No. ____

In the Supreme Court of the United States

MARYLAND SHALL ISSUE, INC., *et al.*,
Petitioners,

v.

WES MOORE, in his official capacity as Governor of Maryland, *et al.*,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

JOHN PARKER SWEENEY
Counsel of Record
JAMES W. PORTER, III
W. CHADWICK LAMAR, JR.
BRADLEY ARANT BOULT CUMMINGS LLP
1615 L STREET NW
WASHINGTON, DC 20036
(202) 719-8216
jsweeney@bradley.com

Counsel for Petitioner Atlantic Guns, Inc.

(additional counsel listed on inside cover)

September 27, 2024

CARY J. HANSEL, III
2514 N. Charles St.
Baltimore, MD 21218
Phone: (301) 461-1040
cary@hansellaw.com

MARK W. PENNAK
MARYLAND SHALL ISSUE, INC.
9613 Harford Rd.,
Suite C #1015
Baltimore, MD 21234
Phone: (301) 873-3671
m.pennak@me.com

Counsel for Petitioners Maryland Shall Issue, Inc., Deborah Kay Miller, and Susan Brancato Vizas

QUESTION PRESENTED

Whether Maryland's Handgun Qualification License Requirement violates the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioners

Petitioners Atlantic Guns, Inc., Maryland Shall Issue, Inc., Deborah Kay Miller, and Susan Brancato Vizas were appellants in the court of appeals and plaintiffs in the district court.

Plaintiff-Respondents

Ana Sliveira and Christine Bunch were plaintiffs below.

Defendant-Respondents

Respondents are Wes Moore, in his official capacity as Governor of Maryland, and Colonel Roland L. Butler, in his official capacity as Secretary and Superintendent of Maryland State Police.

The court of appeals substituted Moore as a defendant after his election as Governor of Maryland. *Maryland Shall Issue, Inc. v. Moore*, No. 21-2017, Doc. 54 (4th Cir. Mar. 6, 2023). The original defendant sued in his official capacity as Governor of Maryland was Lawrence Hogan.

The district court substituted Colonel Woodrow W. Jones, III, as a defendant when he became the head of Maryland State Police. *Maryland Shall Issue, Inc. v. Hogan*, No. 1:16-cv-3311-ELH, Doc. 159 (D. Md. Aug. 12, 2021). The original defendant sued in his official capacity as Secretary and Superintendent of Maryland State Police was Colonel William M. Pallozzi. Butler is now substituted for Jones pursuant to Federal Rule of Appellate Procedure 43.

CORPORATE DISCLOSURE STATEMENT

Atlantic Guns, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Maryland Shall Issue, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

The remaining petitioners are individuals.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Maryland Shall Issue, Inc., et al. v. Moore, et al., Nos. 21-2017, 21-2053 (4th Cir.) (en banc opinion, issued August 23, 2024).

Maryland Shall Issue, Inc., et al. v. Moore, et al., Nos. 21-2017, 21-2053 (4th Cir.) (panel opinion, issued November 21, 2023).

Maryland Shall Issue, Inc., et al. v. Hogan, et al., No. 1:16-cv-3311-ELH (D. Md.) (memorandum opinion and order granting summary judgment to defendants, entered August 12, 2021; publicly available, redacted opinion was entered August 23, 2021).

Maryland Shall Issue, Inc., et al. v. Hogan, et al., No. 19-1469 (4th Cir.) (panel opinion, reversing district court's grant of summary judgment to defendants on Article III grounds, as amended, issued August 31, 2020).

Maryland Shall Issue, Inc., et al. v. Hogan, et al., No. 1:16-cv-3311-ELH (D. Md.) (memorandum opinion and order granting summary judgment to defendants on Article III standing grounds, entered August 31, 2019).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Treatises and Other Materials

PETITION FOR WRIT OF CERTIORARI

Just two years ago, this Court rejected the interest-balancing approach adopted by nearly every lower court, and emphatically held that the Second Amendment "demands a test rooted in the Second Amendment's text, as informed by history." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022). Under that straightforward standard, laws that hinder or obstruct conduct protected by the Second Amendment are unconstitutional unless the government "affirmatively proves that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.*; *see United States v. Rahimi*, 602 U.S. ----, 144 S. Ct. 1889, 1898 (2024) (similar). But certain lower courts—determined to avoid applying *Bruen*'s holding—are disregarding this Court's precedents and straining the constitutional text to fit desired policy ends. That is exactly what the en banc Fourth Circuit did in this case to uphold Maryland's ahistorical and burdensome two-step licensing and registration scheme for acquisition and possession of a handgun for self-defense.

Maryland prohibits ordinary citizens from possessing a handgun by prohibiting acquisition of a handgun without first obtaining a "handgun qualification license" ("HQL"), which requires a trip to an electronic fingerprinting vendor, attendance at a half-day training course, and a trip to a range for live-fire of a handgun— all at their own expense—followed by a background check, all of which can take a month or longer. Md. Code, Pub. Safety § 5-117.1 ("HQL Requirement"). Even once armed with an HQL, however, one cannot acquire a handgun without first

satisfying Maryland's 77R Handgun Registration Requirement ("77R Registration"), which imposes another, redundant background check and yet another seven-day wait. Md. Code, Pub. Safety § 5-117, 5-118, 5-120 through 5-123. Compliance with the HQL Requirement places significant burdens on possession and acquisition of a handgun unknown at the Founding and is an outlier even in modern times. Failure to comply may result in fines, imprisonment, and the permanent loss of firearm rights. *Id.* §§ 5-101(g)(3), 5-144.

The Fourth Circuit upheld the HQL Requirement by misconstruing footnote 9 from *Bruen* about shall-issue carry license regimes and other dicta from *Heller* about presumptively lawful regulations, as well as drawing incorrect inferences from this Court's precedents. Effectively immunizing any shall-issue licensing regimes—whether for public carry, acquisition, or even mere possession—from *Bruen*'s historical-tradition analysis, the court declared that such regimes presumptively do not "infringe" conduct protected by the Second Amendment's plain text and trigger the Second Amendment's textual protections only if they are so abusive as to "effectively den[y]" a person the right to keep and bear arms.

The lower court first construed the HQL Requirement to be a shall-issue licensing regime, notwithstanding the redundant 77R Registration. Then, without any analysis of historical tradition, the court held that all shall-issue licensing regimes are presumptively constitutional and that the HQL Requirement is constitutional because it does not totally deny the right and is not abusive. Applying its new test, the court held that Maryland's HQL

Requirement "survive[d]" at "step one of the *Bruen* analysis" because Petitioners did not adequately show an "infringe[ment]" as a matter of plain text. It declined to apply the ordinary meaning of "infringe," which as a matter of text covers any regulation that hinders or obstructs protected conduct. It made no effort to ground the HQL Requirement in historical tradition. And it entirely ignored that Maryland conditions acquisition and possession of a handgun on the satisfaction of a burdensome two-step regime that conditions lawful possession as well as acquisition on completion of a six-to-eight-week process.

The Fourth Circuit's decision cannot be reconciled with this Court's precedents, and it deepens two circuit splits. As a matter of the Second Amendment's plain text, the term "infringe" presumptively prohibits any firearm restriction that "regulates [protected] conduct." *Rahimi*, 144 S. Ct. at 1897. That textual protection precludes any law that hinders or obstructs protected conduct—even if only temporarily—under the original public meaning of "infringe." Any limitation on the scope of that protection must come from "historical justification" rather than from the text. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). The court below critically erred by misconstruing the text to require a total deprivation, distorting language in *Bruen* and *Heller* about restrictions not before this Court in either case and drawing incorrect inferences from those cases. Its decision sharply curtails the text-and-history standard and risks eviscerating Second Amendment rights.

The HQL Requirement is an unconstitutional outlier that the Founders never would have tolerated.

Petitioners have shown that Maryland's novel and extreme acquisition-and-possession licensing regime burdens protected conduct. And Maryland has not met its burden to prove that the HQL Requirement—step one of its two-step licensing scheme—is consistent with historical tradition.

Intervention is necessary to correct the Fourth Circuit's refusal to apply the Second Amendment's "text-and-history standard." *Bruen*, 597 U.S. at 39. It also is necessary to resolve deepening circuit splits regarding: (1) the plain-text meaning of "infringe"; and (2) whether unrelated language from this Court's Second Amendment cases permits lower courts to uphold firearm restrictions that fail to meet *Bruen*'s historical tradition standard.

OPINIONS BELOW

The Fourth Circuit's en banc opinion affirming the district court's judgment is not yet reported but is available at 2024 WL 3908548 and reproduced at App.1a. The Fourth Circuit's panel opinion reversing the district court's judgment is reported at 86 F.4th 1038 and reproduced at App.84a. The district court's publicly available, redacted opinion is reproduced at App.131a, and an amended version is published at 556 F. Supp. 3d 404.[1]

JURISDICTION

The en banc Fourth Circuit issued its opinion and judgment on August 23, 2024. App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

---

[1] The district court redacted only certain confidential, proprietary information not germane to this Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment provides: "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."

The relevant Maryland statutory provisions are reproduced at App.241a.

STATEMENT OF THE CASE

I. Legal Background

Since 1966, Maryland has successfully ensured that prohibited persons cannot acquire a handgun through administration of the 77R Registration. Md. Code Ann., Pub. Safety § 5-117. This acquisition-and-possession licensing regime is administered at the point of purchase or transfer, applies to all handgun transfers, and requires any Maryland citizen seeking to acquire a handgun to submit a 77R Registration application and wait seven days while Maryland State Police conducts an exhaustive background check across federal and state databases. *Id.* §§ 5-117, 5-118 through 5-123. While the 77R Registration itself has no historical analogue, it is not challenged here.

Maryland then layered the Handgun Qualification License Requirement on top of 77R Registration in 2013. Md. Code Ann., Pub. Safety § 5-117.1. With some exceptions not relevant here,[2]

[2] An HQL is not required for law enforcement or the military; if the handgun is a bona fide loan; or to possess a handgun that was lawfully obtained prior to the law's 2013 enactment. Md. Code Ann., Pub. Safety § 5-117.1(a)–(c).

ordinary citizens seeking to purchase, rent, or receive—and possess—a handgun must obtain an HQL before even beginning 77R Registration. *Id.* § 5-117(b)(4). To obtain an HQL, a person must obtain at her own expense and submit: (1) an online application; (2) proof of completion of a four-hour qualifying safety course, which exacts a fee; (3) proof of completion of live-fire on one of Maryland's few firearm ranges for another fee; (4) a complete set of electronic fingerprints from a State-approved live-scan private vendor for yet another fee; and (5) an application fee. *Id.* § 5-117.1(d), (f), (g). After taking the time to attend a safety course, conduct live-fire at a range, obtain fingerprints, and then submit an online application, the person must then wait up to 30 days while Maryland State Police conducts a background check across federal and state databases. *Id.* § 5-117.1(d)(4). And once an HQL is obtained, the person must then undergo 77R Registration and wait another seven days while another, redundant background check is performed by the State Police using the same database before acquiring and possessing a handgun for self-defense or any other lawful purpose.

Neither acquiring an HQL nor completing 77R Registration entitles a Marylander to carry a handgun outside her home. The State has another set of laws regulating public carry, and anyone seeking to carry a handgun outside the home must separately obtain a "wear and carry permit," requiring among other things additional training and another background check. Md. Code Ann., Pub. Safety § 5-301 *et seq*. Maryland's carry-licensing laws are not challenged here.

II. Proceedings Below

A. Petitioners brought this suit challenging the HQL Requirement in 2016. The district court initially granted summary judgment to the State after finding that no plaintiff had Article III standing, but the Fourth Circuit reversed in relevant part. 971 F.3d 199 (4th Cir. 2020). The Fourth Circuit held that plaintiff Atlantic Guns, Inc. (a federal firearms licensee) demonstrated standing to seek redress of its economic injuries and to assert the Second Amendment rights of its customers to acquire and possess a handgun. *Id.* at 209–10. That panel declined to reach whether any other plaintiffs had standing to pursue a Second Amendment challenge, *id.* at 210, but it affirmed the district court's dismissal of the individual plaintiffs' and organizational-plaintiff Maryland Shall Issue, Inc.'s other claims, *id.* at 216–20. The court remanded for a decision on the merits of the Second Amendment facial challenge. *Id.* at 206.

The district court held on remand that the HQL Requirement "undoubtedly burden[s]" the right to bear arms because it "'make[s] it considerably more difficult for a person lawfully to acquire and keep a firearm . . . for the purpose of self-defense in the home.'" App.166a. But it then upheld that law under means-end scrutiny then mandated by the Fourth Circuit and later abrogated by *Bruen*. App.201a. The district court granted summary judgment to the State. App.204a.

B. The Fourth Circuit stayed appellate briefing while this Court considered *Bruen*, and the parties' post-*Bruen* panel briefing focused on the text-and-history standard reiterated in *Bruen*. A divided panel,

in an opinion authored by Judge Richardson, held that the HQL Requirement is facially unconstitutional. App.86a–87a.

The panel first held that the HQL Requirement burdens protected conduct—and triggers the State's historical-tradition burden—because it deprives citizens of the ability to acquire and possess a handgun unless and until they acquire an HQL. App.92a–99a. Explaining that the Second Amendment's text covers "burdens that fall short of total deprivations" and that nothing limits its reach to "laws that *permanently* deprive people of the ability to keep and bear arms," the panel concluded that Petitioner's "temporary deprivation" satisfies "*Bruen*'s first step." App.95a–97a.

Before turning to historical tradition, the panel gave four reasons why footnote 9 in *Bruen* about shall-issue carry license regimes did not bear on the textual inquiry or dispose of the historical analysis. App.97a–99a n.9 (discussing *Bruen*, 597 U.S. at 38 n.9). First, that *Bruen* listed some preconditions unlikely to survive review—*e.g.*, lengthy wait times, exorbitant fees, and other abusive practices—does not suggest that those are the only characteristics of unconstitutional licensing regimes. Second, *Bruen*'s text-and-history standard "wins every time" over dicta that might allow a court to evade the governing standard. Third, all footnote 9 suggests is that shall-issue carry license regimes might survive the historical scrutiny even though New York's may-issue carry permit regime did not. And fourth, even if footnote 9 were "stretch[ed]" to "bless most shall-issue *public* carry regimes, that says little about shall-issue regimes that limit *handgun possession altogether*."

App.98a. In other words, "even if *Bruen* green-lighted similar but *less burdensome restrictions*, like some shall-issue *carry* regimes, we are still obligated to independently compare *more burdensome* restrictions, like shall-issue *possession* regimes, against the historical record." App.98–99a.

After disposing of the State's and the dissent's pleas to elevate *Bruen*'s footnote 9 over its holding, the panel held that Maryland failed to show that the HQL Requirement is justified by historical tradition. App.99a. First, the panel observed that the State had conceded at panel argument that it had not identified a single Founding Era law that "required advance permission" before a citizen could purchase a firearm. App.99a (quoting oral argument). Then the panel rejected the State's historical arguments relying on modern laws prohibiting "dangerous" people from owning firearms and Founding Era militia training laws, because neither evidenced a relevantly similar tradition of regulation. App.100a–106a.

Senior Judge Keenan dissented and, relying on *Bruen*'s footnote 9, opined that the HQL Requirement does not "rise to the level of 'infringement' of the plaintiffs' Second Amendment rights" that would trigger the State's historical-tradition burden. App.126a.

C. The Fourth Circuit ordered rehearing en banc, supplemental briefing, and additional argument. On August 23, 2024, the en banc court affirmed the district court and upheld the HQL Requirement. The en banc majority held that Petitioners' challenge failed "at step one of the *Bruen* framework" because the Handgun Qualification

License does not "infringe" protected conduct. App.32a. The majority never analyzed historical tradition. App.32a.

The en banc majority opinion—written by Senior Judge Keenan, joined by nine others, and largely paralleling her panel dissent—held that Petitioners' challenge failed because the HQL Requirement does not implicate the Second Amendment's plain text. Purporting merely to interpret the Second Amendment's use of "infringe" within *Bruen*'s first step, the majority failed to address or apply the original public meaning of that plain text.

Elevating *Bruen*'s dicta above all other considerations, including *Bruen*'s holding, the majority held "that non-discretionary 'shall-issue' licensing laws are presumptively constitutional and generally do not 'infringe' the Second Amendment right to keep and bear arms under step one of the *Bruen* framework" unless they are particularly abusive. App.18a. It sought to support its novel reading of "infringe" through two rationales applying gloss to contradict the text's plain meaning. The court held that only total deprivations are protected by the text because it erroneously concluded that each of this Court's Second Amendment cases concerned laws that completely "banned or effectively banned the possession or carry of arms." App.14a. It compounded its misreading of "infringe" by misconstruing footnote 9 as "introduc[ing] a more nuanced consideration of the concept of 'infringement'" and rendering any and all shall-issue regimes generally immune from constitutional challenge. App.15a. And it sought further support in *Heller*'s dicta suggesting that other,

unrelated restrictions may be presumptively constitutional. App.17a.

The en banc majority grafted dicta from *Bruen* and *Heller* onto the textual analysis to create a novel barrier to relief from constitutional infringement. The court held that all shall-issue license regimes are constitutional as a matter of the Second Amendment's plain text unless "a plaintiff rebuts this presumption of constitutionality by showing that a 'shall-issue' licensing law effectively 'den[ies]' the right to keep and bear arms." App.18a. It then held that Petitioners failed to rebut the HQL Requirement's presumptive constitutionality. App.19a–32a. To reach that conclusion, the court held that temporary deprivations do not, without a showing of abuse, qualify as infringement. App.4a–5a, 18a. It found that Petitioners failed to make an adequate showing of "lengthy" wait times (failing to address the four-to-six-week delay for obtaining an HQL). And it rejected that the HQL Requirement was otherwise "abusive," ignoring the multiple inconvenient qualifying activities, multiple commercial fees, and other burdens of the HQL Requirement (which significantly reduced handgun purchases after enactment), as well as the additional unnecessary delays resulting from Maryland's redundant 77R Registration process. App.24a–32a.

In holding that infringement requires more than a "temporary deprivation," the en banc majority expressly declined to address the "historical sources" that inform the plain-text meaning of "infringe" because, in the majority's view, it was more prudent to give determinative weight to *Bruen*'s footnote 9 dicta. App.27a. It did not acknowledge the dissent's

admonition that the majority's unsupported reading of the Second Amendment's plain text will have rights-foreclosing impacts on all Second Amendment challenges—not just those at issue here. Six judges—concurring, dissenting, or both—disagreed with the majority's infringement holding.

Three judges concurred only in judgment. App.34a. They agreed with the dissent that the HQL Requirement triggers the Second Amendment's textual protections because "Maryland's law regulates acquiring a handgun, and the Second Amendment's text encompasses that conduct." App.34a. But those judges would have upheld the law as consistent with historical tradition. They misread footnote 9 as providing "insight into the degree of fit necessary for a shall-issue licensing regime to be relevantly similar to historical analogues," App.39a, and suggesting that "some shall-issue licensing regimes" are consistent with historical tradition, App.45a. Based on those faulty premises, those judges concluded that the HQL Requirement is relevantly similar to the historical tradition of prohibiting "certain dangerous individuals" from acquiring firearms. App.41a–45a.

Judge Niemeyer concurred in part, dissented in part, and concurred in the judgment. App.49a. He concluded that the HQL Requirement is constitutional solely "by virtue of the Supreme Court's explanation in footnote 9 of *Bruen*." App.55a. But he disagreed with the majority's "new 'infringement' analysis," which he observed "appears nowhere in *Bruen*." App.55a.

Judge Richardson dissented, joined by Judge Agee. He first explained that the HQL Requirement

triggers the Second Amendment's textual protections because it regulates the keeping and bearing of arms by the people, which is all that is needed to "establish[] a prima facie Second Amendment claim." App.58a. Judge Richardson then demonstrated that *Bruen*'s carry-license dicta cannot be elevated "over the mandatory text-and-history test" and, in any event, stands only for the proposition that "the Court did not decide the unpresented question of the constitutionality of shall-issue licensing regimes, suggesting only that the answer to that open matter may not look the same as the conclusion just reached." App.59a–65a. He explained—as a matter of original public meaning and precedent—that the Second Amendment's plain text covers "burdens that fell short of total deprivations," including those imposed by the HQL Requirement. App.65a–69a.

Turning to history, Judge Richardson explained why the State's historical arguments could not justify its licensing scheme. App.70a. Dangerous-persons prohibitions were not relevantly similar because they "targeted only people determined to be dangerous" or who were thought to lack Second Amendment rights, while Maryland's law "bars *everyone* from acquiring handguns until they can prove that they are *not* dangerous." App.73a–74a. The judges who concurred in the judgment erred by misreading *Bruen*'s dicta as pertaining to historical tradition and using that misreading to support an "assum[ption] that we must ignore the undeniable difference between the burdens on the right imposed by *ex ante* disarmament of all citizens and *ex post* punishment of a dangerous individual who poses a threat." App.75a–76a. And militia-training laws did not impose any burden on

acquisition or possession by militiamen or non-militia, and could not justify the HQL Requirement. App.81a. The HQL Requirement, Judge Richardson concluded, is unconstitutional.

Judge Richardson closed his dissent by observing that the Fourth Circuit has taken three post-*Bruen* cases en banc (*Bianchi*, *Price*, and this case) and, each time, created "a different threshold limit unsupported by the plain text and appearing nowhere in the Supreme Court's precedents" so as to "dispose[] of these challenges at the plain-text stage." App.82a. He then expressed his hope that the Fourth Circuit would "reverse course and assess firearm regulations against history and tradition," instead of "go[ing] out of its way to avoid applying the framework announced in *Bruen*." App.83a.

REASONS FOR GRANTING THE PETITION

Review by this Court is necessary to preserve the right to acquire and possess a handgun and rein in the Fourth Circuit's divergence from this Court's precedents and those of other circuits. The lower court did not follow "the standard for applying the Second Amendment" declared by this Court: "text, as informed by history." *Bruen*, 597 U.S. at 19, 24. It instead relied on dicta and an unsupported reading of the plain text to avoid analyzing the historical justifications for Maryland's HQL Requirement. Disturbingly, the court's creation of freestanding textual limitations to defeat Second Amendment challenges is not an exception here but its new normal—it did this three times in three en banc decisions in three weeks. *Bianchi v. Brown*, 111 F.4th 438, 453 (4th Cir. 2024) (en banc) (holding that semi-

automatic rifles are too militaristic to constitute bearable arms), *cert. pet. docketed sub nom. Snope v. Brown*, No. 24-203 (Aug. 23, 2024); *United States v. Price*, 111 F.4th 392, 397 (4th Cir. 2024) (en banc) (holding that a handgun ceases being a protected arm if its serial number has been removed, obliterated, or altered).

The decision below cannot be reconciled with this Court's Second Amendment standard and it deepens at least two circuit splits. Intervention is necessary to ensure that lower courts hold the government to its burden of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition." *Bruen*, 597 U.S. at 17.

I. The Decision Below Conflicts With This Court's Second Amendment Precedents.

The Fourth Circuit's decision that the HQL Requirement—the burdensome and time-consuming step one of its two-step licensing and registration scheme— does not even implicate the Second Amendment's protections is profoundly wrong, and its underlying rationales are dangerously misleading. The court below misconstrued the plain textual meaning of "infringe," drew unsupported negative inferences from this Court's precedents, and elevated dicta over the "straightforward" text-and-history standard. Neither the decision of the court below, nor its rationales, can be reconciled with this Court's jurisprudence.

A. The Fourth Circuit misconstrued "infringe" to constrict the Second Amendment's textual protections.

Because Maryland's HQL Requirement plainly hinders acquisition and possession of handguns—that is, keeping and bearing them—the Second Amendment's plain text presumptively prohibits it. The court below misconstrued the plain-text meaning of "infringe" to require a total deprivation of the right. That indefensible reading departs from the original public meaning of the Second Amendment's text and this Court's precedents applying both the Second Amendment and other constitutional rights. And it has no limiting principle: if "infringement" does not cover less-than-total deprivations in this context, then it never does.

This Court has repeatedly observed that the Second Amendment's text provides a clear command: "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 Second Amendment "presumptively protects" any conduct that the "plain text covers," *Bruen*, 597 U.S. at 24, and any limitation on its protective scope must come from "historical justification," *Heller*, 554 U.S. at 635.

Bruen's textual analysis is not a demanding exercise, contrary to the Fourth Circuit's novel approach. This Court made quick work of the inquiry in *Bruen* through just a few paragraphs analyzing the "definition[s]" of the Second Amendment's terms. 597 U.S. at 32–33. This Court has made clear that the plain text incorporates the "normal and ordinary"

meaning of its terms as they would have been "known to ordinary citizens in the founding generation." *Heller*, 554 U.S. 576–77; *Bruen*, 597 U.S. at 20.

The textual inquiry turns here on the original public meaning of "infringe." Stated differently, it asks what degree of regulation is necessary to trigger the plain-text's presumptive protections. Under this Court's precedents, the Second Amendment's plain text presumptively bars any firearm law that hinders or obstructs the exercise of protected conduct, even if only temporarily.

Early American dictionaries and treatises demonstrate that the original public meaning of "infringe" includes even temporary denial of protected conduct. One need not look further than the same dictionaries that this Court used in *Heller*. 1 Samuel Johnson, Dictionary of the English Language 1101 (4th ed. 1773) (defining "infringe" as "[t]o destroy; to hinder"); *id.* at 1107 (defining "hinder" as "to impede"); 1 Noah Webster, American Dictionary of the English Language 110 (1828) (defining "infringe" as "[t]o destroy or hinder"); *id.* at 106–07 (defining "hinder" as "to obstruct" or "[t]o interpose obstacles or impediments").

Other historical sources cited with approval in *Heller*, 554 U.S. at 594–95, 612–13, confirm that less-than-total impediments trigger the Second Amendment's textual protections. 2 St. George Tucker, Blackstone's Commentaries 143 n.40 (1803) ("The right of the people to keep and bear arms shall not be infringed . . . and this without any qualification as to their condition or degree . . . ."); *Nunn v. State*, 1 Ga. 243, 251 (1846) ("The right of the whole people . .

. to keep and bear *arms* . . . shall not be *infringed*, curtailed, or broken in upon, in the smallest degree.").

This Court's Second Amendment cases provide further support. *Heller* rejected the argument that banning handguns was constitutional merely because "the possession of other firearms (*i.e.*, long guns) is allowed." 554 U.S. at 629. *Caetano* held that a ban on certain kinds of arms (*i.e.*, stun guns) could violate the Second Amendment even though other arms were available. *Caetano v. Massachusetts*, 577 U.S. 411, 411–12 (2016). *Bruen* cast aside the interest-balancing notion—implicitly resurrected by the Fourth Circuit in this case—that the Second Amendment's protections depend upon "the severity of the law's burden on that right," 597 U.S. at 18–19 (citation omitted). *Bruen* itself involved a less-than-total ban on public carry: New York's licensing scheme allowed the plaintiff to "carry to and from work." *Id.* at 16. And *Bruen* observed that some "sensitive place" restrictions might be unconstitutional, even though those laws do not completely foreclose armed self-defense in public. *Id.* at 30–31. Most recently, this Court in *Rahimi* made clear that if the government "regulates arms-bearing conduct," then it "bears the burden to justify its regulation." *Rahimi*, 144 S. Ct. at 1897; *id.* at 1907 (Gorsuch, J., concurring) (asking whether the law "addresses individual conduct covered by the text"); *id.* at 1932 (Thomas, J., dissenting) (asking whether the law "target[s]" protected conduct). And *Rahimi* upheld a federal law that "temporarily disarmed" citizens based on historical tradition, which presupposes that the plain text prohibited that less-than-permanent deprivation. 144 S. Ct. at 1903.

The text of the Second Amendment makes no distinction between regulations totally and permanently forbidding protected conduct or laws imposing less-than-total or temporary hindrances. The acquisition and possession of a handgun is presumptively protected, and restriction of that conduct, whether temporary or permanent, can only be justified by historical tradition.

This textual construction is not unique to the Second Amendment. It proves true across many constitutional contexts. In the free speech context, "[i]t is of no moment that the [challenged] statute does not impose a complete prohibition"—both "burdens" on and "bans" of protected speech "must satisfy the same rigorous scrutiny." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000). Any regulation that "affect[s] speech" implicates the First Amendment and is "valid if [it] would have been permissible at the time of the founding." *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1223–24 (2021) (Thomas, J., concurring in the denial of certiorari). Similarly, "the Free Exercise Clause protects against 'indirect coercion or penalties on the free exercise of religion, not just on outright prohibitions.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017). And a pat down is a "search" under the Fourth Amendment's text but is permissible because it is "reasonable." *Terry v. Ohio*, 392 U.S. 1, 30–31 (1968).

As in these other contexts, laws that hinder the keeping or bearing of arms trigger the Second Amendment's textual protections, subject only to "historical justifications." *Heller*, 554 U.S. at 635. Concluding otherwise—as the Fourth Circuit did—

impermissibly relegates the Second Amendment to a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Bruen*, 597 U.S. at 70 (citation omitted).

The Fourth Circuit made no effort to explain how its cramped reading of "infringe" comports with the term's historical meaning, expressly declining to consider "historical sources related to the . . . interpretation of the term 'infringe.'" App.27a. Nor did it explain how its construction of "infringe" applies only to so-called "shall-issue" licensing regimes without impacting all Second Amendment challenges.

On one hand, the decision could be read as misconstruing the plain text with the effect of eviscerating the amendment's protection in all contexts—for, as a matter of plain text, the term must always have "the same meaning." *Torres v. Madrid*, 592 U.S. 306, 332 (2021) (Gorsuch, J., dissenting). But that cramped interpretation of "infringe" is wrong as a matter of original public meaning. On the other hand, the decision could be read as giving an inconsistent meaning to "infringe" depending on the kind of law being challenged. That is equally wrong because assigning a single term within a constitutional amendment "two different meanings at the same time" is an "innovation [that] is no virtue." *Id.* Either way, the Fourth Circuit's interpretation must be rejected.

The Fourth Circuit's reading of "infringe" cannot be squared with either original public meaning, or this Court's precedents. As explained below, neither can its rationales for adopting such a narrow reading.

B. The Fourth Circuit relied on a mistaken negative inference.

The Fourth Circuit tried to support its incorrect reading of "infringe" by drawing a mistaken negative inference from this Court's Second Amendment cases. App.117a. The court below read *Heller*, *McDonald*, *Caetano*, *Bruen*, and *Rahimi* collectively as involving laws that "banned or effectively banned the possession or carry of arms," and then used that broad reading to draw a negative inference that only total bans are textually protected. App.14a. As explained above, the Fourth Circuit erred by reading those cases as involving total deprivations of the right to keep and bear arms. *Supra* at 18. *Heller's* handgun ban allowed long guns; *Caetano*'s stun gun ban allowed other arms; *Bruen*'s carry ban allowed carry to and from work; and *Rahimi* involved a temporary dispossession. But each of those laws "infringe[d]" exercise of the right as a matter of plain text.

The Fourth Circuit's rationale also suffers from the same flaw as the federal government's "responsible" person argument rejected in *Rahimi*. The mere fact that *Heller* and *Bruen* "used the term 'responsible' to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right" does not mean that only responsible citizens have the right to keep and bear arms. *Rahimi*, 144 S. Ct. at 1903; *id.* at 1944 (Thomas, J., dissenting). Similarly, just because the Court spoke of bans and prohibitions does not mean it construed them as total deprivations. This Court should reject the Fourth Circuit's strained effort to alter the original public meaning of the constitutional text based on an erroneous negative

inference about the laws assessed on discretionary review in other cases.

C. The Fourth Circuit misread *Bruen*'s footnote 9 to justify upholding the HQL Requirement under step one.

The Fourth Circuit's only other rationale for misreading "infringe"—and declaring all shall-issue licensing regimes presumptively constitutional—was its misreading of dicta from *Bruen* about shall-issue carry licenses and dicta from *Heller* about other presumptively lawful measures. It is true, of course, that this Court in *Bruen* made the modest and unremarkable observation that shall-issue carry license regimes are not necessarily unconstitutional merely because New York's may-issue regime was unconstitutional, 597 U.S. at 38 n.9, similar to its asides in *Heller* about regulations not addressed in that case, 554 U.S. at 625–27. But the Fourth Circuit's decision to uphold Maryland's HQL Requirement improperly elevated footnote 9 over *Bruen*'s holdings and the constitutional text.

1. The Fourth Circuit's reading of *Bruen*'s dicta ignores *Bruen*'s holding. The entire point of *Bruen* was that the Second Amendment "demands a test rooted in the [constitutional] text, as informed by history." 597 U.S. at 19. This Court has cautioned against taking "stray comments and stretch[ing] them beyond their context—all to justify an outcome inconsistent with this Court's reasoning and judgment," *Brown v. Davenport*, 596 U.S. 118, 141 (2022), and against "read[ing] a footnote" as "establish[ing] the general rule" for a case. *United States ex rel. Schutte v. SuperValu, Inc.*, 598 U.S. 739, 755 n.6 (2023). *Bruen*'s

text-and-history standard "wins every time" over dicta that could be read to support a different outcome. App.98a.

The court below erred by seizing upon *Bruen*'s dicta. Such dicta might provide "thoughtful advice," *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2277 (2024) (Gorsuch, J., concurring), but it does not justify evading the standard set forth in *Bruen*, or radically curtailing the textual command of the Constitution itself.

Bruen held that when "later history contradicts what the text says, the text controls"; thus, the text controls *a fortiori* when it conflicts with dicta about issues not even before the Court. 597 U.S. at 36. This Court should reinforce *Bruen*'s holding and the plain text by rejecting the Fourth Circuit's patent misreading and misapplication of *Bruen*'s dicta.

2. In addition to improperly relying on footnote 9, the court below fundamentally misconstrued that dicta. Its reading of footnote 9 (as well as dicta from *Heller*) is wrong several times over.

First, read in its proper context, footnote 9 merely observes that shall-issue carry licensing regimes are not necessarily unconstitutional just because New York's may-issue regime violated the Second Amendment. Shall-issue carry regimes were not before the Court. *Bruen* itself clarified that it did not "undertake an exhaustive historical analysis." *Id.* at 31 (quoting *Heller*, 554 U.S. at 626). Further consideration of the "historical justification" for other firearm regulations was again reserved for later cases. *Heller*, 554 U.S. at 635.

Fairly read, *Bruen*'s dicta just "invited courts to independently assess the pedigree of shall-issue licensing regimes against the historical record." App.62a. And that reflected the time-honored need for courts to have an "open mind to the possibility that different facts and different legal arguments might dictate different outcomes in later disputes." *Loper Bright*, 144 S. Ct. at 2277 (Gorsuch, J., concurring). It did not create a new and different framework of scrutiny for any and all shall-issue licensing regimes that conflicts with the text-and-history standard that the Second Amendment demands. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821) (explaining that a court's views "beyond the case . . . may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision"). By construing *Bruen*'s dicta as presumptively foreclosing Petitioners' challenge, the court below impermissibly "stretch[ed] dicta beyond their context—all to justify an outcome inconsistent with this Court's reasoning and judgment." *Brown*, 596 U.S. at 141.

Second, nothing in *Bruen*'s dicta can fairly be read as suggesting that any and all shall-issue licensing regimes are presumptively constitutional and almost never implicate the Second Amendment's plain text. That footnote made no mention of the textual inquiry or the word "infringe." *Bruen*, 597 U.S. at 38 n.9. Rather, it came after this Court had "turn[ed] to [the] historical evidence," was itself appended to a sentence about historical tradition, and analyzed differences in burdens imposed by shall-issue and may-issue carry-licensing regimes—a quintessential historical inquiry. The Fourth Circuit shoehorned dicta that, at best, concerned a specific

historical inquiry, irrelevant here, into the historical prong of *Bruen*'s standard. That subversion allowed the court below to sidestep the undisputed absence of historical justifications for the HQL Requirement.

Third, footnote 9 cannot be read as rubber-stamping shall-issue licensing for possession, whatever its relevance to public carry. As Judge Richardson put it, "even if *Bruen* green-lighted similar but *less burdensome restrictions*, like some shall-issue *carry* regimes, we are still obligated to independently compare *more* burdensome restrictions, like shall-issue *possession* regimes, against the historical record." App.98a–99a. The Fourth Circuit rejected this argument by misapplying *Bruen*'s statement that "[n]othing in the Second Amendment's text draws a home/public distinction." App.19a. But that is a distinction relevant only to the text, not history.

For historical tradition, there is a clear difference between possession in the home and carry in public. For example, unlike possession, public carry "has traditionally been subject to well-defined restrictions." *Bruen*, 597 U.S. at 38. That difference is precisely why *Heller* (possession) and *Bruen* (public carry) analyzed different sets of history. The Fourth Circuit's failure to respect the critical historical differences between the possession prohibited by the HQL Requirement and the carry involved in *Bruen's* dicta should not go uncorrected.

And fourth, the Fourth Circuit's misreading and misapplication of dicta from *Bruen* and *Heller* reflects a disturbing lower-court trend of grafting atextual and ahistorical presumptions onto the governing legal standard to avoid applying *Bruen*'s

historical tradition standard, just as these same courts had grafted interest balancing onto *Heller*'s standard, which practice this Court corrected in *Bruen*. The Fourth Circuit principally relied on *Bruen*'s dicta to exempt shall-issue licensing regimes from the text-and-history standard—and, indeed, to alter the meaning of the constitutional text itself. App.13a–19a. And it justified doing so because it (along with other courts) has relied on dicta from *Heller* about "presumptively lawful" measures to reject "myriad constitutional challenges." App.17a.

But there is no support in this Court's cases for displacing text-and-history scrutiny with mere presumptions cobbled together from disparate dicta. *Heller* expressly reserved "expound[ing] upon the historical justifications" of any exceptions to the right for future cases. 554 U.S. at 635; *see also United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024) (Thapar, J.) ("applying *Heller*'s dicta uncritically would be at odds with *Heller* itself, which stated courts would need to 'expound upon the historical justifications' for firearm-possession restrictions when the need arose."). *Bruen* made clear that text and history govern all Second Amendment challenges, 597 U.S. at 24, and relied on "the historical record" even when discussing sensitive places, *id.* at 30. And *Rahimi* doubled down on text and history, not presumptions to avoid that standard. 144 S. Ct. at 1898–99.

This Court should intervene to prevent lower courts from again "replac[ing] the Constitution's text with a new set of judge-made rules," *NLRB v. Noel Canning*, 573 U.S. 513, 614 (2014) (Scalia, J., concurring in the judgment), as they did in the post-

Heller, pre-*Bruen* period. As this Court observed in *Rahimi* when rejecting that a person "may be disarmed simply because he is not 'responsible,'" 144 S. Ct. at 1903, the lower courts are misusing language from *Heller* and *Bruen* to swallow the Second Amendment standard prescribed in those cases. That trend must be stopped to prevent relegation of the Second Amendment to a permanent "second-class right." *Bruen*, 597 U.S. at 70 (citation omitted).

II. The Decision Below Deepens At Least Two Circuit Splits.

The Fourth Circuit's decision deepens at least two circuit splits on: (1) when a challenged law "infringe[s]" protected conduct under the Second Amendment's plain text; and (2) whether dicta from this Court's Second Amendment cases permit lower courts to uphold firearm laws without regard to text and history.

A. Lower courts are divided as to the meaning of "infringe" for purposes of the textual inquiry.

Even after *Bruen* declared that the Second Amendment's protections do not depend on "the severity of the law's burden on that right," 597 U.S. at 18 (citation omitted), lower courts surprisingly still struggle to discern when a law sufficiently "infringe[s]" protected conduct within the textual analysis.

The Third Circuit has followed *Bruen* and concluded that, in addition to laws "banning gun ownership," the Second Amendment "also forbids lesser violations that hinder a person's ability to hold

on to his guns." *Frein v. Penn. State Police*, 47 F.4th 247, 254 (3d Cir. 2022) (citations, alteration, and quotation marks omitted). *Frein* involved a challenge to officials seizing firearms belonging to the parents of a man charged with several murders. *Id.* at 250. *Frein* correctly held that "the government 'infringed' on the parents' right to 'keep' their arms when it began holding on to the guns indefinitely," even though they could acquire and keep other firearms. *Id.* at 254. It reached that conclusion by faithfully applying the original public meaning of "infringe" and this Court's textual analysis in the First Amendment context. *Id.*

But other lower courts, including the court below, have created exceptions to the plain-text meaning of "infringe." In *McRorey v. Garland*, 99 F.4th 831 (5th Cir. 2024), the Fifth Circuit upheld a federal law that imposed an expanded background check for 18-to-20-year-olds and mandated a three-to-ten-day waiting period. *McRorey* held that under *Bruen*'s footnote 9, the challenged laws "are presumptively lawful" and do not burden conduct "covered by the plain text of the amendment" absent an additional abuse. *Id.* at 838–39. *McRorey* made no mention of the original public understanding of "infringe," and even suggested that the Second Amendment's text does not protect "purchase—let alone without a background check." *See id.* at 838. As with the decision below, the Fifth Circuit's decision in *McRorey* cannot be reconciled with the plain text of the Second Amendment, this Court's Second Amendment precedents generally, or a fair reading of footnote 9.

B. Lower courts are divided as to whether this Court's dicta render some restrictions presumptively lawful.

Lower courts are also divided on whether this Court's dicta render some restrictions presumptively lawful and generally immune from text-and-history scrutiny.

Some lower courts have correctly held that the mode of analysis set forth in *Bruen* prohibits treating any firearm restrictions as presumptively constitutional. Most recently, the Sixth Circuit explained that *Bruen*'s command to apply the text-and-history standard forbids "applying *Heller*'s dicta uncritically," *Williams*, 113 F.4th at 648 (Thapar, J.), which applies equally to footnote 9's discussion of shall-issue carry license regimes. The Seventh Circuit has likewise rejected the government's attempt to misapply dicta from *Heller* and *Bruen* to "sidestep" text-and-history scrutiny. *Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023). And a Ninth Circuit panel—before the court vacated that decision and granted rehearing en banc—announced that "[s]imply repeating *Heller*'s language about the presumptive lawfulness of felon firearm bans will no longer do after *Bruen*." *United States v. Duarte*, 101 F.4th 657, 668 (9th Cir. 2024) (cleaned up), *vacated, reh'g en banc granted*, 108 F.4th 786 (9th Cir. 2024) (mem.).

Other lower courts continue to rely on dicta from *Bruen* or *Heller* to create exceptions to the text-and-history standard. The court below relied on dicta from *Bruen* and *Heller* to hold that shall-issue licensing regimes are presumptively constitutional.

App.15a–18a. The Fifth Circuit in *McRorey* read *Bruen*'s dicta as similarly foreclosing review of most shall-issue licensing regimes. 99 F.4th at 838–39. The Second Circuit construed *Bruen* as "approv[ing] of shall-issue licensing regimes." *Antonyuk v. Chiumento*, 89 F.4th 271, 314–15 & n.24 (2d Cir. 2023), *vacated sub nom. Antonyuk v. James*, 144 S. Ct. 2709 (2024). The Tenth Circuit stated that "*Bruen* apparently approved the constitutionality of regulations requiring criminal background checks" and "preserve[d] 'shall-issue' regimes." *Vincent v. Garland*, 80 F.4th 1197, 1201–02 (10th Cir. 2023), *vacated*, 144 S. Ct. 2708 (2024). And still others continue to rely on *Heller*'s dicta when analyzing the lawfulness of statutes like the felon-in-possession ban. *See, e.g.*, *United States v. Gay*, 98 F.4th 843, 846–47 (9th Cir. 2024); *United States v. Dubois*, 94 F.4th 1284, 1292–93 (11th Cir. 2024) (rejecting that *Bruen* abrogated caselaw upholding felon-in-possession ban as "presumptively constitutional").

By relying on dicta to create presumptions of constitutionality exempt from faithful text-and-history scrutiny, lower courts defy what the Constitution "demands": "a test rooted in the Second Amendment's text, as informed by history." *Bruen*, 597 U.S. at 19. This Court should grant certiorari to forestall further deviation from *Bruen*'s straightforward standard.

III. Maryland's HQL Requirement Violates The Second Amendment.

Properly applying *Bruen*'s governing text-and-history standard demonstrates that Maryland's HQL Requirement is facially unconstitutional. As the

district court held, the HQL Requirement "undoubtedly burden[s]" the right to bear arms because it "'make[s] it considerably more difficult for a person lawfully to acquire and keep a firearm . . . for the purpose of self-defense in the home.'" *Supra* at 7. The State conceded at panel argument that it had not identified a single Founding Era law that "required advance permission" before a citizen could purchase a firearm. *Supra* at 9. In the absence of historical precedent, a law burdening the right to acquire and possess a handgun cannot stand.

A. The plain text covers Petitioners' proposed conduct.

Maryland's HQL Requirement "infringes" textually protected conduct because it prohibits all Maryland citizens (the people) from acquiring or possessing (keeping and bearing) handguns (arms) without first obtaining an HQL.

The State has not disputed that the HQL Requirement applies to "the people." *Bruen*, 597 U.S. at 70 ("all Americans"); *Heller*, 554 U.S. at 580 ("national community"). Nor has it disputed that handguns are covered "Arms," *Bruen*, 597 U.S. at 37, or that the Second Amendment guarantees a "right to acquire" arms for self-defense, *see Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011); *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) (explaining that constitutional guarantees "implicitly protect those closely related acts necessary to their exercise"); *N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1541 (2020) (Alito, J., dissenting) (similar). The only textual element Maryland

contested was infringement. But the HQL Requirement infringes conduct within the scope of the text because it "make[s] it considerably more difficult for a person lawfully to acquire and keep a firearm" *Supra* at 7.

The Second Amendment's text presumptively protects the right to acquire and possess a handgun without enduring Maryland's burdensome and time-consuming HQL Requirement. The HQL Requirement is unconstitutional unless Maryland "demonstrates that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. It has not.

B. Maryland has not demonstrated a justifying historical tradition.

The HQL Requirement suffers a historical flaw from the starting line: Maryland conceded that it has not found any Founding Era evidence of a generally applicable licensing scheme requiring everyone to obtain a license (or permission) before purchasing a firearm. App.99a. Because early American governments knew how to—and did—enact licensing requirements for some groups for other purposes, and firearm violence has existed since the Founding, the lack of any similar firearm licensing scheme "is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Bruen*, 597 U.S. at 26. Maryland's historical evidence cannot overcome this absence of comparable early American regulation.

Prior to its fatal concession, Maryland offered two historical analogues to defend the HQL Requirement: (1) laws prohibiting dangerous persons

and groups from possessing weapons; and (2) militia-training laws. Neither demonstrates a relevantly similar tradition of regulation. Maryland's reliance on laws individually disarming "dangerous" persons—such as going-armed laws and surety regimes—fails under a straightforward application of *Bruen* and *Rahimi*. *Bruen* rejected reliance on both analogues for broad, categorical restrictions on public carry, 597 U.S. at 55–60 (surety); *id.* at 50 (going-armed laws), and *Rahimi* made clear that such laws cannot justify modern laws that "broadly restrict arms use by the public generally," 144 S. Ct. at 1901.

The HQL Requirement resembles the categorical prohibition struck down in *Bruen*, not the individualized and temporary disqualification upheld in *Rahimi*. None of these individualized historical laws justifies the HQL Requirement because none imposed a comparable categorical burden of *ex ante* disarmament on all "the people," without a prior individualized determination of dangerousness. *See id.* at 1898 (explaining that a law "may not be compatible with the right if it does so to an extent beyond what was done at the founding"); *see also Bruen*, 597 U.S. at 29 (explaining the "central" requirements that analogues evidence "a comparable burden on the right of armed self-defense" that is "comparably justified").

Nor do laws disarming certain disfavored groups justify Maryland's generally applicable licensing regime. Class-based bans disarmed certain groups based on race, religion, or political affiliation. App.76a–80a. These restrictions would be unconstitutional today. *Bruen*, 597 U.S. at 58 (warning against reliance on statutes where

prosecutions involved only "black defendants who may have been targeted for selective or pretextual enforcement"). They were enacted with noncomparable justifications: they disarmed classes of person who were considered categorically dangerous and then-understood to lack constitutional rights. And they do not impose a burden comparable to the HQL Requirement, which preemptively disarms "the public generally." *Rahimi*, 144 S. Ct. at 1901.

Finally, early American militia-training laws cannot support the HQL Requirement because none imposed any burden on acquisition or possession by militiamen, much less on non-militia. App.80a–82a. To the contrary, Founding Era militia laws required militiamen regardless of age to acquire and possess firearms. *Id.*

The HQL Requirement is fatally unsupported by historical tradition. It is even an outlier by modern standards.[3] And obtaining an HQL does nothing more than allow the citizen to begin the 77R Registration process. There is no relevantly historical tradition of requiring all citizens to undergo one licensing process to obtain nothing but permission to undergo still

[3] As far as Petitioners are aware, only 14 states have a permit-to-purchase regime. Only three of these (Oregon, Hawaii, and Delaware) require a background check, fingerprinting, classroom and shooting training, and live-fire on a range in order to exercise the right to possess a handgun. Del. Code Ann. § 1448D (effective May 16, 2024); Haw. Rev. Stat. Ann. § 134-2; Oregon Ballot Measure 114 (approved by voters in November 2022). Oregon's measure was permanently enjoined by an Oregon state court as violating the state's constitutional right to keep and bear arms and is on appeal. *Arnold, et al. v. Kotek*, CA A183242 (Or. Ct. App.).

another registration process imposing still more delay before acquiring and possessing a handgun.

Even if *Bruen*'s footnote 9 had some application to acquisition and possession for self-defense inside the home (which it does not), the HQL Requirement is still unconstitutional. Unnecessary restrictions on the exercise of Second Amendment rights (such as lengthy wait times, exorbitant fees, and other abusive practices) are unconstitutional. *Bruen*, 597 U.S. at 38 n.9; *Murdock v. Pennsylvania*, 319 U.S. 105, 114 (1943) (holding fee "for the enjoyment of a right" unconstitutional unless limited "to defray[ing] the expenses of policing the activities").

The HQL Requirement's burdens are abusive and unnecessary—it imposes inconvenient and expensive classroom training, live-fire on a range, fingerprinting, multiple commercial and governmental fees, and a month or more delay for a background check, followed by another seven-day delay for another, nearly identical background check for 77R Registration, which since 1966 has ensured that prohibited persons cannot obtain handguns.

The Court should grant certiorari and hold that Maryland's HQL Requirement is unconstitutional.

IV. This Case Is Exceptionally Important.

Rather than respecting this Court's decisions in *Heller* and *Bruen*, many states have opted instead for defiance. Some like Maryland and New York have taken *Bruen*'s dicta about "sensitive places" and enacted legislation that deems scores of locations "sensitive" to prohibit armed self-defense as widely as possible. *See, e.g.*, *Kipke v. Moore*, Nos. 1:23-cv-1293,

1:23-cv-1295, 2024 WL 3638025 (D. Md. Aug. 2, 2024) (Maryland), *appeals filed*, Nos. 24-1799, 24-1827, 24-1834 (4th Cir.); *Wolford v. Lopez*, --- F.4th ----, 2024 WL 4097462 (9th Cir. Sept. 6, 2024) (California and Hawaii); *Antonyuk*, 89 F.4th at 290–91 (New York). Others have responded by banning hundreds or thousands of different kinds of firearms. *See, e.g.*, *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 2491 (2024) (mem.). And some, like Maryland with its HQL Requirement, have enacted elaborate schemes to discourage citizens from acquiring handguns to possess in the home. *Supra* note 3.

Meanwhile, some lower courts appear all too ready to concoct convoluted, rights-eviscerating evasions of *Bruen*'s standard to uphold wayward state laws. The Fourth Circuit leads that charge, contorting this Court's dicta and reading restrictions into the Second Amendment's text to avoid conducting the rigorous scrutiny of historical tradition. Judge Richardson captured this issue in his en banc dissent: "Three times, our en banc Court has considered Second Amendment challenges in *Bruen*'s aftermath. And three times, our Court has disposed of these challenges at the plain-text stage, each time relying on a different threshold limit unsupported by the plain text and appearing nowhere in the Supreme Court's precedent." App.82a–83a. As for this case, the Fourth Circuit's indefensible reading of "infringe" undoubtedly will taint not just shall-issue challenges but Second Amendment challenges in the Fourth Circuit and elsewhere.

This Court should grant certiorari to prevent lower courts from reading exception-upon-exception

into *Bruen*'s standard—before that standard exists no more. The constitution "demands a test rooted in the Second Amendment's text, as informed by history," *Bruen*, 597 U.S. at 19, not tests rooted in dicta and whatever constructions of text best fit lower courts' desired policy ends. This Court should once again say so.

CONCLUSION

Petitioners respectfully request this Court grant this petition for writ of certiorari.

Respectfully submitted,

JOHN PARKER SWEENEY
Counsel of Record
JAMES W. PORTER, III
W. CHADWICK LAMAR, JR.
BRADLEY ARANT BOULT CUMMINGS LLP
1615 L STREET NW
WASHINGTON, DC 20036
(202) 719-8216
jsweeney@bradley.com

Counsel for Petitioner Atlantic Guns, Inc.

CARY J. HANSEL, III
2514 N. Charles Street
Baltimore, MD 21218
Phone: 301-461-1040
cary@hansellaw.com

MARK W. PENNAK
MARYLAND SHALL ISSUE, INC.
9613 Harford Rd.,
Suite C #1015
Baltimore, MD 21234
(301) 873-3671
m.pennak@me.com

Counsel for Petitioners Maryland Shall Issue, Inc., Deborah Kay Miller, and Susan Brancato Vizas