883). To support that view, Cooley cited the one constitutional challenge to such restrictions during that era: State v. Callicutt, 69 Tenn. 714 (1878). Callicutt resoundingly approved of a statute making it a crime "to sell, give, or loan a minor a pistol, or other dangerous weapon," noting such a law was "not only constitutional as tending to prevent crime but wise and salutary in all its provisions." Id. at 716-17. The State is unaware of any other constitutional challenge to these 19th-century restrictions; that the only such challenge was soundly rejected "settle[s]" that minors' access to firearms "could be prohibited consistent with the Second Amendment." Bruen, 597 U.S. at 30 (that there were "no disputes regarding the lawfulness of such prohibitions" counts strongly in favor of a modern analogue's constitutionality); cf. Id. at 27 ("[I]f some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those

proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality." (emphasis added)).

The Nation's tradition continues to the present. In the 1960s, Congress found minors' access to handguns was "a significant factor in the prevalence of lawlessness and violent crime." Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. IV, § 901(a), 82 Stat. 197, 225-26 (finding "causal relationship between the easy availability of firearms other than a rifle or shotgun and juvenile and youthful criminal behavior") ; see also 114 Cong. Rec. 12,309 (1968) (statement of Sen. Dodd) (noting "minors under the age of 21 years accounted for 35 percent of the arrests for the serious crimes of violence, including murder, rape, robbery, and aggravated assault," and 21 percent of the arrests for murder); Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. On the Judiciary, 90th Cong. 57 (1967) (statement of Sheldon S. Cohen) (adding "[t]he easy availability of weapons make [minors'] tendency toward wild, and sometimes irrational behavior that much more violent, that much more deadly"). Congress sought to limit that availability by prohibiting commercial sale of handguns to 18-to-20-year olds across the country—a law still in effect. See 18 U.S.C. § 922(b)(1), (c)(1). And in 2022, concerned "the profile of the modern mass shooter is often in the 18-to-21-year-old range," 168 Cong. Rec.

S3024 (statement of Sen. Murphy), Congress also required enhanced background checks for all persons under 21. See Bipartisan Safer Communities Act, Pub. L. No. 117-159, div. A, tit. II, § 12001(a)(1)(B)(i)(III), 136 Stat. 1313, 1323 (2022) (codified as amended at 18 U.S.C. § 922(t)(1)(C)).

That tradition is particularly pronounced among the States. A substantial majority of States and the District of Columbia today restrict access to firearms by those under 21, just as States have done for centuries: at least 37 jurisdictions impose restrictions on the purchase, possession, or use of firearms by persons under 21. See, e.g., Alaska Stat. §§ 11.61.220(a)(6), 18.65.705; Ariz. Rev. Stat. §§ 13-3102(A)(2), 13-3112(E); Ark. Code § 5-73-309; Cal. Penal Code §§ 26150, 26155, 26170; Colo. Rev. Stat. § 18-12-203(1)(b); Conn. Gen. Stat. §§ 29-28(b), 29- 35(a), 29-36f; D.C. Code §§ 7-2502.03(a)(1), 7-2509.02(a)(1); Del. Code Ann. tit. 11, § 1448(a)(5); Fla. Stat. §§ 790.06(1), (2)(b), 790.053(1); Ga. Code §§ 16-11-125.1(2.1), 16-11-126(g)(1), 16-11-129(b)(2)(A); Haw. Rev. Stat. §§ 134-2(a), 134-9(a); 430 Ill. Comp. Stat. 65/2(a)(1), 65/4(a)(2), 66/25(1); 720 Ill. Comp. Stat. 5/24-1(a)(10); Iowa Code § 724.22; Ky. Rev. Stat. § 237.110(4)(c); La. Rev. Stat. §40:1379.3(C)(4); Mass. Gen. Laws ch. 140, § 131(d)(iv); Md. Code Ann., Pub. Safety §§ 5-101(r), 5-133(d); Mich. Comp. Laws § 28.425b(7)(a); Minn. Stat. § 624.714; Neb. Rev. Stat. § 69-2433; Nev. Rev. Stat. §

202.3657(3)(a)(1); N.J. Stat. §§ 2C:58-3(c)(4), 2C:58-4(c), 2C:58-6.1(b); N.M. Stat. § 29-19-4(A)(3); N.Y. Penal Law § 400.00(1); N.C. Gen. Stat. § 14-415.12(a)(2); Ohio Rev. Code § 2923.125(D)(1)(b); Okla. Stat. tit. 21 § 1272(A); Or. Rev. Stat. § 166.291(1)(b); 18 Pa. Cons. Stat. § 6109(b); R.I. Gen. Laws §§ 11-47-11, 11-47-18; S.C. Code § 23-31-215(A); Utah Code §§ 76-10-505, 76-10-523(5); Va. Code § 18.2-308.02(A); Wash. Rev. Code §§ 9.41.240(2),(3), 9.41.070; Wis. Stat. § 175.60(3)(a); Wyo. Stat. § 6-8-104(a)(iv), (b)(ii).

It is not difficult to see why so many States and the Federal Government have believed that imposing firearms restrictions on individuals under 21 is well within our Nation's tradition. See Rahimi, 602 U.S. at 697 (asking whether a modern law is "relevantly similar" to historical laws "in both why and how it burdens the Second Amendment right"). Indeed, courts consistently hold that the Second Amendment, at a minimum, permits restrictions that "address a risk of dangerousness," because "[l]egislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed." United States v. Jackson, 110 F.4th 1120, 1127-28 (8th Cir. 2024); accord United States v. Perez-Garcia, 96 F.4th 1166, 1186 (9th Cir. 2024); United States v. Williams, 113 F.4th 637, 650, 657 (6th Cir. 2024); Kanter v. Barr, 919 F.3d

437, 464-65 (7th Cir. 2019) (Barrett, J., dissenting). This Court likewise has recognized the state Legislature's "broad discretion to determine when people's status or conduct indicate[s] a sufficient threat to warrant disarmament." Matter of M.U.'s Application for a Handgun Purchase Permit, 475 N.J. Super. 148, 189 (App. Div. 2023). Said another way, States remain free to make "present-day judgments about categories of people whose possession of guns would endanger the public safety," Kanter, 919 F.3d at 464-65 (Barrett, J., dissenting), consistent with that long and unbroken historical tradition.

The Legislature was free to determine that allowing persons under 21 to access firearms would present an unacceptable risk of danger—and thus regulate them. See, e.g., NRA, 700 F.3d at 203 (finding federal restrictions on "ability of 18-to-20-year-olds to purchase handguns" from retailers to be "consistent with a longstanding tradition of targeting select groups' ability to access and to use arms for the sake of public safety," including "a longstanding tradition of age- and safety-based restrictions on the ability to access arms"). As explained above, legislative findings across decades confirm that access to firearms by individuals under 21 is both "a significant factor in the prevalence of lawlessness and violent crime" and a driver of mass shootings. (As set forth above 28-29 (findings in 1968 and 2022 laws). The evidence bears those

findings out: "The 18-to-20-year age group … has been identified as disproportionately prone to violence, including gun violence, compared to older age groups." Jones, 705 F.Supp.3d at 1134.

A range of statistics unfortunately substantiates the dangerousness of this age group. The group currently commits crimes at a disproportionate rate: 18-to-20-year-olds made up 15% of homicide and manslaughter arrests in 2019, despite constituting less than 4% of the U.S. population. Compare U.S. Dep't of Justice, Crime in the U.S., Arrests, by Age, 2019, Tbl. 38, (Ra50), with U.S. Census Bureau, Age and Sex Composition in the U.S.: 2019, Tbl. 1, (Ra53). Furthermore, FBI data "confirms that homicide rates peak between the ages of 18 and 20"; research shows this "age group commits gun homicides at a rate three times higher than adults aged 21 or older"; and "studies show that at least one in eight victims of mass shootings from 1992 to 2018 were killed by an 18 to 20-year-old." Lara v. Comm'r Pa. State Police, 130 F.4th 65, 68-69 (3d Cir. 2025) (Krause, J., dissenting from denial of rehearing en banc) (collecting sources).

Modern evidence helps explain the threat. As one federal court discussed, "studies have concluded individuals between the ages of 18 and 20 'are more impulsive, more likely to engage in risky and reckless behavior, unduly influenced by peer pressure, motivated more by rewards than costs or

negative consequences, less likely to consider the future consequences of their actions and decisions, and less able to control themselves in emotionally arousing situations.'" Jones, 705 F.Supp.3d at 1134 (quoting report by developmental psychologist). This is at least in part due to "still-developing cognitive systems of 18-20-year-olds" leading to "increas[ed] risk of impulsive behavior." Ibid. Modern biology teaches that "[o]ne of the last parts of the brain to mature—and which continues to develop into the mid-twenties—is the prefrontal cortex, which supports self-control, including judgment, impulse control and inhibition, and long-range planning." Ibid.; see also NRA, 700 F.3d at 210 & n.21 (noting "modern scientific research supports the commonsense notion that 18-to-20- year-olds tend to be more impulsive than young adults aged 21 and over"); Lara, 130 F.4th at 72, nn. 30-31 (Krause, J., dissenting) (discussing, e.g., Mariam Arain et al., Maturation of the Adolescent Brain, 9 Neuropsychiatric Disease & Treatment 449, 453, 456 (2013), on adolescent development).

For these reasons, several courts, before and after Bruen, detailed this clear historical tradition in upholding other restrictions on minors' access to firearms. See, e.g., NRA, 700 F.3d at 200-04 (discussing "considerable historical evidence of age- and safety-based restrictions on the ability to access arms" in upholding a federal statute restricting sale of handguns to individuals

under 21); United States v. Rene E., 583 F.3d 8, 12 (1st Cir. 2009) (relying on "existence of a longstanding tradition of prohibiting juveniles from both receiving and possessing handguns" to uphold a juvenile ban); Jones, 705 F. Supp. 3d at 1136 (in analogous lawsuit, relying on "historical regulations which limited the ability of 18-to-20-year-olds to purchase, acquire, and possess certain weapons" to uphold California law generally prohibiting the sale of long guns to individuals under 21). This Court should join them.

In sum, it remains the State's position that defendant does not have standing to challenge the constitutionality of the permitting statute prohibiting carry permits for individuals under the age of twenty-one and that the order of the trial court denying his Motion to Dismiss the Indictment be affirmed. Further, if this Court were to determine that defendant had standing, it should find that by restricting a minors' ability to carry firearms, New Jersey law clearly "comport[s] with the principles underlying the Second Amendment." Rahimi, 603 U.S. at 692.

CONCLUSION

For the foregoing reasons, the State respectfully requests that defendant's appeal be denied.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1947-24 (AM-276-24)

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	Ind. 22-05-360-I
v.	:	
EMMANUEL J. LOPEZ,	:	On Leave to Appeal from an Order of the Superior Court of New Jersey, Union Vicinage, Criminal Division
Defendant-Appellant.	:	
	:	Sat Below: Thomas K. Isenhour, J.S.C.

Your Honors:

This letter-reply brief is submitted on behalf of Defendant in lieu of a formal brief pursuant to R. 2:6-2(b).

DEFENDANT IS NOT CONFINED

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LEGAL ARGUMENT

POINT I

BECAUSE DEFENDANT HAD STANDING TO CHALLENGE NEW JERSEY'S PROHIBITION ON THE PUBLIC CARRY OF HANDGUNS BY PERSONS YOUNGER THAN TWENTY-ONE YEARS AND THIS AGE RESTRICTION VIOLATES THE SECOND AMENDMENT, THIS COURT SHOULD REVERSE THE DENIAL OF DEFENDANT'S MOTION TO DISMISS THE INDICTMENT.

A. Defendant Had Standing To Challenge The Constitutionality Of New Jersey's Age Restriction On Carry Permits Without Having First Applied For A Permit Because: (1) This Restriction Categorically Barred Him From Eligibility And Made It Futile To Apply; And (2) Defendant Brought A Facial Challenge To The Statutory Scheme.

The State first argued that, per State v. Wade, 476 N.J. Super. 490 (App. Div. 2023), Mr. Lopez failed to establish standing through the futility exception to the application requirement because he failed to make a "substantial showing" that, had he "applied for a permit, we would have satisfied every other statutory requirement." (Sb12)[1] The State argues both that Mr. Lopez's certification was not sufficient and that defendants should not be

[1] Sb – State's Brief (filed July 10, 2025)
Sa – State's Appendix (filed July 10, 2025)
Db – Defendant's Merits Brief (filed May 28, 2025)
Da – Defendant's Merits Appendix (filed May 28, 2025)
Ma – Defendant's Motion Appendix (filed Feb. 2, 2025)

allowed to challenge aspects of the permitting scheme after violating them. (Sb12-15) These arguments fail for several reasons.

First, as thoroughly explained in Mr. Lopez's initial brief, the futility exception to the application requirement does not require the challenger to show that he would have been granted the license but for the challenged provision; it requires the opposite—that the challenger's application would have been denied based on the challenged provision. See, e.g., Antonyuk v. James, 120 F.4th 941, 979 (2d Cir. 2024) ("Futility refers to the denial of an application."), cert. denied, 145 S. Ct. 1900 (2025); United States v. Decastro, 682 F.3d 160, 164 (2nd Cir. 2012) (sufficiency of a futility showing is judged on whether plaintiff has shown that his application would have been denied); Bach v. Pataki, 408 F.3d 75, 82-83 (2d Cir. 2005) (application was futile where applicant "was statutorily ineligible for a carry license"). Bach explains the rationale for this exception to the application requirement: "Imposing a filing requirement would force Bach to complete an application for which he is statutorily ineligible . . . . 'We will not require such a futile gesture as a prerequisite for adjudication.'" 408 F.3d at 83 (quoting Williams v. Lambert, 46 F.3d 1275, 1280 (2d Cir.1995)). Thus, because Mr. Lopez was statutorily ineligible for a carry permit by virtue of his age, he has made a "substantial showing" of futility and has standing to challenge the age restriction.

If this Court instead agrees with the State that Mr. Lopez needed to demonstrate he would have satisfied every statutory requirement other than the age requirement, this Court should rebuff the State's invitation to have this Court evaluate the sufficiency of Mr. Lopez's certification for the first time on appeal and instead remand for an evaluation by the trial court in the first instance. The trial court in this case never evaluated Mr. Lopez's certification nor decided whether or not it was sufficient to demonstrate he would have satisfied all the statutory requirements for a permit other than the age requirement. The trial court simply "adopt[ed] the Appellate Division's rationale in [Wade], finding that defendants did not have standing . . . as they did not apply for a permit to purchase or firearms purchaser identification card prior to possessing the firearms." (Ma52-53)

Because "the customary role of an appellate court is not to make factual findings but rather to decide whether those made by the trial court are supported by sufficient credible evidence in the record," this Court must remand for the trial court to make factual findings in the first instance concerning the sufficiency of Mr. Lopez's certification. State v. S.S., 229 N.J. 360, 365 (2017). Indeed, "our system of justice assigns to our trial courts the primary role of factfinder." Id. at 364. The reason this Court should remand in this case, while it did not in State v. Pinkett, No. A-3121-23, 2025 WL

1260551 (N.J. Super. Ct. App. Div. May 1, 2025), is that Mr. Lopez did submit a certification specifically certifying as to all the requirements for a handgun carry permit. Of course, it is up to the trial court to determine whether to credit Mr. Lopez's assertions—which could very well require testimony from Mr. Lopez to evaluate his credibility. (Ma6-15) But in Pinkett, only two of the three defendants submitted certifications, those certifications were not signed by the defendants themselves, and "neither certification addressed the statutory requirements for a handgun carry permit." Id. at *6. (Da17) Thus, Mr. Lopez's circumstances are distinct from the defendants in Pinkett.

The State's argument that "the court cannot evaluate whether defendant would have been refused a permit on a ground other than the requirement he now challenges" and criticism that bringing "a challenge after being arrested . . . leave[s] it to individual defendants and trial courts to sort out later who should and should not be able to carry a handgun" flies in the face of a plethora of recent Second Amendment cases demanding that trial courts conduct an individualized assessment of whether prosecuting a particular defendant violates the Second Amendment. (Sb14-15)

Federal law prohibits the possession of a firearm by any person "who is an unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3). Federal Courts of Appeals have held that "our history and tradition

may support some limits on a presently intoxicated person's right to carry a weapon . . . but they do not support disarming a sober person based solely on past substance usage." United States v. Connelly, 117 F.4th 269, 272 (5th Cir. 2024); see also United States v. Cooper, 127 F.4th 1092, 1096 (8th Cir. 2025) (the government may only prosecute someone under § 922(g)(3) if using the substance made the defendant (1) act like someone who is "both mentally ill and dangerous," (2) induce terror, or (3) "pose a credible threat to the physical safety of others" with a firearm); United States v. Harris, __ F.4th __, __, 2025 WL 1922605, at *5 (3d Cir. July 14, 2025) ("§ 922(g)(3) temporarily bars anyone who often uses drugs from possessing a gun shortly before, during, or after using drugs."). Because the Courts found that the Second Amendment analysis required individualized consideration, they have remanded for factfinding by the trial courts. See, e.g., United States v. Perez, __ F.4th __, __, 2025 WL 2046897, at *7 (8th Cir. July 22, 2025) (remanding for the district court to determine whether defendant's marijuana use: "1) caused him to act like someone who is both mentally ill and dangerous; or 2) would or did make him "induce terror, or pose a credible threat to the physical safety of others with a firearm."); Harris, __ F.4th at __, 2025 WL 1922605 at *8 (remanding for the district court to determine "how Harris's drug use affected his mental state and riskiness" considering, inter alia, "The length and recency

of the defendant's use during and shortly before his gun possession."). The Second Amendment thus demands that in this case the trial court conduct an individualized assessment to the extent necessary to resolve Mr. Lopez's Second Amendment claim.

Regarding the State's argument that criminal defendants may not "challenge aspects of the civil scheme as invalid after flouting its requirement" (Sb15), while this argument does appear in cases like Poulos v. New Hampshire, 345 U.S. 395 (1953)—where the defendant has not raised the futility exception to the application requirement—it is not raised as a relevant framework for analysis in cases where futility is raised.

For example, Angel Decastro "was convicted of transporting into his state of residence a firearm acquired in another state in violation of 18 U.S.C. § 922(a)(3)" and argued "that § 922(a)(3) violates his Second Amendment right" because, "in combination with New York's licensing scheme, the prohibition on the transportation into New York of a firearm purchased in another state made it virtually impossible for him to obtain a handgun for self-defense." Decastro, 682 F.3d at 161. The case was assessed entirely on futility grounds and did not discuss the Poulos line of cases. The court held, "because Decastro failed to apply for a gun license in New York, he lacks standing to challenge the licensing laws of the state. . . . He has . . . not made the

substantial showing of futility necessary to excuse his failure to apply for a handgun license in New York." Id. at 164. It was because Decastro failed to show that he would have inevitably been denied a permit—i.e. unlike Bach he was not "statutorily ineligible"—that the court found he failed to demonstrate he met the futility exception. The court did not base its conclusion on the premise that a defendant may not first flout a licensing scheme and challenge it after already having violated it.

The rule in Poulos is relevant not to Mr. Lopez's "futility" argument but is relevant to his "facial challenge" argument. The Poulos Court noted in a footnote: "'It is well settled that where a licensing ordinance, valid on its face, prohibits certain conduct unless the person has a license, one who without a license engages in that conduct can be criminally prosecuted without being allowed to show that the application for a license would have been unavailing.'" 345 U.S. at 409 (emphasis added) (quoting United States v. Slobodkin, 48 F. Supp. 913, 917 (D. Mass. 1943)). This rule is more thoroughly explained in Smith v. Cahoon, 283 U.S. 553, 562 (1931):

> [T]he principle is well established that, when a statute, valid upon its face, requires the issue of a license or certificate as a condition precedent to carrying on a business or following a vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain because of his anticipation of improper or invalid action in administration. This principle, however, is not

> applicable where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of constitutional right. . . . In the present instance, . . . [t]he question of the validity of the statute, upon which the prosecution is based, is necessarily presented.

The Slobodkin opinion (quoted by Poulos) also helps distinguish between scenarios when a defendant may challenge a licensing scheme after violating it and when he may not: "it is important to distinguish two different types of asserted invalidity. A regulation might, in form or in substance, be invalid on its face; or, though fair on its face, it might be invalid because of the circumstances of its adoption or application." 48 F.Supp. at 916. The court thus distinguishes between (1) licensing schemes that are unconstitutional on the face of their own language (in which case a defendant can challenge the validity of the regulation as a defense after having violated it); and (2) licensing schemes that are themselves constitutional but applied in violation of an individual's constitutional right (in which case a defendant cannot challenge the application of the scheme after having violated it).

Thus, in Poulos, where the ordinance at issue was constitutional on its face but the City Council wrongly refused to issue Poulos a license to hold a public meeting, the Court held that Poulos was required to judicially appeal the denial rather than ignoring it and proceeding with the meeting anyway. 345 U.S. at 408-09. Conversely, in Smith, where the terms of the licensing statute

itself imposed an unconstitutional requirement on applicants, the Court held that the Smith could challenge the constitutionality of the statute as a defense to his prosecution for failing to obtain a license. 238 U.S. at 562, 565.

Because Mr. Lopez is arguing that the age restriction for carry permits—in combination with the prohibition on public carry without a permit—violates his Second Amendment right to publicly carry a handgun for self-defense, his argument is that the age restriction is invalid on its face. He thus has standing under the Smith line of cases to raise this challenge as a defense to his prosecution for failing to obtain a permit.

Turning to the State's argument on severability, Mr. Lopez does not dispute the State's contention that the age requirement of N.J.S.A. 2C:58-4(c) is severable from the other requirements. (Sb17-19) This means that the rest of N.J.S.A. 2C:58-4 "shall, to the extent that it is not unconstitutional, invalid or inoperative, be enforced and effectuated." N.J.S.A. 1:1-10 (emphasis added). Thus, if this Court finds the age requirement unconstitutional, the remainder of the carry permit statute could be severed from the "justifiable need" provision and these remaining provisions could be enforced going forward.

But the severability of the age restriction does not defeat Mr. Lopez's standing to challenge the age restriction. Mr. Lopez has not mounted a facial challenge to the entirety of N.J.S.A. 2C:39-5 or N.J.S.A. 2C:58-4. He argues

that a single provision—the age restriction—is facially unconstitutional. The meaning of a facial challenge is that he is challenging the constitutionality of the statutory provision prohibiting the issuance of carry permits to persons under twenty-one years old on its face, as it is written, rather than arguing that this provision is merely unconstitutional as applied to him specifically.

In W. Virginia Coal. Against Domestic Violence, Inc. v. Morrisey, 689 F. Supp. 3d 272 (S.D.W. Va. 2023), the Court distinguished between the questions of a facial challenge and severability. In that case, the West Virgina Legislature had enacted the "Parking Lot Amendments" to the "Business Liability Protection Act," which contained number of provisions "to prohibit property owners from banning firearms in the parking lot areas of their properties." Id. at 282. One provision, dubbed the "Inquiry Provision," prohibited business owners from asking invited guests on their properties whether they had a firearm in their parked cars. Id. at 283. The court found that "like most content-based speech regulations, the Inquiry Provision facially violates the First Amendment and may not stand." Id. at 289. However, the court also found that the Inquiry Provision was severable "from the rest of the enactment" and accordingly "[t]he constitutional infirmity of the Inquiry Provision . . . does not render the Parking Lot Amendments wholly unconstitutional." Id. at 289-90. Thus, as demonstrated by this case, the fact

that the age restriction is severable from the remaining permitting provisions does not mean that Mr. Lopez's challenge to the age restriction is not a facial challenge.

Furthermore, while the doctrine of severability allows the remaining provisions of N.J.S.A. 2C:58-4 to be enforced prospectively, nothing in N.J.S.A. 1:1-10 or our severance jurisprudence allows an unconstitutional provision to be retroactively enforced. In Smith, a private truck driver was charged with driving on a Florida highway "without having obtained the certificate of public convenience and necessity, and without having paid the tax." 283 U.S. at 556. Although Supreme Court did not strike down the requirement that private truck drivers to obtain a certificate of convenience and necessity, the Court held that it was improper to treat private carriers the same as common carriers in terms of regulating their rates and services. 283 U.S. at 561-63. The Court then considered Florida's argument that the savings clause rendered the unconstitutional provisions severable from the rest of the scheme. The Court responded:

> The effect of this saving clause is merely that, if one provision is struck down as invalid, it may stand. But until such separation has been accomplished by judicial decision, the statute remains with its inclusive purport, and those concerned in its application have no means of knowing definitely what eventually will be eliminated and what will be left. This was the situation which confronted the appellant when obedience to the

> statute was demanded and punishment for violation was sought to be inflicted.
>
> [Id. at 563-64.]

Therefore, the fact that the statute could be severed prospectively did not retroactively cure the harm inflicted on the defendant. Id. 564. The Court thus held that "the statute was invalid as applied to the appellant" and reversed his conviction. Id. at 567-68.

Likewise, because the unconstitutional age restriction was in effect and enforced at the time Mr. Lopez was arrested for the offence in this case, the severability of the justifiable need provision from the rest of the permitting scheme does not retroactively cure the unconstitutionality of that provision at the time of Mr. Lopez's arrest.

B. The State Has Failed To Meet Its Burden To Demonstrate That New Jersey's Law Prohibiting Eighteen-To-Twenty-Year-Olds From Publicly Carrying Handguns For Self-Defense Is Consistent With The Nation's Historical Tradition Of Firearm Regulation.

The State argues that "[t]here is a longstanding historical tradition of restricting the access of firearms for those younger than 21." (Sb21) The State proffers the following as historical analogues for New Jersey's carry permit age restriction: (1) the age of majority was twenty-one years at the Founding; (2) Founding-era university and college prohibited students from possessing firearms; (3) several States excluded eighteen-to-twenty-year-olds from militia

service; (4) three pre-Civil War and numerous Reconstruction-era laws restricted the ability of persons under twenty-one to purchase or use particular firearms; (5) and one state court opinion deciding a constitutional challenge to an age restriction: State v. Callicutt, 69 Tenn. 714 (1878).

First, with respect to the age of majority of twenty-one years at the Founding, the State argues this is relevant because it meant that persons under twenty-one were unable to exercise the right of petition, vote, serve on juries, or enter into binding contracts. (Sb21-22) But at the time of the Founding, women and black men were also widely prohibited from exercising any of these legal rights. Dred Scott v. Sandford, 60 U.S. 393, 421-27 (1857); Lucy Fowler, Gender and Jury Deliberations: The Contributions of Social Science, 12 Wm. & Mary J. Women & L. 1, 1 (2005); Nino C. Monea, Vanguards of Democracy: Juries As Forerunners of Representative Government, 28 UCLA Women's L.J. 169, 188, 202 (2021); Allison Anna Tait, The Beginning of the End of Coverture: A Reappraisal of the Married Woman's Separate Estate, 26 Yale J.L. & Feminism 165, 167 (2014). Indeed, one need look no further than the very John Adams letter quoted by the State for the assertion that people under twenty-one lack judgment. Adams' letter argued that the colonies should continue to restrict the right to vote to men who owned property because otherwise women would also demand the right to vote; he argued women

should not be permitted to vote because "their Delicacy renders them unfit for . . . the arduous Cares of State." (Ra001-002) These historical exclusions obviously would not permit states to presently enact laws prohibiting women or African Americans from carrying handguns. Thus, historical exclusions of persons under twenty-one years old cannot serve to justify present restrictions on the Second Amendment rights of eighteen-to-twenty-year-olds.

Thus, the State's citation to the age of majority at the time of the founding thus cannot dispositively justify New Jersey's absolute curtailment of the Second Amendment rights of eighteen-to-twenty-year-olds.

The State also argues that the age of majority is relevant because "'authority over the[] lives [of minors under twenty-one] rested with other decision-makers,' including parents, educators, and militia superiors." But under this argument, what is legally salient is the line between those young people who are legally under the control of their parents—minors—and those who are recognized to be legally independent upon reaching the age of majority. But the age of majority is currently eighteen. See, e.g., N.J.S.A. 9:17B-3. Thus, to the extent that there was a historical precedent or prohibiting minors from carrying firearms, this would justify a present law prohibiting persons under eighteen from carrying firearms but would not similarly justify prohibiting the carrying of firearms by persons under twenty-one—as they are

presently legally adults.

Regarding Founding-era college restrictions on the possession of firearms on campus by students, Defendant's initial brief noted that these laws are not analogous to statewide categorical ban on handgun possession by eighteen-to-twenty-year-olds because they were the policies of institutions that had guardianship authority in loco parentis rather than statewide government statutes, and "a restriction on the possession of firearms in a school (a sensitive place) is much different in scope than a blanket ban on public carry." Worth v. Jacobson, 108 F.4th 677, 695-96 (8th Cir. 2024).

Turning to the militia, the State notes that in 1829 and 1843 New Jersey and Ohio exempted eighteen-to-twenty-year-olds from militia service. (Sb24) But these were exemptions from mandatory militia service rather than exclusions or prohibitions on militia service. Moreover, the earliest of these two laws, New Jersey's, was enacted thirty-eight years after the ratification of the Second Amendment. At the time of the ratification of the Second Amendment, New Jersey's minimum age for militia service was sixteen, 1780 N.J. Laws 42-43, which it raised to eighteen after the passage of the Milita Act of 1792. 1792 N.J. Laws 850-53. David B. Kopel & Joseph G.S. Greenlee, The Second Amendment Rights of Young Adults, 43 S. Ill. U. L.J. 495, 537-38 (2019). In fact, "18-to-20-year-olds were included in the federal militia and

each state's militia at the time of the founding." Id. at 505, 579.

The Supreme Court was clear in District of Columbia v. Heller, 554 U.S. 570, 596 (2008), that "the ordinary definition of the militia [i]s all able-bodied men" and "[f]rom that pool, Congress has plenary power to organize the units that will make up an effective fighting force." The Court cited the Militia Act of 1792, which provided for the enrolment in the federally organized militia of "each and every free able-bodied white male . . . who is or shall be of the age of eighteen years, and under the age of forty-five years." Ibid. But the Court recognized that legislative enactments that conscripted only men of certain ages did not themselves define the scope of the militia:

> To be sure, Congress need not conscript every able-bodied man into the militia, because nothing in Article I suggests that in exercising its power to organize, discipline, and arm the militia, Congress must focus upon the entire body. Although the militia consists of all able-bodied men, the federally organized militia may consist of a subset of them.
>
> [Ibid.]

Thus, any State's decision to exempt men below the age of twenty-one from militia service has no bearing on the "ordinary definition of the militia" that existed at the founding; the ordinary definition of the militia at the time of the founding clearly included men ages eighteen to twenty.

Additionally, Heller is clear that while the Second Amendment right to

keep and bear arms was not limited to militiamen, all members of the militia enjoyed the right to keep and bear arms. Heller noted, "the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." Id. at 627. The core reason for the Second Amendment's enactment was to prevent "the threat that the new Federal Government would destroy the citizens' militia by taking away their arms"—the arms the militiamen possessed at home. Id. at 599. The State tries to deflect the persuasive weight of this history by pointing to the laws of three states that exempted persons under twenty-one from having to furnish their own arms. (Sb24) The State fails again to note that an exemption from a requirement is not equivalent to a prohibition; moreover, the Supreme Court in Bruen flatly rejected the idea that "three colonial regulations could suffice to show a tradition of public-carry regulation." 597 U.S. at 46.

The State next cites three pre-Civil War state statutes restricting access to firearms for persons under twenty-one years of age—those enacted by Alabama, Tennessee, and Kentucky—and twenty similar Reconstruction enactments. (Sb26-27) Defendant's initial brief explained how the Reconstruction era laws are not sufficient historical analogues. (Db35-39) And the three pre-Civil war laws governed the furnishing of pistols to persons

under twenty-one rather than governing the right to public carry. Act of Feb. 2, 1856, no. 26, § 1, 1856 Ala. Acts 17; 1856 Tenn. Acts 92; Act of Jan. 12, § 23, 1860 Ky. Acts 241, 245. Kentucky's Act, however, did not prohibit parents from furnishing pistols to their children under twenty-one. 1860 Ky. Acts 241, 245. And Tennessee's Act did not apply to the provision of "a gun for hunting", nor did it prohibit the provision of a pistol to a person under twenty-one if he were "travelling on a journey." 1856 Tenn. Acts 92; Act of Jan. 12, § 23.

Furthermore, United States v. Rahimi, 144 S. Ct. 1889 (2024) makes clear that the State's cited nineteenth century laws neither support the "why" nor the "how" of New Jersey's categorical age restriction. Although the usual explanation for the "why" legislatures may have historically placed some restrictions on minors' access to firearms is the view that minors were not "responsible" enough to be entrusted with firearms, Rahimi "reject[ed] the Government's contention that Rahimi may be disarmed simply because he is not 'responsible.'" Id. at 1903. Nor does Rahimi provide support for the State's alternative suggestion for "why"—that legislatures are free to disarm categories of people they deem to be "dangerous." (Sb31) Rahimi did not approve a law disarming an entire category people based on a legislature's determination that the category of people posed a danger; rather, Rahimi

approved a law disarming an individual after a court had made an individualized "finding that [the] individual poses a credible threat to the physical safety of an intimate partner." Id. at 1891. New Jersey's categorical age restriction does not require any similar individualized finding of dangerousness. The actual "how" and "why" of the nineteenth century laws cited by the State reflects the judgment of legislatures that because parents maintain "authority over" minors' lives, parents should have a say in the firearms to which their children have access. Because New Jersey no longer affords parents any legal authority over their children once they reach the age of eighteen, the "how" and "why" of these nineteenth century laws do not support categorical prohibition on the carrying of firearms by eighteen-to-twenty-year-olds, who are presently legally adults.

Finally, the State's reliance on the Tennessee Supreme Court decision Callicutt is misplaced. Callicutt erroneously assumed that the Second Amendment protected only the right of the people to bear arms "for their common defense" and did not protect the right "of individual members of society to carry arms, in times of public peace." 69 Tenn. at 716. This erroneous belief that the Second Amendment protected only the collective right of the militia to bear arms was obviously abrogated by Heller. 554 U.S. at 576, 579-81. Heller's abrogation of Callicutt is made clear by the fact that

Callicutt relied on the interpretation of the Second Amendment by an earlier decision of the Tennessee Supreme Court, Aymette v. State, 21 Tenn. 154 (1840), which Heller explicitly denounced. Id. at 613 ("[Aymette's] odd reading of the right, to be sure, is not the one we adopt."). Thus, Callicutt thus has no persuasive force whatsoever.

Because the State has failed to meet its burden to demonstrate that New Jersey's law prohibiting eighteen-to-twenty-year-olds from publicly carrying handguns for self-defense is consistent with the Nation's historical tradition of firearm regulation, this Court should conclude the twenty-one-year-old age requirement to receive a carry permit—in combination with the prohibition on public carry without a permit of N.J.S.A. 2C:39-5(b)(1)—violates the Second Amendment.

CONCLUSION

For the aforementioned reasons, this Court should reverse the motion court's order denying dismissal of the indictment.

Respectfully submitted,

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