SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Ind. No. 22-07-0867-I
DOCKET NO. A-002407-24
A-002408-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Leave to Appeal from an Opinion of the Superior Court of New Jersey,
v.	:	Criminal Division, Hudson County
JAHMERE GLOVER,	:	Sat Below: Hon. John A. Young, Jr., J.S.C.
Defendant-Appellant.	:	

DEFENDANT-APPELLANT'S BRIEF

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DEFENDANT IS NOT CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

On June 3, 2021, officers from the Jersey City Police Department were conducting surveillance on McAdoo, Rose, and Rutgers Avenues in Jersey City. (Ma17-18)[2] According to Officer Shady Azmy, police observed five men standing around a parked Ford Taurus and Dodge Charger, one of whom, Jermiah Kearney, had a bulge in his waistband. (Ma17-18) The police then lost sight of the bulge when the men started talking with one another. (Ma17-18) At some point, police observed Kearney put on a mask and get in the Ford Taurus along with three other men. Jahmere Glover, later identified as defendant, got into the Dodge Charger by himself. Police stopped the Charger, removed Glover from the vehicle, and according to Officer Egan, the police observed the handle of a firearm sticking out of a bag in the center console of the car. (Ma18) Glover did not have a permit to carry a handgun. (Ma30)

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[1]Defendant adopts the statement of facts as detailed in his motion for leave to appeal. For purposes of ease and clarity, those facts are reproduced above in full, along with an updated procedural history, which is included alongside the facts given the interrelated nature of the procedural history and facts.

[2] The following abbreviations are used:
Ma – Defendant's Appendix in Support of Motion for Leave to Appeal
Pa – State's Appendix in Support of Motion for Leave to Appeal
Da – Defendant's Appendix in Support of Plenary Brief
1T – November 7, 2024 – Argument on Motion to Dismiss
2T – January 16, 2025 – Argument on Motion to Dismiss (continued)
3T – February 28, 2025 – Decision on Motion to Dismiss

A Hudson County grand jury issued Indictment No. 22-07-0867, charging Glover with three offenses: second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1) (count one); second-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1) (count two); and fourth-degree possession of a handgun while under the age of twenty-one, N.J.S.A. 2C:58-6.1 (count three). (Ma1-2) Glover was nineteen-years-old on the date of his arrest. (Ma18)

On March 13, 2023, Glover filed a motion to dismiss counts two and three of the indictment, arguing that the charges against him violated his rights under the Second and Fourteenth Amendments of the United States. (Ma5; Ma44-45) Specifically, Glover argued that New Jersey law improperly prohibits persons under the age of twenty-one, like Glover, from publicly carrying a handgun for self-defense because of their age alone. (Ma5; Ma44-45)

On February 28, 2025, following briefing and oral argument, the Honorable John A. Young Jr. J.S.C. held that Glover lacked standing to challenge his prosecution under count two for second-degree unlawful possession of a weapon without a permit, N.J.S.A. 2C:39-5(b)(1), and thus denied his motion to dismiss count two accordingly. (Ma16) (3T) The court then found, however, that Glover had standing to challenge count three charging him with fourth-degree possession of a handgun by a minor, N.J.S.A. 2C:58-6.1, and thus granted Glover's motion to

dismiss count three. (Ma16)

On March 20 2025, Glover filed a motion for leave to appeal the court's denial of the motion to dismiss count two (Docket No. A-2408-25). (Da1) That same day, the State filed a motion for leave to appeal the trial court's grant of the motion to dismiss count three (Docket No. A-2407-24). (Da2-3) This Court granted both motions and consolidated the appeals. (Da4-7) This brief follows.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD REVERSE THE DENIAL OF DEFENDANT'S MOTION TO DISMISS COUNT TWO BECAUSE: (A) THE COURT ERRED IN FINDING THAT DEFENDANT LACKED STANDING TO CHALLENGE COUNT TWO; AND (B) THE STATE FAILED TO MEET ITS BURDEN UNDER BRUEN OF JUSTIFYING NEW JERSEY'S PROHIBITION ON PUBLICLY CARRYING A HANDGUN WHILE UNDER THE AGE OF TWENTY-ONE. (Ma16; Ma17-37)

Jahmere Glover has a constitutional right under the Second and Fourteenth Amendments to "carry a handgun for self-defense outside the home." New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1, 10 (2022). The State's prosecution of Glover in counts two and three of the indictment seeks to punish him for engaging in this constitutionally protected conduct. (Ma1-2) Because New Jersey's prohibition on publicly carrying a handgun while under

the age of twenty-one violates the Second Amendment, the laws which criminalize Glover's conduct – through the confluence of firearm permitting provisions and criminal statutes – cannot be enforced against him, requiring dismissal of count two. U.S. Const. amends. II, XIV.

The Second Amendment of the United States Constitution states, "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The United States Supreme Court has held that this amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation[,]" District of Columbia v. Heller, 554 U.S. 570, 592 (2008), and protects citizens from infringements on this right by either the federal or state governments. McDonald v. City of Chicago, 561 U.S. 742, 750 (2010). Recently, in New York State Rifle & Pistol Association, Inc. v. Bruen, the Supreme Court clarified that, "consistent with Heller and McDonald, [] 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

In Bruen, the Court articulated the test for evaluating Second Amendment challenges to firearm restrictions: "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 requires assessing the conduct against the plain text of the Second Amendment, and step two requires assessing the challenged regulation against proposed historical analogues. See 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), petition filed, No. 24-1329 (U.S. Jun. 30, 2025). Application of this Bruen two-step inquiry to Glover's case demonstrates that his prosecution under counts two and three is unconstitutional.

Count two accused Glover of carrying a handgun without first obtaining a carry permit contrary to N.J.S.A. 2C:39-5(b)(1). (Ma1) Under New Jersey's firearm licensing scheme, however, it was impossible for Glover to obtain that necessary permit because he was under twenty-one years old. Specifically, N.J.S.A. 2C:58-3(c)(4) prohibits persons under the age of twenty-one from obtaining a handgun purchasing permit. And under N.J.S.A. 2C:58-4(c), a person will not receive a handgun carry permit unless he is eligible to obtain the aforesaid purchasing permit – which, as noted, prohibits applications from persons under the age of twenty-one. Taken together, the confluence of N.J.S.A. 2C:39-5(b)(1), N.J.S.A. 2C:58-4(c), and N.J.S.A. 2C:58-3(c)(4) categorically bars eighteen-to-twenty-year-olds from carrying handguns in public for self-

defense, and then subjects them to criminal prosecution should they attempt to do so.

In support of his motion to dismiss counts two and three, Glover asked the court to apply the consensus opinion among federal courts as to the constitutionality of such age-based firearm restrictions: following Bruen, all three federal courts which have considered analogous state laws prohibiting eighteen-to-twenty-year-olds from publicly carrying handguns have held that those laws violate the Second Amendment. Lara, 125 F.4th at 431; Worth v. Jacobson, 108 F.4th 677, 683 (8th Cir 2024), cert. denied, 145 S. Ct. 1924 (Apr. 21, 2025); 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). (Ma50-52) (Da27)

Before deciding whether to apply these persuasive federal rulings to Glover's prosecution, the trial court first considered the threshold question of standing, finding that Glover did not have standing to challenge count two, but that he did have standing to challenge count three. (Ma30-31) The court thus considered the merits of Glover's constitutional challenge under Bruen only with respect to count three. (Ma31-37) In applying the Bruen test, the court ultimately ruled in Glover's favor, adopting the persuasive body of federal law cited above and dismissing count three based on the finding that the "State has

not met its burden of providing a sufficient historical analogue to satisfy prong two of the Bruen test." (Ma37)

Accordingly, Glover asks this Court to find that the trial court's Bruen analysis – finding New Jersey's handgun age-restriction unconstitutional – was correct, but that its threshold finding that Glover lacked standing to challenge count two was erroneous. More specifically, this Court should find that Glover does, in fact, have standing to bring a Second Amendment challenge to his prosecution under count two of the indictment for the reasons set forth in Point I.A. And upon consideration of the merits of Glover's Second Amendment challenge to count two, this Court should apply the consensus among federal courts discussed above and hold that 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, and is therefore violative of the Second Amendment – as set forth in Point I.B. Upon reaching this finding, this Court should then reverse the trial court's order denying Glover's motion to dismiss count two, and should dismiss count two.[3]

[3] As will be set forth in Point II, based upon these same findings – that Glover has standing, and that New Jersey's firearm age restriction violates the Second Amendment – this Court should affirm the trial court's dismissal of count three.

A. Defendant Has Standing To Challenge The Constitutionality Of His Prosecution Under Count Two.

Glover brought his motion to dismiss under Rule 3:10-2(d), which holds that 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." State v. Wade, 476 N.J. Super. 490, 505 (App. Div. 2023), leave to appeal denied, 255 N.J. 492 (2023). To do so, however, a defendant "must have standing to raise th[at] constitutional objection." Ibid. (quoting State v. Saunders, 75 N.J. 200, 208-09 (1977)). Under federal standing law, the United States Constitution limits the power of the federal judiciary "to the resolution of cases and controversies." Jackson-Bey v. Hanslmaier, 115 F.3d 1091, 1095 (2d Cir. 1997) (citing U.S. Const. art. III, § 2). Unlike the U.S. Constitution, however, the New Jersey "State Constitution contains no provision limiting the judicial power to cases or controversies," Saunders, 74 N.J. at 208, and thus "New Jersey cases have historically taken a more liberal approach on the issue of standing than have federal cases." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971).

A party who seeks to challenge the constitutionality of a permitting or licensing statute must make an additional showing: "to establish standing to challenge an allegedly unconstitutional permit statute, the challenger must have applied for a permit or license under the statute." Wade, 476 N.J. Super. at 505

(emphasis added). Referring to this obligation as the "submission requirement," this Court in Wade relied upon federal case law to find that "there is a recognized exception to the submission requirement if the challenger can 'make a substantial showing that submitting to the [challenged] government policy would [have been] futile." Id. at 505-06 (quoting Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022)); see also Carney v. Adams, 141 S. Ct. 493, 503 (2020) (finding that a party may establish standing despite not having applied if "that application would be merely a 'futile gesture'") (quoting Teamsters v. United States, 431 U.S. 324, 365-66 (1977)).

Here, Glover challenged a permitting provision as part of his motion to dismiss count two.[4] Although Glover never applied for the handgun carry permit in question, he nonetheless has standing to challenge the age-restriction provision of that permitting statute for two reasons. First, Glover satisfied the futility exception as articulated in federal standing law. Because New Jersey standing law imposes a lower burden to establish standing than federal law does, Glover's satisfaction of the federal futility test necessarily grants him standing to raise his challenge under New Jersey law. (Point I.A.i). Second, Glover has

[4] As will be discussed in Point II.A., Glover's motion to dismiss count three did not challenge any permitting or licensing provisions, and thus Glover was not required to satisfy the submission requirement in order to have standing to challenge count three.

standing for the additional and independent reason that he raised a facial challenge to New Jersey's minimum age requirement for carry permits. (Point I.A.ii).

1. Defendant has standing because he satisfied the futility exception to the submission requirement.

It is undisputed that Glover was under the age of twenty-one at the time of the offense, and that he would have been denied a handgun carry permit under N.J.S.A. 2C:58-3(c)(4) if he had applied for one. Because Glover's application for a carry permit would have inevitably been denied by virtue of his age, any attempt to apply would have been futile. Accordingly, Glover satisfies the futility exception, and has standing to challenge the constitutionality of N.J.S.A. 2C:58-3(c)(4) even though he never applied for a handgun carry permit.

To reiterate, the Wade panel recognized that a defendant who satisfies the futility exception will have standing to challenge the constitutionality of a permit even if they did not apply for the permit in question. 476 N.J. Super. at 505. In recognizing the futility exception, Wade cited exclusively to federal case law. Ibid. (citing United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012); Kendrick, 586 F. Supp. at 308; Jackson-Bey, 115 F.3d at 1096). Wade's reliance upon federal case law is relevant here because, as noted, New Jersey case law takes "a more liberal approach on the issue of standing than [] federal" case law.

Crescent Park Tenants Ass'n, 58 N.J.at 101. Accordingly, if Glover satisfies the futility exception as articulated under federal law, he necessarily also has standing under New Jersey law.

The Second Circuit recently clarified the proper application of the futility exception in its consideration of a Bruen challenge in Antonyuk v. James, explaining that "'futility' refers to the outcome of the contemplated application, i.e., whether the result is preordained." 120 F.4th 941, 979, 310 (2d Cir. 2024), cert. denied, 145 S. Ct. 1900 (Apr. 7, 2025). The Second Circuit provided several additional iterations of the definition of futility: whether an application "would have been denied"; whether applicant was "statutorily ineligible" for the permit; and whether "it is obvious that [the applicant] could not have" had his application granted. Ibid. (citing Decastro, 682 F.3d at 164; Bach v. Pataki, 408 F.3d 75, 82–83 (2d Cir. 2005); and Image Carrier Corp. v. Beame, 567 F.2d 1197, 1201–02 (2d Cir. 1977), respectively). In short, "[f]utility refers to the denial of an application[.]" Ibid. (emphasis added).

When applied here, Glover successfully satisfied the futility exception: he was nineteen-years-old at the time of his arrest and was therefore "statutorily ineligible" for a permit, so any application that he submitted "would have been denied[.]" Antonyuk, 120 F.4th at 310. As such, Glover was not "require[d]" to perform the "futile gesture" of applying for a permit "as a prerequisite for

adjudication[.]" Bach, 408 F.3d at 83. In fact, although the trial court ultimately erred in holding that Glover lacked standing to challenge count two, the court did correctly apply the test for futility, albeit only in the context of the challenge to count three:

> The chief of police is barred from granting a permit to members of a disqualified class as defined in N.J.S.A. 2C:58-3. See N.J.S.A. 2C:58-4(c). Defendant was under the age of twenty-one at the time of the offense. He falls within an enumerated category of people disqualified from receiving a permit to purchase a handgun. Any effort to obtain a [handgun carry permit] would have been denied on the basis of Defendant's age. Defendant has made an adequate showing that applying for a gun permit would have been futile. See Wade, 476 N.J. Super. at 560. Defendant has standing to challenge the statute.
>
> [(Ma31)]

The trial court erred when it declined to also apply this analysis to Glover's challenge to count two. (Ma30-31) The court did not provide an explanation as to why Glover's satisfaction of the futility exception granted him standing for count three, but not for count two. Instead, the court simply cited to this Court's decision in Wade for the general proposition that "N.J.S.A. 2C:39-5(b)(l)" – the statute Glover was charged with in count two – "remains constitutional and enforceable." (Ma30) (citing Wade, 476 N.J. Super. at 508). A review of this Court's opinion in Wade, however, makes clear that, contrary

to the court's finding, Glover was not deprived of standing to challenge count two by this Court's opinion in Wade.

Like Glover, the defendants in Wade argued that their charges for unlawful possession of a handgun without a permit under N.J.S.A. 2C:39-5(b)(1) should be dismissed because the handgun permitting scheme upon which their charges were based contained a requirement that was rendered unconstitutional by Bruen. 476 N.J. Super. at 495-97. The defendants in Wade, however, did not challenge the age restriction that Glover challenges here, but instead challenged the "justifiable need" requirement under which an applicant for a permit was required to demonstrate an "urgent necessity for self-protection" in order to be issued a carry permit. Ibid. In support of his argument for futility, Wade had submitted a certification from counsel attesting that he lacked this "urgent necessity for self-protection" and would not be able to satisfy the requisite justifiable need requirement. Ibid. Wade thus argued that his application was futile, thereby granting him standing. Ibid.

The Wade panel disagreed, finding that Wade did not satisfy the futility exception because he had failed to "establish that [he] would have qualified for a gun-carry permit excluding the justifiable need requirement." Id. at 506 (emphasis added). The Court enumerated the other firearm permitting requirements that Wade would have been required to satisfy in order to obtain a

permit if the age-restriction was removed. Ibid. Because there was "[n]othing in the record [that] establishes that Wade would have been able to comply with those [remaining permitting] requirements," the Court held that he had failed to satisfy the futility exception. Id. at 506-07.

There are two reasons why the Wade decision does not deprive Glover of standing to challenge count two. First, Wade's consideration of the constitutionality of the "justifiable need" requirement was distinct from Glover's challenge to the age requirement. Second, the futility exception test applied by Wade imposes a higher burden for establishing standing than federal law, making it improper and inapplicable here.

Unlike the age requirement that Glover challenges here, where a person could know with 100 percent certainty that he was ineligible for a permit because he was under twenty-one years of age, the dispositive question on futility in Wade – of whether a person has a sufficient "urgent need for self-protection" to qualify as a "justifiable need" – was not immediately ascertainable. In order to determine whether someone truly lacks an urgent need for self-protection, they must submit an application so that a discretionary determination can be made as to their need for self-protection. No such discretionary determination was necessary for Glover. As the trial court correctly noted during argument, "unlike Wade, where there was a discretionary call as to whether justifiable need could

be satisfied or not, here, you're either 21 or you're not." (2T8-11 to 13) Any application Glover submitted would undoubtedly have been denied; the same was not true for Wade. The finding in Wade that the defendant failed to satisfy futility thus does not compel the same outcome with respect to the age requirement because, unlike in Wade, there is no doubt whatsoever that Glover's application for a firearm permit would have been denied because of the age requirement that he challenged as unconstitutional.

Additionally, the Wade panel's discussion of severability has no bearing on Glover's standing, despite the trial court's reference to severability as part of its discussion on Glover's lack of standing to challenge count two. (Ma30)[5] The Wade panel held that the justifiable need provision was severable from the rest of New Jersey's gun-permit statutes because the rest of the provisions "were not dependent on the justifiable need provision." 476 N.J. Super. at 509. Glover does not dispute that the "justifiable need" requirement of N.J.S.A. 2C:58-4(c) is severable from the other requirements. But all this means is that the rest of

[5] Although the trial court noted Wade's finding on severability within its short discussion of Glover's standing to challenge count two, it is not clear that severability was, in fact, the specific basis upon which the court denied. (Ma30) As noted, the court's opinion does not specifically indicate the basis for its finding on standing beyond generally citing to Wade's holding that N.J.S.A. 2C:39-5(b)(1) remains constitutional and enforceable.

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).

Under the rule on severability, any remaining section of the severed provisions will nonetheless be unenforceable if it is determined to be unconstitutional. Ibid. Wade's finding of severability thus does not deprive Glover of the ability to argue that a different provision of the permitting statute is unconstitutional and unenforceable against him – particularly because the Wade decision did not consider or rule upon the constitutionality of the age requirement which he now challenges. Accordingly, both of these findings from Wade – that the defendants there did not satisfy the futility exception, and that the remainder of the firearm permitting scheme is severable – are distinct from the questions at issue here, and therefore do not support the trial court's finding that Glover lacked standing to challenge count two.

Moreover, the manner in which the Wade panel applied the futility exception was mistaken, and should not be applied here because doing so would require this Court to impose a higher burden on standing than the applicable burden in federal law. Specifically, Wade's application of the futility test failed to draw the proper distinction between the inevitable denial of a permit and the inevitable grant of a permit. As noted, the Wade panel found defendants failed to establish futility because they could not establish that they "would have

qualified for a gun-carry permit excluding the [challenged] justifiable need requirement." Id. at 506 (emphasis added). Under this articulation of futility, defendants would need to demonstrate that they were guaranteed to meet all of the remaining, non-challenged firearm permitting requirements in order to satisfy the futility exception. Ibid.

While it was certainly true that the Wade defendants failed to show they were otherwise qualified for a permit outside of the "justifiable need" requirement, that is not the relevant question when deciding futility. The proper question for establishing futility – as defined by the federal cases upon which the Wade test relies – is whether the application for a permit "would have been denied" due to the challenged requirement, not whether it would be granted in the absence of the challenged requirement. Antonyuk, 120 F. 4th at 978-79. Federal courts have made clear that a party does not need to prove that removal of the challenged provision will guarantee that they will then receive the sought after permit in order to establish standing. Rather, a party will have standing so long as they can show that they would have been denied a permit because of the challenged ordinance, and that "[i]nvalidation of the challenged ordinance…would tangibly improve the [party's] chances" of success – even if it "would not guarantee [their] success." Mhany Mgmt., Inc. v. County of Nassau, 819 F.3d 581, 602 (2d Cir. 2016) (citing to Village of Arlington Heights,

429 U.S at 261 (emphasis added)); see also Gutierrez v. Saenz, 145 S. Ct. 2258, 2269-70 (2025) (finding that a Texas prisoner had standing to challenge constitutionality of Texas's DNA testing statute because a ruling in his favor would "redress his injury by removing the allegedly unconstitutional barrier" even if it was not guaranteed that he would ultimately receive the DNA testing he sought).

Federal law would thus grant Glover standing even though he did not prove that removal of the age-restriction would have guaranteed receipt of a firearm permit; the test in Wade, on the other hand, would deny Glover standing because he did not prove that removal of the age-restriction would have guaranteed receipt of a firearm permit. In asking this Court to depart from Wade's application of the futility exception, Glover asks this Court to simply apply the definition of standing as articulated in federal law so as to avoid violating the principle that New Jersey law cannot impose a higher burden on standing than federal standing law. See State v. Harrell, 475 N.J. Super. 545, 564 (App. Div. 2023) ("[U]nlike the trial court, 'we are not bound by our earlier decisions because we do not sit en banc.'") (citing, inter alia, Pressler and Verniero, Current N.J. Court Rules, cmt. 3.3 on Rule. 1:36-3 (2023) (noting this court's 'opinions clearly are binding on all [trial] courts' but they do not bind 'other panels of the Appellate Division"); see also Liberty Mut. Ins. v. Rodriguez, 458 N.J. Super. 515,

521 (App. Div. 2019) (holding that the opinion of one panel of the Appellate Division does not bind another panel).

Finally, for all the reasons cited above as to Wade's mistaken articulation of the futility exception, this Court should likewise not rely upon the recent unpublished opinion in State v. Pinkett, No. A-3121-23, and State v. Phillips, No. A-3122-23 (App. Div. May 21, 2025), motion for leave to appeal filed, Docket No. 090736 (filed May 15, 2025). Relying on Wade, the Pinkett panel held that defendants lacked standing to challenge the firearm carry age-restriction as a defense against their prosecution for possession of a handgun without a permit because they had failed to apply for the carry permits in question. Pinkett (slip op. at 17-18). (Da23-25) The Pinkett panel applied the same articulation of futility as defined in Wade, denying standing because the record "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[.]" Id. (slip op. at 17) (Da23)

As was true for the identical finding in Wade, application of this test for futility would impose a higher burden on standing than federal law. This Court should therefore depart from the articulation of the futility exception test as applied in both Wade and Pinkett, and find that Glover successfully satisfied the futility exception, thereby granting him standing.

2. Defendant has standing because he argued 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. 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 that 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 a defendant 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 a defendant's "conduct could be proscribed by a properly drawn statute." Freedman v. Maryland, 380 U.S. 51,

56 (1965). Courts in several jurisdictions have found standing for defendants in the exact same position as Glover, holding that a defendant who raises a facial challenge to a firearm permitting scheme under which they are being prosecuted will have standing to challenge the permitting scheme despite never having applied for a permit. See People v. Sovey, 179 N.Y.S.3d 867, 871 (N.Y. Sup. Ct. 2022); Golden v. United States, 248 A.3d 925, 948 (D.C. App. 2021); Jackson v. United States, 76 A.3d 920 (D.C. App. 2013); Magnus v. United States, 11 A.3d 237 (D.C. App. 2011); Plummer, 983 A.2d at 341.

In order to raise a successful "facial challenge to a legislative Act" the challenging party "must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). Glover clearly raised a facial challenge by arguing that the confluence of N.J.S.A. 2C:39-5(b)(1), N.J.S.A. 2C:58-4(c), and N.J.S.A. 2C:58-3(c)(4) violates the Second Amendment by categorically barring eighteen-to-twenty-year-olds from carrying handguns in public for self-defense. Glover argues that this age-based restriction is "unconstitutional in all of its applications," Plummer, 983 A.2d at 338, because it "applies, without any stated exception to" every person between the ages of eighteen and twenty. Smith, 283 U.S. at 562.

Glover does not argue that the statute is merely unconstitutional "under some conceivable set of circumstances," Salerno, 481 U.S. at 744, or that it is

merely "possible" that the statute would be applied in a manner that is unconstitutional. Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 455 (2008) (emphasis added). Rather, Glover's argument is that prohibiting eighteen-to-twenty-year-olds from carrying handguns based solely on their age is always unconstitutional.

This rule – that criminal defendants establish standing by arguing that the statute they are charged under is facially invalid – remains true even though this Court in Wade rejected the defendants' assertion that they had standing because they were bringing a facial challenge. 476 N.J. Super. at 508. Quoting Kendrick, 586 F. Supp. 3d, at 309 the Wade panel found that: "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. It should be noted that Kendrick's decision not "to import First Amendment case law wholesale" into Second Amendment jurisprudence came before Bruen where the Supreme Court held, in no uncertain terms, 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. Glover 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, Glover 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 Glover 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.[6]

Finally, the United States Supreme Court recently affirmed the principle that criminal defendants will always have standing to raise a facial challenge to a criminal statute that they are charged under, and that this basis for standing is not limited to defendants asserting violations of the First Amendment. In Wilson v. Hawaii, the Court issued an opinion accompanying its denial of certiorari from a Hawaii Supreme Court case. 145 S. Ct. 18, 20 (2024) (Thomas, J.; Alito, J.; Gorsuch, J., concurring in the denial of the petition for certiorari). (Ma99-109) There, Wilson was charged with unlawful possession of a gun without a permit, and he challenged Hawaii's permitting scheme as unconstitutional under Bruen as a defense against his prosecution. Id. at 18-19. The Hawaii Supreme found that, without having ever applied for the permit in question, Wilson lacked standing to challenge the constitutionality of that permit and thereby could not raise the challenge as a defense against his prosecution. Ibid.

Although the Court ultimately denied certiorari for lack of jurisdiction because it was an interlocutory appeal filed prior to the completion of Wilson's

[6] That a prosecution is sufficient to constitute an injury is discussed at length in Point II.A. below.

prosecution, three justices nonetheless issued an opinion accompanying the denial – an opinion which the trial court in Glover's case rightly recognized as "foreshadow[ing] the thinking of the [U.S. Supreme] Court on this issue." Id. at 22. (Ma25) Justices Thomas and Alito – writing in a separate concurrence from Justice Gorsuch – roundly rebuked the Hawaii Court's opinion, finding it had "invoke[ed] state standing law to dodge Wilson's constitutional challenge" and thereby "failed to give the Second Amendment its due regard." Id. at 20. As part of their opinion, Thomas and Alito reaffirmed the right of criminal defendants to pursue the exact constitutional challenge that Glover here raises:

> A defendant can always raise unconstitutionality as a defense where a statute is invalid upon its face and an attempt is made to enforce its penalties in violation of a constitutional right….Thus, a state-law holding that a defendant lacked standing to attack the constitutionality of the ordinance because [he] made no attempt to secure a permit under it is not an adequate nonfederal ground of decision where the ordinance…on its face violates the Constitution. This is true where, as here, an individual waits to raise the issue until he is prosecuted for failure to procure a license.
>
> [Id. at 20-21 (citations omitted) (emphasis added).]

The trial court's denial of Glover's motion to dismiss count two was an example of the practice Thomas and Alito here characterize as improper: it "invoke[d] state standing law to dodge [Glover's] constitutional challenge" and thus "failed to give the Second Amendment its due regard." Ibid. The trial

court's clear contradiction of the Supreme Court's findings in Wilson – which the trial court cited in its own opinion – further emphasizes the error of the court's denial of Glover's motion to dismiss count two. (Ma25-26)

In sum, because Glover made a substantial showing that applying for a carry permit would have been futile in light of his age, and because he challenged the firearm age-restriction as invalid on its face, he established standing under count two without any need to show that he was otherwise eligible for a carry permit. This Court should therefore reverse the trial court's finding to the contrary; should find Glover has standing to challenge count two; and should address Glover's Second Amendment challenge on the merits.

B. Dismissal Of Count Two Is Required Because The State Failed To Meet Its Burden Under Bruen Of Justifying The Firearm Regulation Upon Which Defendant's Prosecution Under Count Two Is Based.

All three federal courts that have reviewed analogous 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. 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. And 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. The United States Supreme Court has denied certiorari of 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. Worth, 145 S. Ct. 1924. This denial of certiorari means that Minnesota is now permanently enjoined from enforcing its age restriction.

This Court should follow the holdings in Lara, Worth, and Firearms Pol'y Coal., and hold, as the trial court did, that New Jersey's permit requirement coupled with its prohibition on issuing carry permits to eighteen- to twenty-year-olds violates the Second Amendment. The decisions of these three courts were the result of the application of the two-step test for constitutionality as articulated by the Supreme Court's decision in Bruen. 597 U.S. at 10. To reiterate, under step one, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." Id. at 24. And under step two, "[t]he government must then justify its regulation by

demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Ibid.

Beginning with step one, Bruen held that "the plain text of the Second Amendment protects [plaintiffs'] proposed course of conduct—carrying handguns publicly for self-defense." 597 U.S. at 32. The Court based this conclusion on its explanation in Heller that "the 'textual elements' of the Second Amendment's operative clause – 'the right of the people to keep and bear Arms, shall not be infringed' – 'guarantee the individual right to possess and carry weapons in case of confrontation.'" Ibid. (quoting Heller, 554 U.S. at 592). The Court noted that no party disputed "that handguns are weapons 'in common use' today for self-defense." Ibid. Additionally, in Bruen, it was undisputed that the petitioners in that case— "two ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects." Ibid.

Because the conduct in this case is also publicly carrying a handgun, the only difference between this case and Bruen with respect to the conduct is Glover's age as a nineteen-year-old. Thus, the question for step-one is whether persons under twenty-one years old are part of "the people" referenced in the Second Amendment. Notably, all of the federal courts that have considered this issue have concluded (or assumed without deciding) that eighteen-to-twenty-year-olds are part of "the people" mentioned in 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 438; Worth, 108 F.4th at 689; Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives, 5 F.4th 407 (4th Cir.), vacated as moot, 14 F.4th 322 (4th Cir. 2021); Brown v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 704 F. Supp. 3d 687, 701 (N.D.W. Va. 2023); Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 116 (10th Cir. 2024); Firearms Pol'y Coal., 623 F. Supp. 3d at 748-51; cf. Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1324 (11th Cir. 2025) petition for cert. filed, __ S.Ct. __, Docket No. 24-1185 (May 20, 2025) ("[W]e assume without deciding that the Second Amendment's plain text covers persons between eighteen and twenty years old when they seek to buy a firearm."); McCoy v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, 140 F.4th 568, 575 (4th Cir. 1025) petition for cert. filed, __ S.Ct. __, Docket No. 25-25 (July 8, 2025) (same).

There are numerous reasons that these courts have found eighteen-to-twenty-year-olds are part of "the people." 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[7] and

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

being constitutionally entitled to vote via the Twenty-Sixth Amendment. If the meaning of "the people" were locked in time to what the term 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 "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[.]" U.S. Const. amends. I, IV. Basic tenets of textual interpretation require interpreting this same term – "the people" – 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.

The trial court was thus correct to conclude that "[t]here is strong support

in recent case law demonstrating eighteen to twenty-year olds are encompassed within the term 'the people' from the Second Amendment" and thus "[p]rong one of the Bruen test is satisfied." (Ma32) This Court should find the same, and should hold, consistent with the consensus among federal courts, that Glover, as a nineteen-year-old, is a part of "the people" and his conduct is covered by the plain text of the Second Amendment, thereby satisfying step one of Bruen.

Having satisfied step one, 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. Under step-two, 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.

This Court should rule in the manner that all three federal courts considering this question have ruled, and find that the State's proposed historical analogues are not "relevantly similar" and thus cannot 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 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 [sic] 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 a 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). Ultimately the Court concluded "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.

Next, 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).

Then 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.

Relatedly in Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives, the Fourth Circuit observed that "[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." 5 F.4th at 437. 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.

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, having considering a myriad of 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. To 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.

As was true in the above federal cases, in Glover's case too "the State does not point to a founding-era law that prohibits those under the age of twenty-one from possessing a gun[.]" (Ma33) (emphasis added) The State argued that,

as summarized by the trial court, persons under twenty-one were understood at the time of the founding to be "unable to care for themselves, lack[ing] the requisite judgment to vote, had no will of their own, and could not be trusted by the public." (Ma33) This attitude towards minors at the founding – in which people under twenty-one generally lacked the ability to "act interpedently outside of the context of adult supervision" – ultimately "impacted the circumstances under which those under 21 could access firearms" as evinced through university rules prohibiting student gun ownership, as well as rules requiring parents, local guardians, or local authorities to furnish minors with weapons that they will then carry and use in the militia. (Ma81)

These sources attesting to public attitudes concerning the furnishing of weapons to minors, however, "are not [the] analogies the Bruen test requires and are therefore not persuasive here." (Ma33) To reiterate, the relevant constitutionally protected conduct in question is the act of carrying a handgun outside the home. The State's proffered analogues from the founding era thus fall far short of the categorical prohibition on carrying a handgun in public while under the age of twenty-one at issue here.

Moreover, the State's reliance upon Reconstruction-era laws was likewise insufficient to meet its burden under Bruen. The federal cases ruling on this issue have routinely held that the relevant historical frame of reference for the

historical analysis required by Bruen is the founding-era – when the Second Amendment was ratified in 1791 – and not the Reconstruction-era, when the Fourteenth Amendment was ratified in 1868. Lara, 125 F. 4th at 440-41.

The Third Circuit in Lara correctly held "that the Second Amendment should be understood according to its public meaning in 1791." Ibid. While Lara noted that "Bruen declined to resolve this timeframe question," it also noted that Bruen "gave a strong hint when it observed . . . 'that the scope of the protection applicable to the Federal Government and States [under the Bill of Rights] is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.'" Ibid. (quoting Bruen, 597 U.S. at 37). Indeed, the Supreme Court stated in Bruen that, "because post-Civil War discussions of the right to keep and bear arms 'took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.'" 597 U.S. at 36 (quoting Heller, 554 U.S. at 614). And in Rahimi, "the surety and going armed laws" the Court relied on to uphold § 922(g)(8) were all founding-era laws. 144 S. Ct. at 1899-1901.

There are several additional reasons for focusing on 1791 as the relevant time frame. First, even though it was the Fourteenth Amendment that made the Second Amendment applicable to the States, the Supreme Court has "made clear that individual rights enumerated in the Bill of Rights and made applicable

against the States through the Fourteenth Amendment have the same scope as against the Federal Government." Ibid. (citations omitted). If courts were constrained to founding-era historical analogues when evaluating the constitutionality of federal firearms regulations but permitted to consider Reconstruction-era analogues when evaluating state regulations, the Second Amendment would have a different scope against the States from its scope against the Federal government. Worth, 108 F.4th at 693.

Second, "because the states initially were not restricted by the" Second Amendment, "state laws are less illuminating the further one moves from ratification." Hirschfeld, 5 F.4th at 420. Third, after failing to successfully secure the rights of freed slaves (such as the right to bear arms) through legislation, Congress determined "that a constitutional amendment [the Fourteenth] was necessary to provide full protection for the rights of blacks." McDonald, 561 U.S. at 775. One purpose of the Fourteenth Amendment was to override many of the state laws that had been enacted to restrict the rights of Black people from bearing arms. Id. at 771, 775-76. "So we should hesitate to look to Civil-War-era state laws that restricted the right to bear arms as evidence of the scope of the Second Amendment right at the time of the Founding." Hirschfeld, 5 F.4th at 421.

And even if this Court were to look at the Nineteenth Century laws cited

by the State (it should not), the Eighth Circuit in Worth explained why they too fail to provide an adequate historical analogy for New Jersey's categorical ban on the public carrying of handguns by eighteen-to-twenty-year-olds. 108 F.4th at 697. Of the twenty laws, few actually regulated the carrying of firearms by persons under twenty-one years old; seventeen laws regulated only the furnishing of firearms to persons under twenty-one. Ibid. And among the states regulating the carrying of firearms, for example, Nevada prohibited only concealed carry of a pistol by persons under twenty-one but did not similarly prohibit open carry. 1885 Nev. Stat. 51. As noted by Bruen, when looking at historical restrictions on concealed-carry without respect to age limitations, "concealed-carry prohibitions were constitutional only if they did not similarly prohibit open carry." 597 U.S. at 53. Thus, Nevada's statute, which prohibited only concealed carry for persons under twenty-one, is not analogous to New Jersey's, which "ban[s] public carry altogether." Ibid.

The other seventeen states only "criminalized the sale or furnishing of weapons to minors,[8] meaning [persons under twenty-one] could publicly bear arms subject to generally applicable concealed-carry rules." Worth, 108 F.4th at 697. And among the states that prohibited the sale or furnishing of pistols to persons under twenty-one, almost all had some exception or limitation: (1) a

[8] "Minors" here refers to persons under twenty-one rather than eighteen.

limitation to weapons that were or could be concealed[9]; (2) an exception allowing a parent of the minor to furnish a firearm to the minor[10]; or (3) an exception for hunting, traveling, and/or self-defense.[11] See Worth, 108 F.4th at 697. These laws restricting the furnishing of handguns to eighteen-to-twenty-year-olds with exceptions and limitations thus differ dramatically in the "how" from New Jersey's scheme of categorically prohibiting the carrying of handguns by eighteen-to-twenty-year-olds without any limitations or exceptions. Rahimi, 144 S. Ct. at 1898. Thus, "'[n]one of these historical limitations on the right to bear arms approach' the burden of [New Jersey's] Carry Ban." Id. at 697-98.

Therefore, even if this Court were to look at these Reconstruction-era laws as relevant—which it should not—this Court should conclude that "these laws cannot sufficiently establish that a prohibition on law-abiding 18-to-20-year-olds carrying a handgun in public for self-defense is consistent with this Nation's historical tradition of firearm regulation." Firearms Pol'y Coal., 623 F. Supp. 3d at 756 (emphasis in original). Thus, this Court should conclude that because the permit requirement of N.J.S.A. 2C:39-5(b)(1) in combination with

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[9] Pub. L. No. 52-159, 27 Stat. 116 (1892) (D.C.); 1875 Ind. Acts 59; 1890 La. Acts. 39; 1878 Miss. Laws 175-76; 1890 Wyo. Sess. Laws. 140.

[10] 1859 Ky. Acts 245; 1881 Ill. Laws 73; Mo. Rev. Stat. § 1274 (1879); 1878 Miss. Laws 175-76; 1897 Tex. Gen. Laws 221-22.

[11] 1876 Ga. Laws. 112; 1855 Tenn. Pub. Acts 92.

the twenty-one-year-old age requirement to receive a permit "prohibits law-abiding 18-to-20-year-olds from carrying handguns for self-defense outside the home based solely on their age," this statutory scheme violates the Second Amendment, as incorporated against the States via the Fourteenth Amendment. Id. at 758.

Accordingly, this Court should find that count two – which prosecutes Glover under the unconstitutional statutory scheme outlined above – cannot be enforced and must be dismissed. "An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." Ex parte Siebold, 100 U.S. 371, 376-77 (1879); see also Montgomery v. Louisiana, 577 U.S. 190, 203 (2016) ("A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void.") (citing Siebold, 100 U.S., at 376). This Court should therefore reverse the trial court's order finding Glover lacks standing to challenge count two; should consider his Second Amendment claim on the merits; should find that the statutes upon which his prosecution are based violate the Second Amendment; and should dismiss count two accordingly.

POINT II

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S GRANT OF DEFENDANT'S MOTION TO DISMISS COUNT THREE BECAUSE THE COURT CORRECTLY FOUND THAT: (A) DEFENDANT HAS STANDING TO CHALLENGE COUNT THREE; AND (B) THAT THE STATE FAILED TO MEET ITS BURDEN UNDER BRUEN OF JUSTIFYING NEW JERSEY'S PROHIBITION ON PUBLICLY CARRYING A HANDGUN WHILE UNDER THE AGE OF TWENTY-ONE. (Ma16; Ma17-37)

Glover was charged in count three with violating N.J.S.A. 2C:58-6.1 which states that "no person under the age of 21 years shall possess, carry, fire or use a handgun" notwithstanding certain narrow, inapplicable exceptions. (Ma2) As was true for count two, count three of the indictment seeks to punish Glover for engaging in the constitutionally protected conduct of carrying a handgun in public for self-defense. Bruen, 597 U.S. at 10. Glover's prosecution under count three was therefore unconstitutional for the same reasons discussed above with respect to count two: the State was unable to identify a relevantly similar historical analogue that would justify New Jersey's categorical prohibition on carrying a handgun in public while under the age of twenty-one.

Unlike in count two, however, the trial court here correctly found that Glover had standing to raise a constitutional challenge to his prosecution under count three, and the court thus addressed the merits of Glover's second

amendment challenge, ultimately ruling in his favor and dismissing count three of the indictment. The trial court's findings with respect to count three were correct, and should be affirmed by this Court. Specifically, this Court should hold that the trial court was correct in finding that Glover had standing to raise a constitutional challenge as a defense against count three, (as discussed in Point II.A), and was correct in finding that New Jersey's criminalization of handgun possession under the age of twenty-one violates the Second Amendment, thereby rendering Glover's prosecution under count three unconstitutional and unenforceable, requiring dismissal (as discussed in Point II.B.). (Ma31-37)

A. The Trial Court Correctly Found that Defendant Has Standing To Challenge The Constitutionality of His Prosecution Under Count Three.

Glover brought his motion to dismiss count three pursuant to Rule 3:10-2(d), arguing that N.J.S.A. 2C:58-6.1 is unconstitutional. As is true for all challenges under Rule 3:10-2(d), Glover was required to have standing to bring this challenge. Wade, 476 N.J. Super. at 505. Notably, however, to establish standing to challenge count three, Glover did not need to meet the so-called submission requirement because, unlike count two, he was not being prosecuted for failing to obtain a permit or license. Rather, N.J.S.A. 2C:58-6.1 makes it a crime for anyone under twenty-one to simply "possess, carry, fire or use a handgun[.]" N.J.S.A. 2C:58-6.1(b) (listing exceptions for handgun use under

parental supervision, or for military, competition, hunting, or other law enforcement purposes).

The Wade opinion held that the submission requirement applies only to challenges to permitting statutes: "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. There was simply no "permit or license" that Glover could have submitted an application for to make the submission requirement applicable to count three; the act of possessing a handgun while under the age of twenty-one is a crime in and of itself under N.J.S.A. 2C:58-6.1. The submission requirement, along with the futility exception to the submission requirement, were thus irrelevant and inapplicable to Glover's challenge to count three. Ibid. So while Glover maintains that he satisfied the futility exception for purposes of his challenge under count two, the trial court did not need to apply that exception to Glover's challenge to count three to reach its correct holding that Glover had standing to challenge that count.

The court was correct to find that Glover had standing to challenge count three because being charged with a crime under an unconstitutional statute is itself an injury sufficient to warrant standing, as numerous federal courts have found. Undoubtedly, a conviction under an unconstitutional statute constitutes

an injury sufficient to establish standing. Antonyuk v. James, 120 F.4th at 941 ("[Defendant's] criminal conviction surely qualified as an Article III injury-in-fact"); Bond v. United States, 564 U.S. 211, 217, (2011) (finding the defendant's challenge to her conviction and sentence "satisfies the case-or-controversy requirement, because the incarceration... constitutes a concrete injury, caused by the conviction and redressable by invalidation of the conviction").

Short of an actual conviction, being prosecuted – or even threatened with prosecution – is likewise sufficient to establish an injury. In Firearms Policy Coalition, Inc. v. McCraw, for example, the Court held that the plaintiffs did not need to violate the permit-to-carry statute to show that they had standing, but could instead meet the injury requirement by showing they intended to engage in arguably protected, but prohibited conduct, with a "credible threat of prosecution[.]"623 F.Supp.3d 740 745-46 (N.D. Tex., Aug. 25, 2022) (emphasis added) (cited by Worth, 666 F. Supp. at 902 (D. Minn. 2023), aff'd, Worth v. Jacobson, 108 F. 4th 677 (8th Cir. 2024) (rejecting Government's "implicit suggestion that Plaintiffs have shown no injury" where plaintiffs failed to apply for permit-to-carry and were later prosecuted for carrying a firearm) (emphasis added). See also United States v. Bozarov, 974 F.2d 1037, 1040–41 (9th Cir. 1992) (finding the defendant had standing to raise facial constitutional challenge to criminal charge against him, and that he had "unquestionably been injured"

where prevailing in his challenge would "prevent him from being convicted").

Because these federal courts have found that being indicted and charged with a crime is sufficient to grant standing to a defendant to challenge the constitutionality of the statute they are charged under, the same is true in New Jersey: being charged with a crime is sufficient to accord standing to challenge the New Jersey criminal statute in question. Saunders, 74 N.J. at 208. In fact, in its discussion of standing, the Wade panel cited to the District Court of New Jersey decision in Kendrick v. Bruck, in which the District Court characterized prosecution – or even a credible threat of prosecution – as sufficient to warrant standing. 586 F. Supp. 3d at 308-09 (finding that plaintiffs in civil case failed to establish an injury sufficient to warrant standing because they "d[id] not argue that they have faced prosecution" or even a "credible threat of prosecution") (emphasis added).

The only limiting factor for Glover to establish standing in New Jersey is the "rule which limits a criminal defendant to constitutional claims related to his own conduct" which is based upon "the principle that legislative acts are presumptively valid and will not be overturned on the basis of hypothetical cases not actually before the court." Id. at 209 (emphasis added). Glover's prosecution under count three is certainly not hypothetical, and he thereby has the right to challenge the charge against him as unconstitutional. Ibid.

Moreover, the highest courts of numerous states have reached this finding: "Defendant here is not attempting to apply the statute to a hypothetical situation: defendant was clearly charged with the violation of section 12–4(b)(5) and, if convicted, she will sustain direct harm. Hence, defendant possesses standing to challenge the constitutionality of the statute under which she is to be prosecuted." People v. Watson, 118 Ill. 2d 62, 66 (1987) (emphasis added); see also People v. Aguilar, 2 N.E.3d 321, 324 (Ill. 2013) ("Here, the challenged statutes were enforced against defendant in the form of a criminal prosecution….If anyone has standing to challenge the validity of these sections, it is defendant."); State v. Zitterkopf, 317 Neb. 312, 321 (2024) ("[S]tanding to challenge the constitutionality of a statute under the federal or state Constitution depends upon whether one is, or is about to be, adversely affected by the language in question….[Defendant] was criminally charged under [the applicable state statute] which makes the statute clearly relevant to the prosecution of his case, and therefore, he had standing to challenge the constitutionality of the statute.").

In sum, federal courts and state appellate courts have recurringly found that being charged with a crime – or even facing the credible threat of prosecution – is sufficient to grant a defendant standing to challenge the constitutionality of the statute under which they are being prosecuted. Glover's

prosecution under count three thus grants him standing to challenge the constitutionality of N.J.S.A. 2C:58-6.1 as a defense against his prosecution pursuant to Rule 3:10-2(d). This Court should affirm the trial court's finding that he had standing to challenge count three.

B. The Trial Court Correctly Dismissed Count Three Because the State Failed To Meet Its Burden Under Bruen of Justifying The Firearm Regulation Upon Which Defendant's Prosecution Under Count Three Was Based.

New Jersey's categorical ban on carrying a handgun while under the age of twenty-one is unconstitutional for the reasons discussed above in Point I.B. While counts two and three charge Glover under different statutes, the conduct Glover is charged with committing under both counts is the same: the State is prosecuting him for the constitutionally protected act of publicly carrying a handgun while under the age of twenty-one.

In order to justify this prohibition on Glover's constitutionally protected behavior, the State must identify a law that is "relevantly similar" to the statute charged in count three – N.J.S.A. 2C:58-6.1. Rahimi, 144 S. Ct. at 1898. The State's discussion of historical firearm regulation, however, did not make a meaningful distinction between the statutes charged in counts two and three. Accordingly, the State's proffered historical analogs fail to justify the handgun carry age-restriction enforced under count three for the same reasons that they failed to justify the same age-restriction enforced under count two. As was true

in every federal court to have considered the issue, the State here could not "point to a founding-era law that prohibits those under the age of twenty-one from possessing a gun." (Ma33)

The trial court was thus correct to find that the State failed to make a "sufficient showing of a historical analogue prohibiting eighteen to twenty-year-olds from possessing guns [necessary] to satisfy prong two of the Bruen test." This Court should find that N.J.S.A. 2C:58-6.1 violates the Second Amendment, and should affirm the trial court's dismissal of Glover's prosecution under that unconstitutional statute in count three. See Ex parte Siebold, 100 U.S. at 376-77.

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 Glover's motion to dismiss count two without addressing the merits of this argument because it applied an

incorrect rule of standing that is inconsistent with federal standing jurisprudence, and thus with New Jersey standing rules that require a lower burden than federal standing law.

Accordingly, this Court should: reverse the trial court's finding that Glover lacked standing to challenge count two; hold that Glover has standing to challenge counts two and three; hold that New Jersey's prohibition on carrying a handgun while under the age of twenty-one – as enforced through the statutes charged in counts two and three – violates the Second Amendment; and dismiss counts two and three accordingly.

Respectfully submitted,

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Date: July 28, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002407-24; A-002408-24

STATE OF NEW JERSEY, Plaintiff-Respondent, v. JAHMERE GLOVER, Defendant-Appellant.	Criminal Action On Leave to Appeal from an Order of the Superior Court of New Jersey, Law Division, Hudson County. Indictment No. 22-07-0867-I Sat Below: Hon. John A. Young, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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OF COUNSEL AND ON THE BRIEF

Dated: September 10, 2025

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[1] The State adopts the abbreviation used by defendant in his brief which are as follows:

Db – Defendant's brief
Pa – State's appendix in support of its motion for leave to appeal
Ma – Defendant's appendix in support of his motion for leave to appeal
Da – Defendant's appendix in support of his formal brief
1T – Defendant's motion to dismiss dated November 7, 2024
2T – Defendant's motion to dismiss dated January 16, 2025
3T – Decision on defendant's motion to dismiss dated February 28, 2025

CASES

STATUTES

RULES

CONSTITUTIONAL PROVISIONS

PRELIMINARY STATEMENT

In our State, any person who knowingly possesses a handgun without first obtaining a permit to carry is guilty of a crime of the second degree. Relatedly, our statutes prohibit the issuance of a handgun carry permit to a person under the age of twenty-one. And separately, it is a fourth-degree crime for a person under the age of twenty-one to possess a handgun, except in certain limited circumstances. When read together, our laws limit ownership and possession of a handgun to individuals who are twenty-one or older.

Our State's age restriction is not an outlier. In fact, the federal government and a majority of other states establish twenty-one as the minimum age for certain gun rights. Indeed, the Bruen Court confirmed that the Second Amendment preserved the gun rights of "law-abiding, adult citizens." Thus, a minimum age limit does, without a doubt, circumscribe the right to keep and bear arms. At common law and historically, this minimum age was twenty-one. Accordingly, our legal framework which – in the aggregate – limits the possession of a handgun to individuals twenty-one or older comports with the "principles that underpin our regulatory tradition."

Here, defendant Jahmere Glover, who was nineteen years old at the time of his offense, never applied for a gun permit. He was charged in three counts, two of which are relevant to this appeal. Count two charged him with unlawful

possession without a permit and count three with possession of a handgun while being under twenty-one.

He moved before the trial court to dismiss these two counts of the indictment, arguing that he had a Second Amendment right to possess a handgun which, he maintains, cannot be denied by the State based only on his age. The trial court denied his motion as to count two, but granted it as to count three. As to count two, the court ruled that defendant lacked standing because he never submitted a permit application. However, as to count three, it dismissed the charge, ruling that defendant had standing to challenge both the permitting scheme and the criminal statute; and that the statute criminalizing possession of a handgun by a person under twenty-one was unconstitutional pursuant to Bruen.

The court was correct as to count two, and its order as to that count should be affirmed. However, in its order dismissing count three, the trial court applied the two-step Bruen analysis in a manner that the U.S. Supreme Court disavowed in Rahimi. Here, the trial court erroneously limited its historical inquiry to the Founding-era alone. This was wrong. The trial court's erroneous interpretation of binding precedent warrants reversal of the dismissal of count three.

COUNTER STATEMENT OF PROCEDURAL HISTORY AND FACTS

The State adopts the combined Statement of Procedural History and Facts as stated in the brief submitted by counsel on behalf of defendant.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD AFFIRM THE TRIAL COURT'S ORDER DENYING DEFENDANT'S MOTION TO DISMISS COUNT TWO.

The trial court properly denied defendant's motion to dismiss count two of the indictment, ruling that he lacked standing pursuant to this court's holding in Wade.[2] Defendant contends the trial court's ruling was erroneous. In support, he develops three interrelated arguments.

First, he argues that he had the requisite standing to challenge the permitting statute on Second Amendment grounds because it would have been futile for him to apply for a permit, given his age. (Db10-19). In so arguing, he asks this court to depart from its holding in Wade, and its recent unpublished decision in Pinkett and Phillips.[3] He asserts that the Wade panel wrongly

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[2] State v. Wade, 476 N.J. Super. 490 (App. Div.), leave to appeal denied, 255 N.J. 492 (2023).

[3] State v. Pinkett, No. A-3121-23; State v. Phillips, No. A-3122-23 (App. Div. May 21, 2025), motion for leave to appeal filed, Docket No. 090736 (filed May 15, 2025) (Da8-26)

articulated the futility exception for establishing standing to challenge a permitting statute by imposing a higher threshold than required under federal law. (Db10-19). Second, he argues that he had standing because he raised a facial challenge, and contends that no set of circumstances exist under which the minimum age requirement for carry permits would be constitutional. He stresses – relying on the United States Supreme Court's opinion accompanying its denial of certiorari in Wilson v. Hawaii[4] – that a criminal defendant always has the standing to raise a facial challenge to a criminal statute that they are charged under. (Db20-26). And third, he argues that had the trial court applied the Bruen test when considering his motion to dismiss count two, as it did when considering his motion to dismiss count three, it would have also dismissed this charge because the aggregate of our laws violate his Second Amendment right to carry a handgun for self-defense. (Db26-41). Principally, defendant reasons that, at nineteen years old, he has a constitutional right to carry a handgun for self-defense, that restricting handgun carry permits to individuals twenty-one or older violates the Second Amendment, and that he should not be prosecuted for engaging in constitutionally protected conduct.

[4] Wilson v. Hawaii, 145 S. Ct. 18, 20 (2024) (Thomas, J.; Alito, J; Gorsuch, J., concurring in the denial of the petition for certiorari).

This court should reject his arguments for three independent reasons. First, he lacked standing to raise his constitutional objection to his prosecution under N.J.S.A. 2C:39-5(b) because he never applied for a permit. Nothing in the record shows that, but for the age restriction on permits, he would have satisfied the other statutory criteria for a handgun carry permit. Significantly, his argument that this court should depart from the well-reasoned holding in Wade is equally unconvincing.

Second, our laws which limit possession and ownership of a handgun to those twenty-one or older do not violate the Second Amendment. As more fully explained in Point II, laws imposing a minimum age of twenty-one for gun rights comport with the "principles that underpin our regulatory tradition." United States v. Rahimi, 602 U.S. 680, 692 (2024).

And third, in the event that the age restriction under N.J.S.A. 2C:58-4 – read together with N.J.S.A. 2C:58-3(c)(4) – is unconstitutional, this court should find that the age restriction is severable from the other statutory criteria. Consequently, because the age restriction is independent and severable from the remaining provisions of the permitting statute, defendant's argument that N.J.S.A. 2C:58-4 is facially unconstitutional must fail. Ultimately, N.J.S.A. 2C:39-5(b)(1) and N.J.S.A. 2C:58-4 are both constitutional and enforceable

against defendant. For the reasons that follow, this court should affirm the trial court's order denying his motion to dismiss count two of the indictment.

This court "generally review[s] a trial court's decision to dismiss an indictment under the deferential abuse of discretion standard." State v. Twiggs, 233 N.J. 513, 532 (2018). However, where "the decision to dismiss relies on a purely legal question . . . that determination [is reviewed] de novo." Ibid. (citations omitted); see also Wade, 476 N.J. Super. at 500.

Under the New Jersey Constitution, "[n]o person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury." N.J. Const. art. I, ¶ 8. The purpose of the grand jury is to "determine whether the State has established a prima facie case that a crime has been committed and that the accused has committed it." State v. Hogan, 144 N.J. 216, 227 (1996). Its "role is not to weigh evidence presented by each party, but rather to investigate potential defendants and decide whether a criminal proceeding should be commenced." Id. at 235.

Because of the grand jury's role in our criminal justice system, courts are reluctant to intervene in the indictment process, id. at 228, and "should not disturb an indictment if there is some evidence establishing each element of the crime to make out a prima facie case," State v. Morrison, 188 N.J. 2, 12 (2006). Courts should only dismiss an indictment on "the clearest and plainest ground,"

State v. N.J. Trade Waste Ass'n, 96 N.J. 8, 18 (1984), and when the indictment is "manifestly deficient or palpably defective," Hogan, 144 N.J. at 229.

The Second Amendment preserves the right of individual persons to keep and bear arms. Dist. of Columbia v. Heller, 554 U.S. 570, 582 (2008). But, as the United States Supreme Court illuminated in Bruen, "[p]roperly interpreted, the Second Amendment allows a 'variety' of gun regulations." New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 80 (2022), (Kavanaugh, J., concurring) (citing Heller, 554 U.S. at 636).

As more fully explained in Point II, Bruen established the two-step analytical framework for Second Amendment challenges. It held that courts must, first, determine whether "the Second Amendment's plain text covers an individual's conduct." Id. at 19. If it does, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Ibid.

Public carry of handguns has long been "the most closely-regulated aspect of [the State's] gun-control laws." In re Preis, 118 N.J. 564, 568 (1990). Any individual who wishes to carry a handgun in public must first obtain a permit. N.J.S.A. 2C:39-5(b)(1). Knowingly possessing a handgun in public without a permit is a second-degree crime. Ibid.

Relevant here, to obtain a permit to carry a handgun, the individual must "not [be] subject to any of the disabilities set forth in [N.J.S.A. 2C:58-3(c)]." N.J.S.A. 2C:58-4(c).[5] N.J.S.A. 2C:58-3(c)(4) provides that an applicant must be at least twenty-one years old to be granted a handgun carry permit.

This court explained in Wade that

> [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). To make that challenge, however, the defendant must have standing to raise the constitutional objection. 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

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[5] Apart from the disabilities set forth in N.J.S.A. 2C:58-3(c), additional requirements for a handgun permit "include the applicant demonstrating, among other things, that he or she: has no juvenile adjudications for certain weapons offenses; is not the subject of a domestic violence restraining order; has not violated certain types of court orders; has not been committed due to mental health issues; is not a fugitive or the subject of an open warrant; and has complied with liability insurance requirements. See N.J.S.A. 2C:58-3(c)(6), (7), (10-15); N.J.S.A. 2C:58-4(d)(4); N.J.S.A. 2C:58-4.3." State v. Pinkett, No. A3121-23; State v. Phillips, No. A-3122-23 (App. Div. May 21, 2025), motion for leave to appeal filed, Docket No. 090736 (filed May 15, 2025). After the application is submitted, the chief or the superintendent conducts the necessary background checks. If the chief police officer or superintendent instead denies the application, then the applicant may request a hearing in the Superior Court within 30 days of the denial. N.J.S.A. 2C:58-4(e). In any case, a permit applicant dissatisfied with the decision of the Superior Court may appeal the decision "in accordance with law and the rules governing the courts of this State." Id.

> 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.
>
> [476 N.J. Super. at 505.]

"Unlike the United States Constitution, our State Constitution contains no provision limiting the judicial power to cases or controversies," however, the New Jersey Supreme Court has "recognized that rules of standing are necessary if the courts are to properly respect the legislature's prerogatives with regard to its law-making functions." Saunders, 75 N.J. at 208 (citations omitted).

"[C]lassifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be demonstrated." Antonyuk v. James, 120 F.4th 941, 982–83 (2d Cir. 2024), cert. denied, 145 S. Ct. 1900 (2025) (quoting Bucklew v. Precythe, 587 U.S. 119, 138 (2019)). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987); see also Rahimi, 602 U.S. at 693 (2024). To prevail, the State need only demonstrate that the law at issue is constitutional in some of its applications. See Rahimi, 602 U.S. at 693.

As this court illuminated, "[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." Wade 476 N.J. Super. at 505. An exception to the submission requirement is if the challenger can "make a substantial showing that submitting to the government policy would [have been] futile." Id. at 506 (alteration in original) (quoting Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022)).

In Wade, the defendants were charged with several counts of unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1), arising from an incident that occurred pre-Bruen. Id. at 495. After the United States Supreme Court decided Bruen, the defendants moved to dismiss those counts, arguing that the justifiable-need provision of New Jersey's gun-permitting statute in effect at the time of their arrest was unconstitutional under Bruen. Ibid. This court disagreed, finding that the defendants did not have standing to challenge the statutes because they had not applied for a carry permit and did not present sufficient evidence to demonstrate that they would have qualified, but for the unconstitutional justifiable-need requirement. Id. at 495, 506-07.

Like the defendants in Wade, here defendant did not apply for a handgun permit. Because he failed to apply for a handgun permit, the trial court properly held defendant lacked standing to challenge count two of the indictment which charged him with unlawful possession of handgun. That defendant was nineteen years old at the time does not change this analysis because defendant fails to

demonstrate he would have qualified for a permit but for the age restriction. Ibid. Indeed, defendant was 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." Id. at 507 (citing Borough of Collingswood v. Ringgold, 66 N.J. 350, 331 (1975)).

In developing his argument that his permit application would have been futile, defendant asks this court to depart from Wade's articulation of the futility exception. To be sure, the Wade court recognized the exception to the submission requirement where a defendant "make[s] a substantial showing that submitting to the government policy would [have been] futile." Wade 476 N.J. Super. at 506 (quotations omitted) (emphasis added). He argues that this articulation of futility imposes a higher burden than the federal cases upon which the panel relied.

Not so. Consistent with the federal cases he cites, a challenger to an allegedly unconstitutional permitting scheme is required to make a substantial showing that his application would have been futile. See Bruck, 586 F. Supp. 3d at 308 ("There is a recognized exception to this requirement if a plaintiff makes a substantial showing that submitting to the government policy would be futile.); United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012) ("Failure to apply for a license would not preclude [defendant's] challenge if he made a

'substantial showing' that submitting an application 'would have been futile.'") (citations and quotations omitted). Here, defendant made no showing, let alone a substantial one, that submitting a permit application would have been futile because of the age restriction. In making his argument, defendant asks this court to hypothesize about the fate of a handgun permit application he never made. Similar to the defendants in Wade, defendant here was not free to ignore our statute but for an alleged unconstitutional provision. Wade, 476 N.J. Super. at 507.

Finally, defendant contends that he has standing despite never having applied for a permit because he is launching a facial challenge. This argument is also unpersuasive. In Wade, this court held the justifiable need provision, which is unconstitutional pursuant to Bruen, was severable from the remaining provisions of N.J.S.A. 2C:58-4. 476 N.J. Super. at 496, 511. In making its finding, this court observed the gun permit statutes were not dependent on the justifiable-need provision because an applicant seeking a permit to carry would have to demonstrate he qualified for other criteria independent from the justifiable need requirement, including that he was mentally and physically capable of handling a handgun and was not a potential danger to the public. Id. at 509-10. It thus concluded N.J.S.A. 2C:39-5(b) was constitutional and

enforceable, and it remanded the case and directed the trial court to reinstate both counts charging N.J.S.A. 2C:39-5(b)(1) in the indictment. Id. at 496, 511.

This sound reasoning equally applies here. Like the justifiable-need requirement, the age restriction requirement set forth in N.J.S.A. 2C:58-3(c)(4) is not dependent on the other criteria an applicant needs to demonstrate to be issued a handgun permit. As described above, an applicant must also demonstrate, among other things, that he is mentally and physically capable of handling a handgun and is not a potential danger to the public. N.J.S.A. 2C:58-4(c); N.J.S.A. 2C:58-3(c). Accordingly, even if the age restriction of our gun permitting law is found to be unconstitutional, it is independent and severable from the remaining provisions. As such, his facial challenge against the permitting law must fail as well. See Wade, 476 N.J. Super. at 511.

For the foregoing reasons, the State asks that this court affirm the denial of defendant's motion to dismiss count two of the indictment.

POINT II

THIS COURT SHOULD REVERSE THE TRIAL COURT'S ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COUNT THREE.

In granting defendant's motion to dismiss count three of the indictment, the trial court erred in two ways. First, relying on the futility exception laid out in Wade, the court reasoned that because defendant "made an adequate showing that applying for a gun permit would have been futile," he had standing to challenge the New Jersey gun permit statute and N.J.S.A. 2C:58-6.1. (Pa97). This is at odds with its own finding as to count two, where it correctly determined that, pursuant to Wade, because defendant did not submit a carry application, he could not launch his Second Amendment challenge against the permitting statute. Second, the trial court applied the two-step Bruen analysis in a manner that the U.S. Supreme Court disavowed in Rahimi. Relying primarily on the Third Circuit's decision in Lara, the court incorrectly concluded that because the State did not identify a Founding-era regulatory twin, our laws criminalizing possession of a handgun by those under twenty-one are unconstitutional.

The State asks this court to reverse for at least two reasons. First, as discussed in Point I above, because defendant never applied for a carry permit, he lacked standing to challenge the constitutionality of the statute in light of this

court's holding in Wade. The trial court was incorrect to rule that he had demonstrated that his permit application would have been futile since he made no showing that he would have satisfied the other statutory criteria of the permit statute, but for the age restriction. Second, by not considering any Reconstruction-era and later evidence, the trial court misapplied the two-part test as laid out in Bruen. In Bruen itself, the United States Supreme Court relied on mid-19th-century cases and statutes, see Bruen, 597 U.S. at 51-57, and surveyed "public discourse surrounding Reconstruction," id. at 60. Rahimi has now put the relevance of 19th-century evidence even further beyond doubt. There, the United States Supreme Court rested its decision upholding a challenged law in large part on laws passed between 1836 and 1868. Id. at 690, 695. The trial court's incorrect result is not saved by the fact that it recited the relevant legal standard and purported not be seeking a "historical twin." The same was true of the Fifth Circuit's decision in United States v. Rahimi, 61 F.4th 443, 454 (5th Cir. 2023), which the Supreme Court nonetheless reversed.

The Second Amendment of the United States Constitution reads in full: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In Heller, the United States Supreme Court clarified that "the Second Amendment conferred an individual right to keep and bear arms" independent

of any militia service. Heller, 554 U.S. at 595. However, in doing so, the Court recognized that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." Id. at 626. For example, it highlighted that:

> [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.
>
> [Id. at 626-27.]

Two years later, in McDonald, the Supreme Court held that the Second Amendment was also fully applicable to the States via the Fourteenth Amendment. McDonald v. City of Chicago, 561 U.S. 742, 750 (2010).

In Bruen, the Supreme Court established the two-step analytical framework for Second Amendment challenges. It held that courts must, first, determine whether "the Second Amendment's plain text covers an individual's conduct." Bruen, 597 U.S. at 19. If it does, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Ibid.

In Rahimi, the United States Supreme Court clarified how lower courts should apply the two-part Bruen analysis for evaluating the constitutionality of firearm regulations. Rather than rest a decision on whether the government

could point to identical firearm regulations in the Founding era, lower courts were instructed to identify the principles animating the regulation being challenged to see if they comport with the principles underlying the Second Amendment. Id. at 691–92. Doing so involves "ascertain[ing] whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" Id. at 692 (quoting Bruen, 597 U.S. at 28). To determine whether a law is relevantly similar, courts must consider "[w]hy and how the regulation burdens the right." Ibid. Even if a challenged law is not a "dead ringer" or "historical twin" with a historical regulation, it may still be sufficiently analogous to survive a constitutional challenge. Ibid.

Although the Supreme Court has not yet resolved the question of which period is the primary focus of the Second Amendment inquiry, it has made clear that evidence from Reconstruction and beyond is a critically important part of the historical analysis. See id. at 692 n.1 (leaving open question of whether inquiry's central focus is Reconstruction era or founding era); Bruen, 597 U.S. at 37-38 (same). In Heller, the Court investigated "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century," Heller, 554 U.S. at 605, and relied on "19th-century cases that interpreted the Second Amendment," "'discussion of the Second Amendment in

Congress and in public discourse' after the Civil War," and "how post-Civil War commentators understood the right," Bruen, 597 U.S. at 21 (describing and quoting Heller, 554 U.S. at 610, 614, 616-19). Likewise, Bruen relied on mid-19th-century cases and statutes, see Id. at 51-57, and surveyed "public discourse surrounding Reconstruction," Id. at 60. Bruen also invoked 19th-century evidence in discussing sensitive places in particular. It said that "18th- and 19th-century" laws restricting the possession of guns in legislative assemblies, polling places, and courthouses satisfied its historical analysis, Id. at 30, and cited to sources in which all the 19th-century laws restricting guns in the locations the Court listed were from the late 19th century.

Indeed, Rahimi has put the relevance of 19th-century evidence even further beyond doubt. There, the Court rested its decision upholding a challenged law in large part on laws passed between 1836 and 1868. See Rahimi, 602 U.S. at 695-96 (relying on Massachusetts surety statute from 1836); Id. at 696 (invoking similar statutes of nine other jurisdictions by citation to Bruen, 597 U.S. at 56 & n.23); Bruen, 597 U.S. at 56 & n.23 (citing 1838 Wisconsin, 1840 Maine, 1846 Michigan, 1847 Virginia, 1851 Minnesota, 1854 Oregon, 1857 District of Columbia, 1860 Pennsylvania, and 1868 West Virginia surety laws).

The U.S. Supreme Court's decision in Rahimi corrected several widespread misconceptions about the two-step methodology it announced in Bruen. After all, the contemporary statute in Rahimi was "by no means identical" to the "founding era regimes, but it d[id] not need to be." Rahimi, 602 U.S. at 698. The Court also cautioned against placing undue weight on the absence of historical firearms regulations on a particular topic at the Founding because "the Second Amendment permits more than just regulations identical to those existing in 1791." Id. at 680. And several Justices reiterated the Court's prior pronouncement that post-ratification historical sources from the 19th-century constitute a "critical tool of constitutional interpretation." Id. at 727 (Kavanaugh, J., concurring) (citation omitted).

In recognition that there must be some age threshold for the right to bear arms, this Court stated that the Second Amendment applies to all "law-abiding, adult citizens." Bruen, 597 U.S. 1, 31 (2022) (emphasis added). From the time of the Founding, through Reconstruction and most of the 20th century, there was a widely-held consensus that anyone under the age of 21 was a minor. Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1116-18 (11th Cir. 2025) (en banc), cert. pending sub nom., Nat'l Rifle Ass'n v. Glass, 24-1185 (U.S.); Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 124-25 (10th Cir. 2024). The Founding generation believed that under-21-year-olds "lacked the reason and judgment

necessary to be trusted with legal rights," including the ability to contract. Bondi, 133 F.4th at 1117-20. As a consequence, Founding-era minors "could not purchase weapons for themselves" under the common law. Id. at 1120. Founding-era militia laws – which either exempted minors from firearm requirements entirely, or expected minors' parents to acquire firearms for them – reflected this limitation. Id. at 1119. See also Lara v. Comm'r Pennsylvania State Police, 125 F.4th 428, 448 (3d Cir. 2025) (Restrepo J., dissenting) (citing 1 William Blackstone, Commentaries *453; 4 James Kent, Commentaries on American Law 266 (W.M. Hardcastle Brown ed. 1894) (1826); 1 John Bouvier, Institutes of American Law 87 (New ed., The Lawbook Exchange, Ltd. 1999) (1851)). Restrictions on firearms possession by persons under twenty-one continued – and expanded – in the 19th 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.

Post-ratification history confirms the Founding-era understanding. See Bondi, 133 F.4th at 1122. Although the pervasive common-law limitations prevented unsupervised minors from acquiring dangerous weapons at the Founding, by the mid-19th century this proved inadequate. Id. at 1122-23. During the ante-bellum period, dramatic economic and technological transformations—especially the mass production of deadlier and more accurate handguns—made it easier for minors to independently acquire firearms. Id. at 1135-40 (Rosenbaum, J., concurring).

As an initial matter, this court should find that because individuals under the age of twenty-one could not exercise certain legal rights at the founding, they were excluded from the scope of "the people" under Bruen's first step. 597 U.S. at 19. Therefore, defendant's Second Amendment challenge should fail at the first step.

If this court finds that eighteen to twenty-year olds are presumptively among "the people" to whom Second Amendment rights extend, it should find that a restriction on gun possession rights of those under twenty-one are consistent with the principles that underpin the Nation's historical tradition of gun regulations. Here, in its decision granting defendant's motion to dismiss

count three, the trial court wrongly concluded that only the Founding-era understanding of the Second Amendment is relevant to the inquiry mandated by Bruen. In so doing, the court improperly resolved the question of whether courts should primarily rely on the prevailing understanding of the right to keep and bear arms from 1791 when the Second Amendment was adopted, or 1868 when the Fourteenth Amendment was adopted. Holding that it could consider historical evidence from the Founding era only, the trial court disregarded all historical evidence from the mid-to-late-1800s, which demonstrated that many other states enacted analogous age based statutes during that time period. (See Pa41-56).

Having confined its analysis to Founding-era statutes, the trial court ruled its holding that N.J.S.A. 2C:58-6.1 violates the Second Amendment because the State did not identify a statutory twin from the 1790s. And, to bolster its conclusion that the Second Amendment extends to 18-to-20-year-olds, the trial court pointed to minors' occasional militia service in the decades surrounding the adoption of the Second Amendment. (Pa95; 99-100).

The trial court was incorrect to limit its historical inquiry to the Founding-era alone. Founding-era common law principles, which considered people under twenty-one to be minors, as confirmed by post-enactment history, demonstrate that restrictions on carrying firearms by those under twenty-one are congruent

with our historical tradition of regulation. Indeed, the centrality of the Reconstruction-era in a case involving a state law follows directly from the principle that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them." Bruen, 597 U.S. at 34 (quoting Heller, 554 U.S. at 634-35). The Constitution's protection of the right to keep and bear arms did not constrain the states until 1868; a state "is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second." Id. at 37. In McDonald, the Court analyzed at length the public understanding around 1868 before holding that the Second Amendment constrains the states. See McDonald, 561 U.S. at 770-78. That approach is inconsistent with the trial court's belief that only the Founding informs the historical inquiry under Bruen.

The trial court based its decision to prioritize the Founding on an assumption that "the idea that the States would incorporate the Second Amendment to the States without understanding the breadth of protections the Second Amendment offers would lead to varying interpretations of those protections." (Pa101). This approach is not in line with binding precedent. The trial court's general assumption cannot possibly resolve the time-period issue, because Bruen itself noted the assumption and then left the time-period issue open. See 597 U.S. at 37-38.

Defendant, relying on the opinions in Lara and Worth, also urges this court to also focus on 1791 as the relevant time frame for the historical inquiry. Those cases, to be sure, invalidated firearms restrictions on individuals under twenty-one. However, those cases are not binding on this court, nor are they persuasive. Those courts managed to "avoid the weight of legal history by labeling individuals between the ages of 18 and 21 as 'adults.'" Bondi, 133 F.4th at 1125. The common law understanding, coupled with post-enactment history, demonstrates otherwise. Additionally, those holdings are at odds with Rahimi which requires analysis based on historical principles, rather than a demand for a historical dead ringer.

In sum, the trial court's decision to look only to the Founding-era is inconsistent with United States Supreme Court decisions. For the reasons stated, this court should reverse the dismissal of count three of the indictment.

CONCLUSION

For the foregoing reasons, the State submits that this court should AFFIRM the trial court's order denying defendant's motion to dismiss count two of the indictment, and REVERSE the trial court's order granting defendant's motion to dismiss count three of the indictment.

Respectfully submitted,

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Dated: September 10, 2025

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LETTER REPLY ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
INDICTMENT NO. 22-07-0867-I
DOCKET NO. A-002407-24
A-002408-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Leave to Appeal from an Opinion of the Superior Court of New Jersey,
v.	:	Criminal Division, Hudson County.
JAHMERE GLOVER,	:	Sat Below:
Defendant-Appellant.	:	Hon. John A. Young, Jr. J.S.C.

Honorable Judges:

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

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant Jahmere Glover relies on the procedural history and statement of facts set forth in his opening brief.[1]

LEGAL ARGUMENT

While the trial court here agreed with Glover's argument that New Jersey's age-restriction on handgun possessions for persons under twenty-one violated the Second Amendment, the court found that Glover only had standing to challenge count three of his indictment (charging him with fourth-degree possession of a handgun while under the age of twenty-one, N.J.S.A. 2C:58-6.1), and found that he lacked standing to challenge count two (charging him with second-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1)). Based on these findings, the court granted Glover's motion to dismiss count three –where it found he did have standing – but denied his motion to dismiss count two for lack of standing. (Ma16)

Accordingly, as argued at length in his opening brief, Glover asks this Court to find that he has standing to challenge both counts two and three; to affirm the trial court's Second Amendment analysis finding that New Jersey's

[1] Db – Defendant's July 28, 2025 Appellant Brief
Da – Defendant's Appendix in Support of July 28, 2025 Appellant Brief
Ma – Defendant's Appendix in Support of Motion for Leave to Appeal
Pb – State's September 10, 2025 Respondent Brief
AGb – Attorney General's October 6, 2025 Amicus Curiae Brief

handgun age-restriction is unconstitutional; to apply that Second Amendment analysis to both counts; and to dismiss both counts accordingly. In turn, the State, in its September 10, 2025 Respondent-Brief, asks this Court to reach the opposite findings and hold that Glover did not have standing to challenge either counts two or three, and to find that New Jersey's handgun age-restriction is constitutional. (Pb5; Pb14-15; P25) In support of Glover's argument that this Court should rule in his favor, Glover relies upon the appellate briefing already submitted in this matter, and submits the following supplemental arguments on the threshold question of standing.

POINT I

DEFENDANT HAS STANDING TO CHALLENGE COUNTS TWO AND THREE OF HIS INDICTMENT.

A. Defendant Has Standing To Challenge Count Two.

Beginning with Glover's standing to challenge his prosecution under count two, there are several points of law upon which the State and Glover are not in dispute. First, while a party challenging the constitutionality of a permitting or licensing scheme must, in general, apply for the permit in question before raising their challenge (under the so-called "submission requirement"), it is now undisputed that a party will have standing to raise that challenge so long as they can satisfy the futility exception. As the State acknowledges, "the Wade

court recognized the exception to the submission requirement where a defendant 'make[s] a substantial showing that submitting to the government policy would [have been] futile.'" (emphasis and alterations in original) (Pb11) (citing State v. Wade, 476 N.J. Super. 490, 506 (App. Div.), leave to appeal denied, 255 N.J. 492 (2023)).

Second, the State does not dispute that New Jersey law imposes a burden for establishing standing that is equal to or lower than the burden employed in federal standing law. As the State rightly notes, "[u]nlike the United States Constitution, our State Constitution contains no provision limiting the judicial power to cases or controversies. . . ." (Pb9) (citing State v. Saunders, 75 N.J. 200, 208-09 (1977)). See also Wade, 476 N.J. Super. at 505 (citing to Saunders for authority on general principles of New Jersey standing law). This quoted passage from Saunders, in turn, relies upon an earlier New Jersey Supreme Court case, Crescent Park Tenants Ass'n, where the Court held that "New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases." Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 101 (1971). It is this principle of New Jersey standing jurisprudence that Glover relies upon in his appellant brief as part of his argument that his standing to challenge count two is not defeated by this Court's opinion in State v. Wade. (Db8-19) Specifically, that application of the

futility test as articulated in Wade would impose a higher burden for establishing standing than federal law, making Wade's futility test improper and inapplicable. (Db14)

In response, the State does not dispute the relevancy of federal standing jurisprudence to the question of Glover's standing. Instead, the State argues that the Wade futility test should be applied to Glover specifically because it is "[c]onsistent" with federal law:

> [Glover] argues that [Wade's] articulation of futility imposes a higher burden than the federal cases upon which the [Wade] panel relied. Not so. Consistent with the federal cases he cites, a challenger to an allegedly unconstitutional permitting scheme is required to make a substantial showing that his application would have been futile.
>
> (Pb11) (citing Kendrick v. Bruck 586 F. Supp. 3d 300, 308 (D.N.J. 2022); United States v. Decastro, 682 F. 3d 160, 164 (2d Cir. 2012) (emphasis added).

By arguing that Wade is applicable specifically because it is consistent with federal standing law, the State, in effect, adopts – or at least does not dispute – the aforementioned principle requiring New Jersey courts to apply a burden for standing that is equal to or less restrictive than the one employed in federal law.

In sum, then, the following points of law are not in dispute: successful satisfaction of the futility exception is sufficient to establish standing; and New Jersey law imposes a burden for standing equal to or lower than the federal

burden for standing. In light of these points of agreement, the inquiry as to whether Glover had standing to challenge count two is as follows. Firstly, what is the futility exception test employed in federal law? Secondly, does Glover satisfy the futility exception as laid out in federal law? Because it is undisputed that the burden for establishing standing in New Jersey is equal to or lower than the burden in federal law, if Glover satisfies the federal futility exception test, then he must necessarily have standing in New Jersey. Crescent Park Tenants Ass'n, 58 N.J. at 101.

The relevant question for establishing futility under federal law is whether an application for a permit "would have been denied" by virtue of the permitting provision being challenged. (Db17) (citing Antonyuk v. James, 120 F.4th 941, 979 (2d Cir. 2024), cert denied, 145 S. Ct. 1900 (Apr. 7, 2025). Notably, the federal test does not ask whether the sought after permit would be granted in the absence of the challenging provision. Numerous federal cases make this clear. The Second Circuit recently elaborated upon the futility test that was first employed in U.S. v. DeCastro – a case cited favorably by the State in support of its argument on standing (Pb11) – as follows: "sufficiency of a futility showing is judged on whether plaintiff has shown that his application would have been denied[.]" Antonyuk, 120 F.4th at 979 (citing Decastro, 682 F.3d at 164). Likewise, in Bach v. Pataki, an application was deemed futile where the

applicant "was statutorily ineligible for [the] carry license" and thus "had nothing to gain…by completing and filing an application." 408 F.3d 75, 82-83 (2d Cir. 2005). And in Image Carrier Corp v. Beame, an application was deemed futile "since it [wa]s obvious that [the potential bidden] could not have been awarded a contract[.]" 567 F.2d 1197, 1201-02 (2d Cir. 1997). None of these articulations of the futility test require the challenger to demonstrate that, if the challenged provision were removed, his would-be application would have been granted. In short, then, "[f]utility refers to the denial of an application" – and not to whether it would have been granted in the absence of the challenged provision. Antonyuk, 120 F.4th at 979.

Applying this test to Glover, in order to establish futility, he need only demonstrate that "his application" for a handgun carry permit "would have been denied[.]" Ibid. There is no doubt that Glover's application for a handgun carry permit would have been denied by virtue of his age. As the State notes, "our statutes prohibit the issuance of a handgun carry permit to a person under the age of twenty-one." (Pb1) Because Glover is nineteen years old, he is "statutorily ineligible" for a handgun carry permit in New Jersey, and it is thus "obvious that" he "could not have been awarded" a permit even if he applied. Bach, 408 F.3d at 82-83; Image Carrier Corp, 567 F.2d at 1201-02. Any application submitted by Glover would have been denied.

Under federal law, this demonstration – that Glover's application for a handgun carry permit "would have been denied" – is sufficient to establish futility. Antonyuk, 120 F.4th at 979. And because New Jersey standing law imposes a burden for standing that is equal to or more liberal than federal law, Glover's demonstration of federal standing necessarily grants him standing in New Jersey. Crescent Park Tenants Ass'n, 58 N.J. at 101. Glover thus has standing to challenge count two.

The futility test that the State asks this Court to apply would require Glover make an additional showing. Specifically, the State argues that Glover did not establish standing for count two because he did not show that he "would have qualified for a permit but for the age restriction." (Pb10-11) (emphasis added). This is simply not the federal test for futility just described. In fact, the State has not provided a single federal case in which the requested "but for" test must be satisfied in order to establish futility. In light of the undisputed principle that New Jersey law imposes a burden for standing that is equal to or lower than federal law, Glover asks this Court to apply the federal futility test – a test which asks only whether his application for a handgun would have been denied.

Moreover, in addition to Glover's satisfaction of the futility exception, he also has standing to challenge his prosecution under count two because, as previously argued (Db20-26), he challenges New Jersey's handgun age

restriction as invalid upon its face. Smith v. Cahoon, 283 U.S. 553, 562 (1931). In response, the State does not take issue with Glover's characterization of his challenge as a facial challenge. Rather, the State argues that because the age restriction is severable from the rest of the handgun permitting provisions, Glover's standing is defeated regardless of the facial validity of the age restriction. (Pb12) As Glover previously argued, however, the doctrine of severability in no way deprives Glover of standing. (Db15-17)

There is nothing within the rule on severability, N.J.S.A. 1:1-10, or within New Jersey's severance jurisprudence, that would allow for an unconstitutional provision to be enforced against a party's constitutional rights. If this Court finds the handgun age restriction to be unconstitutional, a finding of severability would simply allow the remainder of the permitting scheme to be enforceable moving forward. Such a finding, however, could not in any way justify or remedy Glover's arrest and prosecution under an unconstitutional statute.

That is how the Supreme Court held in Smith v. Cahoon, where it found that the permitting provision which the appellant had challenged was "invalid as applied to the appellant" and thus reversed the appellant's conviction. Id. at 567-68. In that case, Florida had argued that the savings clause rendered the unconstitutional provisions of the statute severable from the rest of the permitting scheme. In response, the Court found that

> The effect of this saving clause is merely that, if one provision is struck down as invalid, others 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.]

Because the statute was enforced against the appellant at a time when the unconstitutional provision was still in effect and had not yet been severed, his conviction was invalid, and was thus reversed. Id. at 567-58.

Likewise, in Shuttlesworth v. Birmingham, 394 U.S. 147, 153-54 (1969), the Supreme Court held that a parade ordinance in Birmingham, Alabama was unconstitutional. The Court then noted that the Alabama Supreme Court had interpreted the statute narrowly in such a way as to render the remainder of the statute constitutional. Id. at 155. But, the Court explained, even if

> [w]e assume that this exercise [in narrow construction] was successful, and that the ordinance as now authoritatively construed would pass constitutional muster…[i]t does not follow [] that the severely narrowing construction put upon the ordinance by the Alabama Supreme Court in November of 1967 necessarily serves to restore constitutional validity to a conviction that occurred in 1963 under the ordinance as it was written.
>
> [Id. at 155-56.]

And because the ordinance had been enforced against the defendants at a time prior to the Alabama Court's redemption of the statute – when the unconstitutional provision was still in effect – the Court reversed the convictions of the defendants. Id. at 159.

The same applies to Glover: what matters is the constitutionality of the firearm permitting scheme at the time that it was enforced against him. Glover was already arrested and is currently being prosecuted under the permitting scheme which deprived him of his Second Amendment rights by virtue of the unconstitutional handgun age restriction. Any finding from this Court that the remainder of the firearm permitting scheme is enforceable going forward does nothing to redeem the fact that he was, and is, being prosecuted under an unconstitutional provision that prohibits him from exercising his Second Amendment right. The charge against him must therefore be dismissed as unconstitutional, and a finding of severability from this Court has no bearing on his standing to raise that constitutional challenge.

B. Defendant Has Standing To Challenge Count Three.

Unlike count two where Glover was prosecuted for his failure to obtain the necessary handgun permit, count three does not criminalize his failure to obtain a permit. Rather, the charge under count three directly criminalizes possession of a handgun for anyone under twenty-one years old, regardless of

whether they sought a permit or not. N.J.S.A. 2C:58-6.1. Glover therefore does not need to satisfy the "submission requirement" in order to establish standing because that requirement applies only to constitutional challenges to licensing and permitting schemes. (Db44)

Notably, the Attorney General is in agreement with Glover's argument as to the inapplicability of both Wade and the futility exception with respect to Glover's standing on count three. In its October 6, 2025 briefing – submitted alongside its motion to appear as Amicus Curiae – the Attorney General noted that "[c]ount three does not hinge on whether Defendant applied for a permit. N.J.S.A. 2C:58-6.1. So a Wade analysis—used when someone was required to obtain a permit—is inapplicable. (AGb20, n.6). Glover and the Attorney General are thus in agreement on this point: the Wade analysis and the futility exception are inapplicable to the question of Glover's standing to challenge count three. And as argued in Glover's appellant brief, (Db44-48), Glover does, in fact, have standing to challenge his prosecution under count three pursuant to Rule 3:10-2(d) because he is raising a "constitutional claim related to his own conduct" and there is nothing at all "hypothetical" about the injury he suffered through his arrest and prosecution under an unconstitutional statute. Bruck, 586 F. Supp. at 308-09.

The State nonetheless maintains that Glover lacks standing to challenge count three because, per the State, he "never applied for a carry permit" and thus "lacked standing to challenge the constitutionality of the statute in light of this court's holding in Wade." (Pb14-15) As just noted, the Attorney General and Glover agree that the futility exception and the Wade analysis are entirely inapplicable to Glover's standing under count three. (AGb20, n.6) This Court should therefore affirm the trial court's holding that Glover has standing to challenge count three, albeit without reliance upon Wade or the futility exception. (Db43-47) Upon finding that Glover has standing to challenge count three, this Court should consider the merits of Glover's Second Amendment argument, and should affirm the trial court's finding that the handgun age restriction is unconstitutional for the reasons laid out in Glover's appellant brief. (Db26-41)

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Glover's appellant brief, this Court should: reverse the trial court's finding that Glover lacked standing to challenge count two; hold that Glover has standing to challenge counts two and three; hold that New Jersey's prohibition on carrying a handgun while under the age of twenty-one – as enforced through the statutes charged in counts two and three – violates the Second Amendment; and dismiss counts two and three accordingly.

Respectfully submitted,

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BY:_____
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Dated: October 6, 2025

Superior Court of New Jersey
APPELLATE DIVISION
DOCKET NOs. A-002407-24; A-002408-24

		CRIMINAL ACTION
STATE OF NEW JERSEY, Plaintiff,	:	On Appeal From an Interlocutory Order of the Superior Court of
	:	New Jersey, Hudson County,
v.		Dismissing Counts in the Indictment
	:	
JAHMERE GLOVER, Defendant.	:	Sat Below: Hon. John A. Young, Jr.
_____	:	

AMENDED BRIEF ON BEHALF OF THE ATTORNEY GENERAL OF NEW JERSEY, AMICUS CURIAE

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PRELIMINARY STATEMENT

When he was under 21 years old, Defendant carried a firearm in public without seeking a permit as required by New Jersey law. And in doing so, he violated a state law prohibiting firearm possession by individuals under 21 that is consistent with centuries of firearm restrictions.

This Court should first reject Defendant's attempt to collaterally challenge New Jersey's firearm permit requirement when he never sought a permit. New Jersey has long required people to seek and obtain a permit before they may publicly carry a firearm. For good reason: the permitting regime allows law enforcement to ensure that an individual does not threaten public safety and can be trusted to possess a firearm in public. Defendant violated that bedrock requirement when he carried in public without seeking a permit, yet now seeks to use his criminal trial to attack New Jersey's law. But this Court has already held in State v. Wade, that one allegedly invalid permitting requirement does not excuse a defendant's conduct that remains unlawful under other, severable provisions of the permitting scheme. So Wade easily forecloses Defendant's challenge to New Jersey's public-carry permitting scheme, and the State may hold him accountable.

This Court should also uphold New Jersey's restriction on firearm possession by individuals under 21. Our nation has recognized since before the

Founding that individuals under 21 have not reached the age of full judgment and maturity. At the Founding, the age of majority was 21, before which minors were substantially under the control of their parents or other responsible adults. Such control over a minor's life was far-reaching—from deciding the books one reads, to receiving the benefit of the minor's labor or wages, to controlling whether the minor could purchase or possess a firearm. This common-law system at the Founding effectively prevented a minor from obtaining a firearm without parental consent. Even in states that required militia service for 18-to-20-year-olds, the law recognized this inability to obtain firearms for oneself by requiring parents or state governments to provide such weapons. And just a few decades later, faced with increasing interpersonal violence, the States began to statutorily restrict firearm use—including by minors—such that by the end of the nineteenth century, the vast majority of the U.S. population lived in jurisdictions that prohibited minors under 21 from purchasing firearms.

New Jersey's law prohibiting 18-to-21-year-olds from purchasing, possessing, or carrying a firearm absent parental supervision, military service, or other limited exceptions thus fits comfortably within this Nation's longstanding historical tradition of firearm regulation. Yet despite this history of reasonable limitations on the ability of individuals under 21 to possess firearms, the motion court ruled that New Jersey's restriction violates the

Second and Fourteenth Amendments—demanding a statutory citation from a period that largely relied on unwritten common law.

Indeed, the Eleventh Circuit, in an en banc opinion authored by Chief Judge Pryor, recently rejected such a narrow approach in National Rifle Association v. Bondi. There, the court upheld a similar Florida law banning purchase of firearms by individuals under the age of 21 as consistent with our nation's historical tradition from the Founding through the nineteenth century of limiting minor's ability to purchase firearms. The Fourth Circuit followed shortly thereafter, upholding a federal statute prohibiting commercial sale of handguns to individuals under 21 for similar reasons in McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives. This Court should similarly uphold New Jersey's law as consistent with these longstanding Second Amendment principles.

In short, this Court should affirm in part by recognizing that Defendant is prohibited from collaterally challenging New Jersey's firearm permitting law when he never sought a permit in the first place. And it should reverse in part by recognizing that New Jersey's other restrictions on 18-to-21-year-olds' purchase, possession, and carry of firearms is comfortably constitutional and consistent with a longstanding history of similar firearm regulations for minors.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Amicus Attorney General relies on the Statement of Procedural History and Facts in the State's brief and highlights the following.

A. New Jersey's Public Carry Permitting Law

Public carry of handguns has long been "the most closely-regulated aspect of [the State's] gun-control laws." In re Preis, 118 N.J. 564, 568 (1990). Since 1905, New Jersey has restricted the concealed carrying of firearms to individuals who had permits to do so. See 1905 N.J. Laws, ch. 172 at 324. That remains true today: any individual who wishes to carry a handgun in public must first obtain a permit. N.J.S.A. 2C:39-5(b)(1). Knowingly possessing a handgun in public without such a permit is a second-degree crime. Ibid.

To obtain a permit, an applicant must follow a two-step process. First, the applicant must apply to the relevant law enforcement official: the chief police officer in the municipality or the superintendent of the New Jersey State Police. N.J.S.A. 2C:58-4(c). At the time of defendant's arrest in June 2021, the permit application required certain biographical information and the endorsement of "three reputable persons who have known the applicant for at least three years

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[1] As they are closely related, the Attorney General has combined these sections for the Court's convenience.

preceding the date of application, and who shall certify . . . that the applicant is a person of good moral character and behavior." N.J.S.A. 2C:58-4(b).

An applicant must also satisfy several substantive criteria. He must "not [be] subject to any of the disabilities set forth in [2C:58-3(c)]," which turn on the applicant's age, mental and physical health, criminal history, and potential danger to public safety, among other considerations. N.J.S.A. 2C:58-4(c). He must show that he is "thoroughly familiar with the safe handling and use of handguns," ibid., which he can show by completing a training course, submitting qualification scores, or passing a use-of-force test, N.J.A.C. 13:54-2.4(b), (c). And, until the Supreme Court's decision in New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022), he had to establish "a justifiable need to carry a handgun" based on an "urgent necessity for self-protection." N.J.S.A. 2C:58-4(c).[2]

Second, after the application is submitted, the chief or the superintendent conducts the necessary background checks. Ibid. At the time of defendant's offense, if the chief or superintendent approved the application, the applicant had to present it to the Superior Court for review. N.J.S.A. 2C:58-4(d). (Today,

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[2] As noted below, N.J.S.A. 2C:58-3 and 58-4 were amended effective December 22, 2022. L. 2022, c. 131, §§ 2-3. These citations are to the statutes as they existed at the time of defendant's offense on June 3, 2021.

there is no such requirement; approval by the chief or superintendent is final.) If the Superior Court was likewise satisfied that all permit requirements were met, it issued an order granting the applicant a public carry permit. Ibid. If the court instead considered denying the permit, state law required it to first hold a hearing to allow the applicant "to proffer reasons why he satisfies the standard and respond to any questions from the judge." In re Carlstrom, 240 N.J. 563, 572 (2020). At the hearing, the court could take evidence and hear testimony to assess whether the applicant qualified for a permit. Id. at 572-73.

If the chief police officer or superintendent instead denies the application, then the applicant may request a hearing in the Superior Court within 30 days of the denial. N.J.S.A. 2C:58-4(e). In any case, a permit applicant dissatisfied with the decision of the Superior Court may appeal the decision "in accordance with law and the rules governing the courts of this State." Ibid.

New Jersey partially amended these laws after Defendant's arrest, but the State retained the requirement that individuals obtain a permit before carrying a gun in public. On June 23, 2022, the U.S. Supreme Court issued its decision in Bruen, holding that New York's "proper cause" requirement, which required individuals to establish a special need for self-defense to obtain a license to carry firearms in public, violated the right of "ordinary, law-abiding citizen[s] to carry handguns publicly for self-defense." 597 U.S. at 9-11. The Court noted that

other States' analogous requirements to show "special need for self-protection" to get public carry permits were also invalid. Id. at 12-15 & n.2.

But Bruen did not disturb other parts of the permitting laws. The majority in Bruen explicitly acknowledged that a wide range of States had "well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." Id. at 38. Beyond recognizing their existence, the Court made clear it had no doubt as to the validity of those "licensing regimes"—that is, while it found that States could not condition the grant of a public carry license on a showing of a special need for self-defense, it confirmed that States could still require an individual to obtain a permit to carry more broadly. Id. at 38 n.9; see also id. at 80 (Kavanaugh, J., concurring) (confirming that "the 6 States . . . potentially affected by today's decision," including New Jersey, "may continue to require licenses for carrying handguns for self-defense" without the heightened self-defense requirement). In other words, "Bruen['s] … holding did not effectuate a wholesale invalidation of the various states' gun licensing and permit systems." In re M.U.'s Application for a Handgun Purchase Permit, 475 N.J. Super. 148, 192 n.11 (App. Div. 2023).

The day after the Court issued Bruen, the New Jersey Attorney General issued a Law Enforcement Directive to implement the decision. See N.J. Att'y

Gen. L. Enf't Dir. 2022-07 (June 24, 2022) (AGa001-003).[3] The Directive emphasized that, "[w]hile Bruen impacts our justifiable need requirement, the ruling does not change any other aspect of New Jersey's public carry laws." (AGa001). The Directive reminded residents that "carrying a handgun without a permit is still illegal in this state, and law enforcement agencies must consider all other … mandatory requirements for obtaining a carry permit before granting an application." (AGa001-002). It further instructed that "the applicable law enforcement agency shall continue to ensure that the applicant satisfies all of the criteria of N.J.S.A. 2C:58-4d and N.J.A.C. 13:54-2.4, except that the applicant need not submit a written certification of justifiable need to carry a handgun." (AGa002).

In December 2022, the Legislature likewise amended the permitting laws in light of Bruen. Consistent with the Supreme Court's decision and Directive 2022-07, the statute formally eliminated the justifiable need requirement and revised a series of other requirements. See L. 2022, c. 131. But the amended statute did not change the basic requirement that a person in New Jersey obtain a permit before lawfully carrying a handgun in public, or that the person would need to satisfy a number of longstanding requirements before obtaining such a

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[3] "AGa" refers to the Attorney General's Appendix, "Pa" refers to the State's MLA Appendix, and "Db" refers to Defendant-Appellant's brief.

permit. See id.; N.J.S.A 2C:39-5(b). Chapter 131 retained the various disqualifications under N.J.S.A. 2C:58-3(c) and added that an applicant cannot receive a permit if he is subject to an outstanding arrest warrant or is a fugitive fleeing from another state. L. 2022, c.131, § 2. In addition, an applicant must be endorsed by four reputable persons who certify that he "has not engaged in any acts or made any statements that suggest the applicant is likely to engage in conduct, other than lawful self-defense, that would pose a danger to the applicant or others." Id. § 3. The new statute modified the safe-handling requirement by enumerating conditions for online instruction, in-person instruction, and target training. See id. § 2(d), (g). And it added requirements for how an individual who has obtained a permit may lawfully carry, such as requiring that the person carry the handgun in a holster. See id. §§ 2(d), 3, 4, 5.

B. New Jersey's Age-Related Firearm Regulations

In addition to restrictions on the ability of individuals under 21 to obtain firearm permits, New Jersey also imposes criminal penalties on the purchase or possession of firearms by persons under the age of 21. Under the current statutory regime, New Jersey prohibits individuals under 18 from "purchas[ing], barter[ing] or otherwise acquir[ing] a firearm" and from "possess[ing], carry[ing], fir[ing] or us[ing] a firearm" at all. N.J.S.A. 2C:58-6.1(a)-(b).

When a person turns 18, New Jersey continues to generally prohibit possession or use of firearms, but permits a broader range of exceptions. First, a person under the age of 21 may not "purchase, barter or otherwise acquire a handgun, unless the person is authorized to possess the handgun in connection with the performance of official duties under the provisions of N.J.S.[A.] 2C:39-6." N.J.S.A. 2C:58-6.1(a). Such official duties include, among others, responsibilities related to U.S. military or National Guard service. N.J.S.A. 2C:39-6. In addition, a person under 21 may not "possess, carry, fire or use a handgun except under [certain specified] circumstances." N.J.S.A. 2C:58-6.1(b). One such exception is when the 18-to-20-year-old is "[i]n the actual presence or under the direct supervision of his father, mother or guardian, or some other person who holds a permit to carry a handgun or a firearms purchaser identification card, as the case may be." N.J.S.A. 2C:58-6.1(b)(1). Another exception covers when an individual carries a handgun "[f]or the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision." N.J.S.A. 2C:58-6.1(b)(2). Other exceptions include competitions, target practice, training, and hunting with a valid license and training. N.J.S.A. 2C:58-6.1(b)(3)-(4).

C. Factual Background

On June 3, 2021, Defendant—then nineteen years old—was found in public with a firearm. (Pa83-84). Defendant concedes that he "did not have a permit to carry a handgun." (Db1); see also (Pa96). On July 7, 2022, a grand jury indicted Defendant with one count of second-degree possession of a weapon for an unlawful purpose, in violation of N.J.S.A. 2C:39-4a(1) (count one); one count of second-degree unlawful possession of a weapon without a permit, in violation of N.J.S.A. 2C:39-5b(1) (count two); and one count of fourth-degree possession of a firearm by a minor, in violation of N.J.S.A. 2C:58-6.1 (count three). (Pa1-2).

Defendant moved to dismiss counts two and three of the indictment as unconstitutional under the Second Amendment. (Pa5). The court granted in part and denied in part the motion. (Pa82). The court denied Defendant's motion to dismiss count two charging unlawful possession of a weapon under N.J.S.A. 2C:39-5(b)(1), finding that, "[l]ike in Wade, [Defendant] did not apply for [a] handgun permit" and thus "Defendant lack[ed] standing to challenge" the permitting statute. (Pa96). However, the court granted the motion to dismiss count three charging possession of a firearm by a minor under N.J.S.A. 2C:58-6.1, finding that "Defendant ha[d] standing to challenge the statute" under the

futility exception and that the statute was unconstitutional under Bruen. (Pa97-103).

On April 10, 2025, this Court granted the State's motion for a stay and granted the parties' motions for leave to appeal the motion court's order on Defendant's motion to dismiss. In addition, the Court consolidated the parties' appeals. The Attorney General moved to appear as amicus curiae and to file this brief on October 6, 2025.

LEGAL ARGUMENT

POINT I
DEFENDANT'S COLLATERAL ATTACK ON NEW JERSEY'S GUN PERMITTING LAW IS FORECLOSED BY WADE.

Wade controls the motion court's denial of the motion to dismiss count two, charging him with unlawful possession of a firearm without a permit. As in Wade, Defendant possessed a firearm in public without a permit in violation of N.J.S.A. 2C:39-5(b)(1). State v. Wade, 476 N.J. Super. 490, 495 (App. Div. 2023); (Db1; Pa96). And as in Wade, Defendant never applied for a permit. 476 N.J. Super. at 495; (Pa96). The motion court thus correctly applied "binding precedent" with "the same or indistinguishable fact pattern" when it denied defendant's motion to dismiss count two. State v. Farmer, 48 N.J. 145, 183 (1966); see (Pa96). This Court should do the same.

As this Court held in Wade, it is well settled that "to establish standing to challenge an allegedly unconstitutional permit statute, the challenger must have applied for a permit or license under the statute." Wade, 476 N.J. Super. at 505-06 (collecting cases); see also, e.g., Borough of Collingswood v. Ringgold, 66 N.J. 350, 364 (1975); United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012); Westfall v. Miller, 77 F.3d 868, 870-72 (5th Cir. 1996); Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022). Indeed, our courts have recently and repeatedly denied defendants' ability to collaterally attack New Jersey's gun permit laws when they have not applied for a permit, including in challenges to the very age restriction at issue in this case.[4] State v. Pinkett, No. A-3121-23, 2025 WL 1260551, at *5-6 (App. Div. May 1, 2025) (AGa007-008) (rejecting challenge to age restriction for obtaining a permit under the same reasoning as Wade); State v. Gilliard, No. A-1513-21, 2024 WL 502337, at *8 (App. Div. Feb. 9, 2024) (AGa015-016) (same); see also, e.g., Wade, 476 N.J. Super. at 505-08; State v. Purvis, No. A-3064-22, 2025 WL 573685, at *4-7 (App. Div. Feb. 21, 2025) (AGa020-022) (relying on Wade to conclude the defendant "ha[d] no standing to challenge New Jersey's gun permitting scheme" as

[4] Though unpublished opinions are not binding on the Court, R. 1:36-3, such opinions may serve as persuasive authority. See Nat'l Union Fire Ins. Co. of Pittsburgh v. Jeffers, 381 N.J. Super. 13, 18 (App. Div. 2005). The Attorney General is not aware of any contrary unpublished opinions. R. 1:36-3.

unconstitutional); State v. Byrd, No. A-1665-21, 2025 WL 1155923, at *10 (App. Div. Apr. 21, 2025) (AGa030-031) (same); State v. Emanuel, No. A-2274-23, 2024 WL 4511194, at *4 (App. Div. Oct. 17, 2024), leave to appeal denied, 260 N.J. 7 (2025) (AGa039-040) (same).

This requirement is based on the bedrock principle 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." Wade, 476 N.J. Super. at 507 (discussing Ringgold, 66 N.J. 350). Importantly, this Court in Wade concluded that "even if [the challengers] had standing to make a constitutional challenge," the concededly unconstitutional justifiable-need provision was severable from the rest of the permitting law. Id. at 508-10. So the "remaining provisions" of the permitting laws were "constitutional and enforceable at the time of [challengers'] arrest." Id. at 511. Said another way, even though one of the permitting criteria in effect at the time—justifiable need—was unconstitutional, multiple other criteria were still valid, and thus defendants still could not have carried a firearm in public without satisfying them first.

This principle is not new. Indeed, as discussed in Wade, id. at 507-08, our Supreme Court addressed a similar issue in Borough of Collingswood v. Ringgold, which involved a constitutional challenge to a municipal ordinance

prohibiting door-to-door canvassing or soliciting without a permit. 66 N.J. at 354. While the Court found that the ordinance granted officials "too broad discretion" to deny a permit on the basis of a prior conviction or reports of unethical business practices, it upheld the remainder of the permitting scheme. Id. at 364, 366-67, 369. This included the requirement to obtain a permit in the first place. Id. at 371. So the Court affirmed defendants' convictions because defendants had never "attempted to register as required." Id. at 364, 370-71.

There are good reasons for this rule. Allowing an individual to "proceed without the required permits" based on personal disagreement with the permitting law and then challenge the law only after he is caught violating it would be "apt to cause breaches of the peace or create public dangers" and to undermine people's incentive to comply with the law. Poulos v. State of N.H., 345 U.S. 395, 409 (1953). This is especially troubling when the permitting scheme is in place to protect the public safety against the "risk of serious injury from accident and misuse" associated with handguns. In re Wheeler, 433 N.J. Super. 560, 584 (App. Div. 2013). If Defendant in good faith believed that the public carry permitting law was unconstitutional, the proper way to challenge it was through a civil suit in state or federal court after the permit was denied, not breaking the law and then attempting to challenge it collaterally through his criminal prosecution. See Poulos, 345 U.S. at 409 n.13 ("[D]efendants are given

the choice of complying with the regulation, or not engaging in the regulated activity, or, before they act, petitioning the appropriate civil tribunals for a modification of or exception from the regulation.").

While defendant attempts to distinguish Wade by claiming he is facially challenging the age criterion, (Db20-22), that argument misunderstands the law. When only one provision of a larger scheme is invalid, a defendant is nonetheless subject to the rest of the law. See Wade, 476 N.J. Super. at 507-08; Ringgold, 66 N.J. at 364. To be sure, the Attorney General has consistently acknowledged that a challenger may collaterally attack a permitting law that is "completely invalid"—i.e., if all its criteria are unlawful. City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 89 (1958) (citing Smith v. Cahoon, 283 U.S. 553, 562 (1931); Staub v. City of Baxley, 355 U.S. 313, 319 (1958)). That makes sense; if the entire permitting process is invalid, it is "as though the[law] did not exist," and there are no remaining provisions of the law left for the defendant to violate. Poulos, 345 U.S. at 410-14 (discussing cases).

But as Wade explains, that exception has no bearing here. Where only a discrete portion of a broader permitting scheme is (purportedly) unconstitutional, then an individual is still required to seek a permit to show that he satisfies the remaining permitting criteria. Wade, 476 N.J. Super. at 507. Put differently, just as in Wade, the alleged unconstitutionality of the provision here

would not exempt Defendant from compliance with the remainder of the permitting statute. Id. at 507-08. This Court held in Wade that the provisions of New Jersey's gun permitting schemes are severable, with various criteria that are "independent from, and serve[] purposes separate from," one another. Id. at 509-10. So even if the age criterion were invalid, the rest of the permitting requirements remained "constitutional and enforceable at the time of [D]efendant['s] arrest." Id. at 511. In other words, "carrying guns in public [is] still … regulated and subject to a permit requirement," and the State may continue to enforce the remaining permit provisions against Defendant.[5] Id. at 510-11.

Although Defendant complains that he could not have gotten a permit in light of the age restriction, that argument has been roundly rejected by this Court's prior cases. See, e.g., Wade, 476 N.J. Super. at 506-07 (rejecting futility argument where "the record d[id] not reflect that it would have been futile for

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[5] Defendant gets nowhere by citing three U.S. Supreme Court Justices' statements on a denial of certiorari. See (Db24-26) (citing Wilson v. Hawaii, 145 S. Ct. 18 (2024)); see also (Pa91-92). An "opinion[] accompanying the denial of certiorari cannot have the same effect as decisions on the merits" and therefore cannot serve as a "basis for overruling binding … precedent" of this Court. United States v. McKinney, 60 F.4th 188, 193 n.1 (4th Cir. 2023) (quoting Teague v. Lane, 489 U.S. 288, 296 (1989)); cf. State v. D'Agostino, 203 N.J. Super. 69, 76-77 (Law. Div. 1984). Not to mention that there is little indication any of the remaining six Justices would agree with the views expressed by those members.

[defendants] to have applied for a permit even in the absence of the justifiable need provision"); Pinkett, 2025 WL 1260551, at *5-6 (AGa008) (same for challenge to age criterion). Defendant argues that because he was "statutorily ineligible" for a carry license due to his age, there was "no doubt" that he would be denied a permit. (Db11; Db15). But Defendant's ineligibility under one provision of the State's permitting scheme that he claims is invalid does not give him carte blanche to violate the other, valid provisions of that law. See Wade, 476 N.J. Super. at 506-07. As explained in Wade, the other permitting criteria are "independent from, and serve[] purposes separate from" the age restriction. Id. at 509; see also supra at 5, 14. So, "[t]o receive a permit, [Defendant] would have been required to demonstrate that he was 'thoroughly familiar with the safe handling and use of handguns.'" Wade, 476 N.J. Super. at 506 (quoting N.J.S.A. 2C:58-4(c) (2018)). And "he would have had to 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.'" Ibid. (quoting N.J.S.A. 2C:58-4(b) (2018)).

Yet as in Wade, "[n]othing in the record establishes that [Defendant] would have been able to comply with those requirements." Id. at 506-07. Plus, unlike in Wade, Defendant here did not certify that he "had no other disqualifying factors." Id. at 506; see also N.J.S.A. 2C:58-4(c) (2018)

(delineating certain conditions under which an individual shall not be issued a permit). "Consequently, the record does not reflect that it would have been futile for [Defendant] to have applied for a permit even in the absence of the" challenged provision. Wade, 476 N.J. Super. at 507.

Importantly, Defendant overlooks another avenue that would have lawfully addressed his concern: he could have filed a civil suit challenging the age criterion after his permit was denied, rather than choosing to break the law by disregarding the permitting requirement outright. See Poulos, 345 U.S. at 409 n.13 (explaining that challengers, "before they act," can "petition[] the appropriate civil tribunals for a modification of or exception from the regulation"). Indeed, that is how Bruen and Heller arose: through civil suits by individuals who complied with the law until they won in court. See Bruen, 597 U.S. at 16; Dist. of Columbia v. Heller, 554 U.S. 570, 575-76 (2008). And multiple pending challenges to other age restrictions arose in the same manner. See infra Point II (citing various pre-enforcement challenges). If Defendant viewed the age restriction as unconstitutional, he could have challenged it in a civil suit after his permit application was denied, then re-applied for a permit to satisfy the remaining criteria if he prevailed. But he could not "ignore [the] statute and presume that [he] would have been granted a permit but for one

potentially invalid provision of [the] permit statute." Wade, 476 N.J. Super. at 507 (emphasis added).

In the end, Wade compels the outcome here, and the motion court correctly found that Defendant lacked standing to challenge count two. See Farmer, 48 N.J. at 183 (explaining that courts have an "obligation to follow" "binding precedent … [with] the same or indistinguishable fact pattern"); (Pa96). Just as in Wade, Defendant never applied for a permit, yet carried a firearm in public anyway in violation of N.J.S.A. 2C:39-5(b)(1). 476 N.J. Super. at 495; (Db1; Pa96). That alone is enough to resolve this collateral attack on New Jersey's gun permitting laws.

POINT II
NEW JERSEY'S RESTRICTIONS ON FIREARM POSSESSION BY INDIVIDUALS YOUNGER THAN 21 YEARS OLD ARE CONSTITUTIONAL.

The State's restrictions on firearm possession by individuals younger than twenty-one years old are constitutional.[6] Although the Second Amendment

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[6] The motion court erred in applying a Wade analysis to count three and then finding that Defendant satisfied the futility exception. (Pa96-97). Count three does not hinge on whether Defendant applied for a permit. N.J.S.A. 2C:58-6.1. So a Wade analysis—used when someone was required to obtain a permit—is inapplicable. And, for the reasons discussed above, Defendant cannot successfully argue futility under Wade anyway. Regardless, any error in the motion court's standing analysis was harmless because it reached the merits of Defendant's challenge to count three. R. 2:10-2.

protects the right to keep and bear arms, it is "not unlimited." Dist. of Columbia v. Heller, 554 U.S. 570, 626 (2008). Instead, governments may still adopt firearm-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 U.S. 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) (citation omitted). Instead, the question that courts must ask is "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." Ibid.; see also id. at 702 (Sotomayor, J., concurring) (noting a "regulation 'must comport with the principles underlying the Second Amendment,' but need not have a precise historical match" (citation omitted)); id. at 740 (Barrett, J., concurring) ("Historical regulations reveal a principle, not a mold."). "Why and how the regulation burdens the right are central to this inquiry." Id. at 692.

New Jersey law, which limits the ability of individuals under 21 years of age to purchase, possess, or publicly carry firearms, N.J.S.A. 2C:58-6.1; 2C:58-3(c); 2C:58-4(c), is consistent with that historical tradition. Throughout our Nation's history, there have consistently been limitations on 18-to-20-year-olds'

ability to access firearms. First, the Founding generation—concerned about minors' lack of judgment and maturity—imposed widespread common-law restrictions on minors' ability to access firearms, absent parental consent. Second, states in the nineteenth century continued that tradition, enacting statutory restrictions on providing firearms to minors, motivated by the same reasons as the Founding generation. Third, this tradition has remained consistent to today, with modern laws prohibiting those younger than 21 from possessing firearms. New Jersey's law is consistent with this continuous historical tradition, motivated by the same concerns about the judgment and maturity of those under 21 and using similar means—restricting purchase and possession of firearms unless the 18-to-20-year-old is under the supervision of a parent or responsible adult, performing military duties, or engaging in certain other exceptions.

A. The Founding Generation Restricted Minors' Firearm Access Through Common-Law Restraints.

The longstanding historical tradition of restricting access to firearms of those younger than 21 years dates back to the Founding. National Rifle Association v. Bondi. 133 F.4th 1108, 1117-21 (11th Cir. 2025) (en banc), petition for cert. filed, No. 24-1185 (May 16, 2025); McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 140 F.4th 568, 575-78 (4th Cir. 2025), petition for cert. filed, No. 25-24 (July 3, 2025); Jones v. Bonta, 705 F.

Supp. 3d 1121, 1135 (S.D. Cal. 2023); see also United States v. Rene E., 583 F.3d 8, 12 (1st Cir. 2009) (finding a "longstanding tradition of prohibiting juveniles from both receiving and possessing handguns"). Restrictions imposed on minors by the Founding Generation were motivated by a view that individuals under 21 lacked maturity and reason. Therefore, through the common law, they restricted minors' access to firearms absent consent of a parent or other responsible adult.

1. Why the Founding Generation Restricted Minors' Firearm Access: Concern About Minors' Maturity and Reason Before the Age of 21 and Extensive Common-Law Limits on the Rights of Minors

Restrictions on the ability of minors to access firearms were motivated by the Founders' view that those under 21 "lacked the reason and judgment necessary to be trusted with legal rights." Bondi, 133 F. 4th at 1117; see also 2 James Kent, Commentaries on American Law 233 (2d ed. 1832) (explaining that 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"). 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, Nat'l Archives, available at perma.cc/CE79-RA8K. 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, available at perma.cc/QJ7B-D4J4. Thomas Jefferson even compared "infants" to "maniacs" and "drunkards" as groups who "cannot take care of themselves." Letter from Thomas Jefferson to Samuel Smith, May 3, 1823, Nat'l Archives, available at perma.cc/YD6X-H6PN.

Because of this widespread social understanding, until a minor reached 21 (the age of majority), they were "an 'infant' or a 'minor' in the eyes of the law."[7] Bondi, 133 F.4th at 1117 (cleaned up) (quoting 1 Zephaniah Swift, A System of the Laws of the State of Connecticut 213 (1795)); see also 1 William Blackstone, Commentaries on the Laws of England 463 (George Sharswood ed., 1893) ("[F]ull age in male or female is twenty-one years, … who till that time is an infant, and so styled in law."); Samuel Johnson, I'nfant. n.s., A Dictionary of the English Language (1773), available at perma.cc/Q4JZ-DRGE (defining infant, in law, to mean "[a] young person to the age of one and twenty").

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[7] In fact, the view of 21 as the age of majority predates the Founding, tracing back to early English common law. Bondi, 133 F.4th at 1117 (citing T. E. James, The Age of Majority, 4 AM. J. Legal Hist. 22, 30 (1960)). So, even prior to the Founding, the colonies had nearly universally adopted 21 as the age of majority. Id. (citing Vivian E. Hamilton, Adulthood in Law and Culture, 91 Tul. L. Rev. 55, 64 (2016)).

As such, "authority over their lives rested with other decision-makers," including parents, educators, and militia superiors. Megan Walsh & Saul Cornell, Age Restrictions and the Right to Keep and Bear Arms, 1791-1868, 108 Minn. L. Rev. 3049, 3068 (2024); see also Bondi, 133 F.4th at 1117-18; Chavez v. Bonta, 773 F. Supp. 3d 1028, 1040 (S.D. Cal. 2025). So parents "'receive[d] the profits' of their children's labor," Bondi, 133 F.4th at 1117 (alteration in original) (quoting 1 Blackstone, supra, at 453), and "controlled children's access to information, including books," ibid. (citing Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 831–32 (2011) (Thomas, J., dissenting)). Minors also "could not sue to vindicate their rights without joining their guardians or some other 'next friend' who was not their guardian." Ibid. (quoting 1 Blackstone, supra, at 464). "Nor could they enlist in the military without parental consent." Ibid. (citing Act of March 16, 1802, 2 Stat. 132, 135). And minors were also unable to exercise "the right of petition," vote, or serve on juries. Walsh & Cornell, supra, at 3064-65.

One of "the many legal disabilities that 'secured minors from hurting themselves by their own improvident acts'" was minors' lack of "capacity to contract and to purchase goods on account." Bondi, 133 F.4th at 1118 (cleaned up) (quoting 1 Blackstone, supra, at 464-65; and citing William Macpherson, A Treatise on the Law Relating To Infants 303 (1843)); accord McCoy, 140 F.4th

at 575-76; see also Walsh & Cornell, supra at 3057, 3065. All contracts with minors, other than contracts for "necessaries,"[8] were "either void or voidable" because of minor's lack of "judgment and discretion" to enter into "transactions with others." Bondi, 133 F.4th at 1118 (quoting 1 Samuel Comyn, A Treatise of the Law Relative to Contracts and Agreements Not Under Seal 148 (1809)). In fact, "[b]y the early nineteenth century, voidability was applied so 'broadly' that 'it became almost impossible for children to form any contracts.'" Ibid. (quoting Holly Brewer, By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority 271 (2005)).

2. How the Founding Generation Limited Minors' Access to Firearms: Common-Law Restrictions, Militia Laws, and University Regulations

At the Founding, these common-law limits on minors' rights generally prevented individuals under 21 years of age from obtaining firearms on the same terms as adults, permitting firearm access only with the consent of a responsible adult such as a parent or military supervisor. First, the incapacity to contract stopped minors from being able to obtain firearms for themselves. Ibid. The

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[8] Necessaries included goods like food, clothing, education, and lodging, but importantly, did not include firearms like "pistols." Bondi, 133 F.4th at 1118 (citing Saunders Glover & Co. v. Ott's Adm'r, 12 S.C.L. 572, 572 (S.C. Const. App. 1822)). And notably, only minors who did not live with a parent or guardian were able to enter into such contracts. Ibid.

Founding era was a "credit economy," and "credit rather than cash payment was the rule everywhere." McCoy, 140 F.4th at 576 (quoting Carl Bridenbaugh, The Colonial Craftsman 153-54 (1961)). Because it was so common to purchase goods on credit, buying goods—including firearms—"required the ability to contract." Bondi, 133 F.4th at 1118. Minors were "effectively unable to form contracts" because the voidability of such contracts would leave sellers with a "high risk" of being unable to recover their losses on goods sold to minors. Ibid. (quoting Brewer, supra, at 271). Nor could minors purchase a firearm with cash. McCoy, 140 F.4th at 576. "[C]oin was scarce during the [F]ounding era." Ibid. (citing Bridenbaugh, supra, at 153-54). And minors "lacked disposable income to otherwise purchase firearms because they either worked for their parents for no wages or any wages earned belonged to their parents." Bondi, 133 F.4th at 1118 (citing Robert J. Spitzer, Historical Weapons Restrictions on Minors, 76 Rutgers U. L. Rev.: Commentaries 101, 108 (2024); 1 Blackstone, supra, at 453).

Second, Founding-era militia laws similarly underscore these principles. Several States excluded 18-to-20-year-olds from militia service entirely, including New Jersey. See Walsh & Cornell, supra, at 3084 (citing Act of Nov. 6, 1829, § 1, 1829 N.J. Laws 3, 3; Kan. Const. of 1859, art. VIII, § 1; Act of Mar. 12, 1844, § 2, 1843 Ohio Laws 53, 53); 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 enrolment in the militia, all persons under twenty-one ...."). Other laws allowed such minors in the militia. For example, the "Second Congress passed the Militia Act to enroll 'able-bodied' men between the ages of 18 and 45 in the militia" and required such individuals to furnish their own arms. Bondi, 133 F.4th at 1119 (citing Act of May 8, 1792, 1 Stat. 271, 271). But in debates, members of Congress recognized minors' inability to provide firearms for themselves, discussing "'by what means minors were to provide themselves with the requisite articles' for militia service." Ibid. (citing 2 Joseph Gales, The Debates and Proceedings in the Congress of the United States 1854-55 (1834)).

States therefore took different approaches to the "problem of providing minors the firearms necessary for militia service" when such minors lacked the capacity to purchase firearms for themselves. Ibid. Minors were generally exempted from having to furnish their own firearms. See ibid. (collecting state laws and explaining the various approaches); Walsh & Cornell, supra, at 3080-82. Instead, "[p]arents, guardians, or, at times, the local government were responsible in the event a minor appeared without sufficient weaponry." Walsh & Cornell, supra, at 3080; see also Bondi, 133 F.4th at 1119-20 (explaining that some states required parents to provide minors' firearms, and others "implicitly

required" them to do so by holding "parents liable for minors' fines related to militia service, including the failure to obtain a firearm"). Indeed, "[b]y 1826, at least 21 of the 24 states admitted to the Union—representing roughly 89 percent of the population—had enacted laws that placed the onus on parents to provide minors with firearms for militia service." Bondi, 133 F.4th at 1120 (citation omitted); accord McCoy, 140 F.4th at 578. These provisions thus underscore that minors lacked full access to firearms on the same terms as adults.

Third, university regulations from that period, which tightly restricted students' access to firearms, are further evidence "that minors needed parental consent to access firearms." Bondi, 133 F.4th at 1120; accord Walsh & Cornell, supra, at 3069-72 (explaining that the "tight regulation of arms in colleges … offer[s] one of the strongest examples of the Founding generation's belief that minors could not be trusted with guns when not supervised by adults"); see also Spitzer, supra, at 118 ("[P]olicies restricting students' access to weapons were common, if not ubiquitous, … in the 1700s and 1800s …."). For instance, the University of Georgia (founded in 1785) decreed that "no student shall be allowed to keep any gun, pistol, … or any other offensive weapon," even when they were off campus. The Minutes of the Senate Academicus of the State of Georgia, 1799-1842, available at perma.cc/7RJR-9JYR; 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."), available at tinyurl.com/2p8mx5zr. 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), available at tinyurl.com/58kmj2tj. Like the militia laws, these "regulations of student gun ownership and possession during and after the Founding era" thus "confirm that the public understanding of the Second Amendment accepted age limitations." Jones, 705 F. Supp. 3d at 1137 (collecting other examples).

Importantly, Founding-era militia laws and university regulations must be understood in the context of "th[e] predominant common-law regime" governing minors at the Founding. Bondi, 133 F.4th at 1128; see also id. at 1127 (explaining that the Supreme Court in Rahimi relied on "entrenched" common-law principles "that were not limited to firearms" in considering the surety laws (citing 602 U.S. at 695)); supra at 24-27 (discussing the common-law regime limiting minors' access to firearms at the Founding). During the Founding era, the "unwritten law" was the "basis of our jurisprudence" and "furnishe[d] the

rules by which public and private rights [we]re established and secured, the social relations of all persons regulated, their rights, duties, and obligations determined, and all violations of duty redressed and punished." Id. at 1128 (quoting Commonwealth v. Chapman, 54 Mass. (13 Met.) 68, 69 (1847)). In contrast, the "written law" was seen as but a "partial[] and impracticable system." Ibid. (quoting Chapman, 54 Mass. at 69); see also Chavez, 773 F. Supp. 3d at 1041 ("Because of the common-law tradition, statutes were a 'comparatively infrequent' source of law through the mid-19th century." (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 3 (2012))).

So "consider[ing] state militia laws and university regulations without reference to the common law at the Founding" yields a hollow understanding of this Nation's early legal tradition. Bondi, 133 F.4th at 1128. Thus, courts—such as the trial court below—that "fail[] to consider the background common-law regime" that restricted minors' ability to purchase or access firearms "misapprehend[] the import of these written laws." Id. at 1129; see (Pa99) (requiring "statutory support showing minors were not permitted to carry their own guns" (emphasis added)); (Db35); see also Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 127 F.4th 583, 596-99 (5th Cir. 2025) (considering state militia laws and university regulations without reference to

Founding-era common law); cf. Lara v. Comm'r Pa. State Police, 125 F.4th 428, 443-45 (3rd Cir. 2025) (considering the Second Militia Act without reference to the broader common-law scheme presented here and noting that the government did not "point to a single founding-era statute imposing restrictions on the freedom of 18-to-20-year-olds to carry guns" (emphasis added)). Properly considered against the background common-law scheme at the Founding, the militia laws and university regulations confirm that minors had limited access to firearms absent the consent of a responsible adult.

In summary, the Founding Era's "legal treatment of minors" confirms that, "[d]uring the Founding era, minors generally lacked unrestricted access to firearms." Bondi, 133 F.4th at 1118, 1120. First, minors under the age of 21 "generally could not purchase firearms because they lacked the judgment and discretion to enter contracts and to receive the wages of their labor." Id. at 1118. "Second, minors were subject to the power of their parents and depended on their parents' consent to exercise rights and deal with others in society." Ibid. If minors had an established right to keep and bear arms on the same terms as adults, it would be odd for militia laws to require parents to instead obtain arms for them or to permit parents or other responsible adults (like universities) to restrict their access to firearms. Put simply, in light of the restrictions imposed and the motivations for doing so, "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." Rene E., 583 F.3d at 15.

B. In the Nineteenth Century, States Reinforced and Expanded Restrictions on Minors' Firearm Access Via Statute.

Restrictions on firearm possession by individuals 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"); Bondi, 133 F.4th at 1121 ("Mid-to-late-nineteenth-century laws consistent with these principles further establish that our law historically precluded the purchase of firearms by individuals under the age of 21."); McCoy, 140 F.4th at 578 (noting that nineteenth-century laws "reinforced" its analysis). States at this time were motivated by similar reasons to those at the Founding, exacerbated by changes in technology that increased the portability and availability of firearms. States thus increasingly imposed statutory prohibitions on giving or selling firearms to minors.

1. Why States Restricted Minors' Firearm Access in the Nineteenth Century: Concern About Abuse Due To More Readily Available Firearms

Nineteenth-century laws restricting minors' access to firearms were motivated by "a familiar reason: a concern that youths lacked … maturity and judgment." McCoy, 140 F.4th at 579. And this concern was even more acute given "dramatic technological changes," Bruen, 597 U.S. at 27, that

"contributed to [a] rise in interpersonal violence" in the nineteenth century, 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'" (citation omitted)); see also McCoy, 140 F.4th at 579 (explaining that handgun ownership only became prevalent in the mid-nineteenth century). Thus, "civilians"—including minors—"had easy access to more portable and precise firearms than ever before." Bianchi, 111 F.4th 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.

2. How States Restricted Minors' Firearm Access in the Nineteenth Century: Statutory Prohibitions on Selling or Giving Firearms to 21-Year-Olds

As a result of those concerns, during the nineteenth century, States increasingly passed statutes to reinforce and expand on Founding-era restrictions on minors' access to firearms. See Bondi, 133 F.4th at 1122 ("The law of the Founding era, which restricted the purchase of firearms by minors, continued into the nineteenth century in the form of statutory prohibitions."). 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"), available at tinyurl.com/mr3kvnan; 1856 Tenn. Acts 92, 92 (similarly prohibiting selling, giving, or lending "to any minor a pistol, bowie-knife, dirk or Arkansas tooth-pick"), available at tinyurl.com/3e4nfn6n; Act of Jan. 12, 1860, § 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"), available at tinyurl.com/4ecdcrdn. 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 an infant's "minority" lasted until "he attains the age of twenty-one"); see also Bondi, 133 F.4th at 1122 (explaining that the age of majority remained 21 "from the country's founding well into the twentieth century"[9] (quoting Vivian E. Hamilton, Adulthood in Law and

[9] The mere fact that New Jersey "has lowered the age of majority for some rights does not mean that it has less power to restrict the rights of minors than it did at the Founding." Bondi, 133 F.4th at 1125. "[T]hat [New Jersey] distinguishes between the purchase of a firearm and other rights is consistent with the Founding-era legal regime, which also distinguished between when individuals

Culture, 91 Tul. L. Rev. 55, 64 (2016))). In other words, were Defendant correct, New Jersey could not restrict firearms in 2025 in the very manner multiple states restricted before the Civil War, precisely the opposite of what Bruen and Rahimi suggest.

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 nineteenth century, at least 19 states and the District of Columbia—representing roughly 55 percent of the population of states admitted to the Union—restricted the purchase or use of certain firearms by minors." Bondi, 133 F.4th at 1122 (citation omitted); see 1856 Ala. Acts 17; 16 Del. Laws 716-17 (1881); 27 Stat. 116-17 (1892) (District of Columbia) 1876 Ga. Laws 112; 1881 Ill. Laws 73; 1875 Ind. Acts 59; 1884 Iowa Acts 86; 1883

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under the age of 21 could exercise rights based on need and maturity." Id. at 1126. To rule otherwise would be to "hold that the Second Amendment turns on an evolving standard of adulthood that is divorced from the text of the Amendment and from our regulatory tradition," id. at 1125, or worse, to call into question whether any age restriction on firearms is constitutional, id. at 1127-28; see also McCoy, 140 F.4th at 580-82 (Heytens, J., concurring).

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. Acts 92; 1897 Tex. Gen. Laws 221-22; 1882 W. Va. Acts 421-22; 1883 Wis. Sess. Laws 290; 1890 Wyo. Sess. Laws 140. The majority of those laws "prohibited all methods of providing arms to individuals under the age of 21," while "only a few … allowed parents to provide arms to their children." Bondi, 133 F.4th at 1121 (emphasis added). And these laws "carried the threat of criminal penalties." Id. at 1122 (explaining that twelve jurisdictions threatened imprisonment, while eight imposed only fines). So while the Founding era "restricted the purchase of firearms by minors" through the common law, "statutes increasingly did the work" in the nineteenth century as "the common-law regime became less effective at restricting minors' access to firearms." Ibid.

The motion court improperly downplayed these nineteenth-century analogues. (Pa100-01); see also (Db36). As the lopsided majority in Rahimi explained, if there is a consistent tradition across time periods—even if the precise evidence available at the Founding or at Reconstruction differs—it is "unnecessary to decide" which takes precedence, and courts may consider sources from both eras. 602 U.S. at 692 n.1; see id. at 691-92 ("[T]he Second Amendment permits more than just those regulations identical to ones that could

be found in 1791."); id. at 724 (Kavanaugh, J., concurring) (emphasizing need for judges to consider the broader tradition, "at least when reasonably consistent and longstanding," to interpret "vague constitutional text"). Indeed, in this case, the principle that States could restrict access to firearms by those under 21 was strikingly consistent across the Founding and Reconstruction, even if the precise approach to those restrictions developed over the nineteenth century. The motion court thus erred in foreclosing this important source of history.

C. Modern Regulations Continue the Tradition of Restricting Firearm Access By Those Under 21.

This historical tradition continues to the present, with modern laws mirroring their predecessors' rationale for and methods of restricting firearm access of individuals under 21. See McCoy, 140 F.4th at 579 (recognizing that "widespread [modern] restrictions on handgun sales to those under 21 are testament to the continuity of th[is] historical tradition").

Since the 1960s, the U.S. Congress has limited the availability of handguns to minors by prohibiting commercial sale of handguns to 18-to-20-year-olds, see 18 U.S.C. § 922(b)(1), (c)(1), after judging that minor's 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 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 [young people's] tendency toward wild, and sometimes irrational behavior that much more violent, that much more deadly"). And 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 35 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)(2); Ark. Code § 5-73-309(3); Cal. Penal Code §§ 26150(a)(2), 26155(a)(2), 26170(a)(2); Colo. Rev. Stat. § 18-12-203(1)(b); Conn. Gen. Stat. §§ 29-28(b)(10), 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)(6); 430 Ill. Comp. Stat. 65/2(a)(1), 65/4(a)(2), 66/25(1); 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); Md. Code Ann., Pub. Safety §§ 5-101(r), 5-133(d); Mich. Comp. Laws § 28.425b(7)(a); 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; 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)(6); Or. Rev. Stat. § 166.291(1)(b); 18 Pa. Cons. Stat. § 6109(b); R.I. Gen. Laws §§ 11-47-11, 11-47-18; Utah Code §§ 76-10-505, 76-10-523(5); Va. Code § 18.2-308.02(A); Wash. Rev. Code §§ 9.41.070, 9.41.240(1)(c); Wis. Stat. § 175.60(3)(a); Wyo. Stat. § 6-8-104(a)(iv), (b)(ii).

D. New Jersey's Prohibition on Firearm Purchase or Possession Under the Age of 21 Is Consistent with the "Why" and "How" of This Nation's Historical Tradition of Firearm Regulation.

The history discussed above leads to a "straightforward conclusion": New Jersey's laws prohibiting minors from purchasing or possessing firearms are consistent with the Nation's historical tradition of firearm regulation. See Bondi, 133 F.4th at 1122; see also Bruen, 597 U.S. at 19. Like this Nation's historical firearm regulations—and those upheld in Bondi and McCoy—because those under the age of 21 "have yet to reach the age of reason," Bondi, 133 F.4th at 1122; accord McCoy, 140 F.4th at 577, New Jersey law prohibits them from purchasing or possessing firearms, but it allows them to possess firearms under the supervision of a parent, responsible adult, or the military and permits them to acquire firearms in the performance of official duties such as military service, N.J.S.A. 2C:58-6.1(a)-(b); see N.J.S.A. 2C:39-5(b)(1); N.J.S.A. 2C:58-3(c)(4); see also Bondi, 133 F.4th at 1122. New Jersey's firearm laws are thus closely

connected to early prohibitions on access to firearms under the age of 21, mirroring both "why" and "how" the Founding generation and nineteenth-century legislators regulated minors' firearm access. See Rahimi, 602 U.S. at 692.

1. New Jersey's Law Shares the "Why" of Our Nation's Historical Firearm Regulations.

New Jersey's law shares the "why" of these historical limitations: "individuals under the age of 21 have not reached the age of reason and lack the judgment and discretion to purchase firearms responsibly." Bondi, 133 F.4th at 1122-23; accord McCoy, 140 F.4th at 577; see also Rahimi, 602 U.S. at 692. New Jersey restricts firearm purchase and possession by individuals under the age of 21 "[t]o reduce the likelihood that [they]… would lawfully purchase a firearm and use it to inflict grievous harm on [themselves] or others." Bondi, 133 F.4th at 1123; see N.J.S.A. 2C:58-6.1(a)-(b); N.J.S.A. 2C:39-5(b)(1); N.J.S.A. 2C:58-3(c)(4). "But when an individual reaches the age of reason and the need to protect him and the public from his immaturity and impulsivity dissipates, [New Jerey] law permits him to purchase [and possess] firearms." Bondi, 133 F.4th at 1123. This mirrors the "'age limits [imposed] on all manner of activities that required judgment and reason' at the Founding," ibid. (quoting Brown, 564 U.S. at 834 (Thomas, J., dissenting)), and thus "addresses [similar] problems … for similar reasons" to this Nation's earliest firearm regulations,

Rahimi, 602 U.S. at 692; cf. id. at 698 (concluding that 18 U.S.C. § 922(g)(8) shared the purpose of this Nation's early firearm laws to "mitigate demonstrated threats of physical violence").

This is reinforced by the well-accepted idea 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, 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." M.U., 475 N.J. Super. at 189. 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 (Barrett, J., dissenting), consistent with the long, unbroken historical tradition identified above.

Indeed, modern evidence further substantiates the Founders' concerns about the dangerousness of this age group and has been a key factor in modern

laws restricting 18-to-20-year-olds' firearm access. Statistics show that 18-to-20-year-olds commit crimes at a disproportionate rate, making up 15 percent of homicide and manslaughter arrests in 2019 despite constituting less than 4 percent of the U.S. population. Compare U.S. Dep't of Justice, Crime in the U.S., Arrests by Age, 2019, Tbl. 38 (AGa042), with U.S. Census Bureau, Age and Sex Composition in the U.S.: 2019, Tbl. 1 (AGa044). 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 & nn.13-15 (Mem) (3d Cir. 2025) (Krause, J., dissenting from denial of rehearing en banc) (collecting sources). Indeed, modern studies have shown 18-to-20-year-olds "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," at least in part due to their "still-developing cognitive systems," which causes "increas[ed] risk of impulsive behavior." Jones, 705 F. Supp. 3d at 1134 (alteration in original) (quoting report by developmental psychologist).

These statistics thus substantiate the dangerousness of firearm possession by 18-to-20-year-olds and reinforce the constitutionality of restricting that group's access.

2. New Jersey's Law Mirrors "How" This Nation Historically Regulated Minor's Access to Firearms.

New Jersey's law also closely mirrors "how" this Nation's historical tradition of firearm regulation "burden[ed] the right", "imposing similar restrictions" to those that were imposed on minors from the Founding through Reconstruction. Rahimi, 602 U.S. at 692. As explained above, supra at 26-32, at the Founding, "[a]ccess to arms was a matter of parental consent." Bondi, 133 F.4th at 1123. The common law "precluded individuals under the age of 21 from purchasing arms because they lacked cash and the capacity to contract," and when States required minors to carry arms to serve in the militia, they either "required [the minors'] parents to provide the arms" or provided the arms themselves. Ibid. Similarly, universities, acting in the place of students' parents, restricted student's ability to possess or use firearms both on and off campus. Ibid. And states in the nineteenth century enacted statutes "[c]onsistent with these Founding-era limitations" to "expressly prohibit[] the sale of arms to minors with some exceptions for parents to provide firearms to their children." Ibid. And some of those laws even "step[ped] back from the parental consent"

permitted at the time of the Founding, "prohibit[ing] providing pistols and other dangerous weapons under any circumstances to individuals under the age 21, not just selling them." Ibid. (second emphasis added).

Tellingly, those restrictions were seen as comfortably constitutional by those to consider the issue at the time. 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 739 n.4 (6th ed. 1890). 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 714, 716-17. The State is unaware of any other constitutional challenge to these nineteenth-century restrictions. See McCoy, 140 F.4th at 579 (stating that "the Tennessee Supreme Court was the only court to consider the constitutionality of these laws" in Callicutt). 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 (finding that there were "no disputes regarding the lawfulness of such prohibitions" to count 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.").

Just like those early firearm regulations, New Jersey's law prohibits individuals under 21 from purchasing, acquiring, or possessing firearms, with exceptions for when the individual is under parental supervision or performing military duties. N.J.S.A. 2C:58-6.1(a)-(b). A person under 21 may possess or use a firearm under the supervision of a parent or other responsible adult or while performing military duties under the supervision of a recognized military organization. N.J.S.A. 2C:58-6.1(b). And the law permits 18-to-20-year-olds to acquire firearms "in connection with the performance of official duties" like military service. N.J.S.A. 2C:58-6.1(a); N.J.S.A. 2C:39-6. This system closely mirrors how the Founding-era common law restricted firearm use by minors: by generally prohibiting purchase of firearms but permitting some access with parental consent and by requiring arms be provided to minors who were compelled to perform militia service. See supra at 26-32. And other exceptions to New Jersey's law make this even less restrictive than this Nation's early firearms laws, as it permits an individual under 21 to carry a firearm for the purposes of hunting or participating in competition, target practice, or training,

subject to certain safeguards. N.J.S.A. 2C:58-6.1(b); see Bondi, 133 F.4th at 1123 (noting the Florida law it reviewed was "less restrictive than the law at the Founding in some ways"). In short, New Jersey's "law burdens the right no more than these historical restrictions." Bondi, 133 F.4th at 1123.

The motion court erred in demanding that modern law be a perfect match to its historical predecessors. See (Pa99) ("[T]he State does not point to a founding-era law that prohibits those under the age of twenty-one from possessing a gun."); see also (Db35-36; Db38-40). "To be sure, … our modern regime of statutory regulation" differs in some ways from "the common-law regime of the Founding era" and the statutory law of the nineteenth century, but "Supreme Court precedents do not require a modern law to 'precisely match its historical precursors.'" Bondi, 133 F.4th at 1123 (quoting Rahimi, 602 U.S. at 692). Said another way, the Second Amendment is "not meant to suggest a law trapped in amber": the Constitution "permits more than just those regulations identical to ones that could be found in 1791." Rahimi, 602 U.S. at 691-92; see also id. at 739 (Barrett, J., concurring) (agreeing that Second Amendment reasoning is not a "regulatory straightjacket"; that the "challenged regulation need not be an updated model of a historical counterpart"; and that "imposing a test that demands overly specific analogues has serious problems" (citation omitted)). Instead, what matters is that New Jersey's law is "'relevantly similar'

to those … regimes in both why and how it burdens the Second Amendment right." Id. at 698 (quoting Bruen, 597 U.S. at 29). And courts do not "assume[] that founding-era legislatures maximally exercised their power to regulate" or that the Second Amendment imposes a "'use it or lose it' view of legislative authority." Id. at 739-40 (Barrett, J., concurring). "That kind of assumption is especially unwarranted here where the limitations on the legal rights of minors were so pervasive that states had no need to enact restrictions that prohibited their purchase of firearms." Bondi, 133 F.4th at 1123; see also Chavez, 773 F. Supp. 3d at 1041.

Nor does it matter that New Jersey's law applies to a particular class of individuals. See Pa101 (suggesting that the law is a "total ban on a class of people from purchasing or carrying a handgun" and thus contrary to Bruen); Bondi, 133 F.4th at 1129 (finding this argument unpersuasive). Although the motion court grabs onto the Supreme Court's statement that "the history reveals a consensus that States could not ban public carry altogether," this case is a far cry from preventing all "citizens with ordinary self-defense needs from carrying arms in public for that purpose." Bruen, 597 U.S. at 53, 60 (emphasis omitted); see (Pa101). And unlike in Bruen, this Nation's early common law and statutes impose an "analogous … burden" to New Jersey's law. 597 U.S. at 50; see supra at 44-47. Indeed, the U.S. Supreme Court has "not suggest[ed] that the Second

Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse," Rahimi, 602 U.S. at 698—a determination that both the Founding generation and modern legislatures have made with regard to 18-to-20-year-olds. Similarly, while the Supreme Court noted in Rahimi that 18 U.S.C. § 922(g)(8) applied only when a court individually found that a defendant presented a credible threat to another's physical safety, it did so because that aspect of the law "matche[d]" the similar "judicial determinations" required by the analogous surety and going armed laws from the Founding era. Id. at 699. That same requirement does not exist here, where historical analogues included broad-based restrictions on minors' access to firearms.

In conclusion, New Jersey's laws restricting minors' ability to purchase, possess, or publicly carry a firearm do not violate the Second and Fourteenth Amendments because they are "consistent with the Nation's historical tradition of firearm regulation." Id. at 689 (quoting Bruen, 597 U.S. at 24).

CONCLUSION

This Court should affirm the court's order denying dismissal of count two charging Defendant with unlawful possession of a handgun without a permit and reverse and vacate the order granting dismissal of count three charging Defendant with unlawful possession of a firearm by a minor.

Respectfully submitted,

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