No. 131191

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Appellate Court of Illinois, First District, No. 1-22-1230
Plaintiff-Appellee,	) There on Appeal from the Circuit Court of Cook County, Illinois,
v.	) No. 22 CR 1006
JAMES BENSON,	) The Honorable James B. Linn,
Defendant-Appellant.	) Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a Cook County bench trial, defendant, James Benson, was found guilty of (1) reckless discharge of a firearm, 720 ILCS 5/24-1.5(a), (2) unlawful possession of a weapon by a felon (UPWF), 720 ILCS 5/24-1.1(a), and (3) misdemeanor domestic battery, 720 ILCS 5/12-3.2(a)(2), and he was sentenced to concurrent prison terms of three, four, and three years, respectively. C50.[1] The appellate court affirmed the judgment, A21, and defendant appeals. No question is raised on the charging instrument.

ISSUE PRESENTED

Whether Illinois's prohibition on felons possessing firearms, set forth in 720 ILCS 5/24-1.1(a), does not violate the Second Amendment as applied to defendant, who previously had been convicted of illegally carrying a firearm in public without a license, and who failed to seek permission to lawfully possess a firearm as provided by statute..

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 602. This Court allowed defendant leave to appeal on January 29, 2025.

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[1] Citations to defendant's appendix, the common law record, the report of proceedings, and defendant's opening brief appear as "A_," "C_," "R_," and "Def. Br. __," respectively.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

U.S. Const. amend II

. . . the right of the people to keep and bear Arms, shall not be infringed.

720 ILCS 5/24-1.1(a)

It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction. This Section shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the Firearm Owners Identification Card Act.

430 ILCS 65/10(c)

Any person prohibited from possessing a firearm under Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 . . . may apply to the Firearm Owner's Identification Card Review Board or petition the circuit court in the county where the petitioner resides, . . . requesting relief from such prohibition and the Board or court may grant such relief if it is established by the applicant to the court's or the Board's satisfaction that[ ] . . .

(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

(2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;

(3) granting relief would not be contrary to the public interest; and

(4) granting relief would not be contrary to federal law.

STATEMENT OF FACTS

Defendant was charged with reckless discharge of a firearm, UPWF, and domestic battery. C11-13.

Trial

The trial evidence showed that on the night of December 23, 2021, Alicia Bradley was living with defendant, her boyfriend, in an apartment on Chicago's South Side. R24-26. Police responded to a report of a domestic disturbance at the residence, R68, and interviewed Bradley and Valencia Johnson, the witness who had called police and was waiting outside of the building for them to arrive, R56, 68-69. These interviews were captured on body camera footage, which the People introduced at trial. R80, 107. Although both Bradley and Johnson testified to a different version of events at trial, their recorded prior inconsistent statements were admitted as substantive evidence. *See* R158; 725 ILCS 5/115-10.1.

In her recorded statement, Bradley told police that she had helped defendant, who was intoxicated, to bed earlier that night, at which time she had taken a gun from him and put it on the nightstand. R36. Bradley and Johnson then went out to get food and when they returned, defendant, who was angry, came out of the bedroom. R39, 75. After Bradley told defendant to go back into the bedroom, defendant pulled out and cocked the gun. R39. Johnson ran, and defendant began beating and kicking Bradley. *Id.* Bradley told police that defendant had "dragg[ed her] around the house and that he

had hit [her] in [her] back with a chair" when she asked him to put the gun down. R35, 40. Bradley tried to FaceTime her mother for help, but defendant took her phone and broke it. R40. As Bradley lay on the floor crying, defendant asked Bradley, "Are you ready to die, bitch?" R40, 75. Bradley told police that defendant was armed and was going to kill her and she asked police to take him away. R38.

Bradley also told police that defendant fired the gun at her before hiding it under the mattress when he heard police coming up the stairs. R41, 75. Bradley permitted the police to search for the gun, and they eventually found it. R41, 77-78, 82. She also showed police a bullet hole in the floor of the apartment near a window. R76-77, 81. Police also found a shell casing in the dining room. R79.

Like Bradley, Johnson told police that defendant had brought the gun from the bedroom and that he beat Bradley and fired the gun at her. R60-61. Police described Johnson as "panicking" when they encountered her outside Bradley's apartment. R71.

Bradley and Johnson presented a different version of events at trial. Bradley testified that she and Johnson were "hanging out" and drinking when an intoxicated defendant arrived home around 11:00 p.m. R26-27, 52. Bradley put defendant to bed (in their bedroom) before she and Johnson left to get something to eat. R27, 53-54. She denied taking defendant's gun from him.

Twenty minutes later, Bradley and Johnson returned to the apartment, and Bradley went into the bedroom (to get a towel so Johnson could shower and sober up before eating). R29, 54. While Bradley was in the bedroom, defendant's phone rang and he began receiving text notifications. R29. The texts were from defendant's brother, who was checking to see if defendant had made it home safely, but when Bradley picked up defendant's phone, she also saw texts between defendant and other women. R30.

Bradley then retrieved the gun, which she attempted to load. R30, 36. Bradley claimed that in her anger, she began dropping the bullets on the floor, so she put the gun down and began punching a sleeping defendant in the face. *Id.*

Defendant woke up, and he and Bradley began arguing. R32. The argument moved to the dining room, where defendant demanded that Bradley leave the apartment. R33. Bradley was trying to get defendant to fight, but he was reluctant. *Id.* Bradley started throwing drinking glasses, and defendant threw a chair. *Id.* At that point Johnson left, and the police arrived. R33, 56.

As the police were coming up the stairs, Bradley opened the door and began yelling that defendant had a gun. R34. Police removed defendant from the apartment and then talked with Bradley. R35.

Thomas Stamps, a friend of defendant who claimed he was then living with defendant and Bradley, testified for the defense that the gun was his

(Stamps had a valid Firearm Owners Identification Card) and that he stored it in a box on the top shelf of a closet. R115-18. On cross-examination, he admitted that his FOID Card listed his family's address in Country Club Hills, Illinois, not defendant and Bradley's apartment. R119-20.

Defendant testified in his own defense. He admitted that he had been out drinking on the night of the crime with "Jay" (whom he referred to as both his brother and a friend) and was drunk when he came home. R125. He remembered Bradley putting him to bed. R127-28. He claimed that he woke up because Bradley was hitting him and screaming about a message on his phone. R128. Defendant testified that during the ensuing argument, Bradley fired a gun into the floor; however, defendant did not think she was trying to shoot him. R129. Defendant admitted that during the fight, Bradley threw a cup, and defendant threw Bradley's phone and a chair, but he denied hitting Bradley with the chair. R132. Defendant claimed that he then took the gun and put it under the bed so Bradley could no longer use it. R131, 138.

On cross-examination, defendant changed his testimony and said that the gun was never fired that night. R138. He also admitted on cross-examination that he told police on the night of the crime that Bradley had tried to kill him with the gun, R139, which account was confirmed by officer testimony, R96. Defendant also acknowledged that he told police that he,

and not Stamps, had possessed the gun for two to three weeks prior to the crime. R141.

He also admitted that he had prior convictions for weapons offenses, including a conviction for aggravated unlawful use of a weapon (AUUW) in 2015 and a conviction for "attempt to unlawfully possess a weapon" in 2018. R123, *see also* R161 (describing criminal history). And he admitted that he was not allowed to have or handle a gun. R135.

The trial court credited the statements given by Bradley and Johnson on the night of the incident, R159, and found defendant guilty of all counts, reducing the charge of aggravated discharge of a firearm to reckless discharge, R160-61. The court sentenced him to concurrent prison terms of three years for reckless discharge of a firearm and domestic battery and four years for UPWF. R171.

Appeal

On appeal, defendant argued, in relevant part, that the UPWF statute is unconstitutional both facially and as applied to him. A7. The appellate court held that defendant's facial challenge failed because he had not proven that the UPWF statute could not be constitutionally applied to any defendant. A19. In so holding, the court followed the reasoning of *People v. Baker*, 2023 IL App (1st) 220328; *People v. Mobley*, 2023 IL App (1st) 221264; and *People v. Burns*, 2024 IL App (4th) 230428; which rejected Second Amendment challenges to the UPWF statute on the ground that the plain

text of the Second Amendment applies only to law-abiding citizens. A19. The appellate court also held that even if it were to depart from those cases, sufficient historical precedent exists to find that banning felons from possessing firearms is consistent with the nation's history and tradition of firearms regulation. A20. The appellate court also rejected defendant's as-applied challenge and affirmed the trial court's judgment. A21.[2] It reasoned that "[a]lthough defendant, in applying [*New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)], contends that the founders intended permanent disarmament only for *violent* felons, *Bruen* does not make any such distinction." A21 (emphasis in original).

STANDARD OF REVIEW

"Statutes are presumed constitutional, and the party challenging the constitutionality of a statute carries the burden of proving that the statute is unconstitutional." *People v. Thompson*, 2025 IL 129965, ¶ 13. The constitutionality of a statute is reviewed de novo. *Id.*

ARGUMENT

Illinois's Ban on Possession of a Weapon by a Felon Comports with the Second Amendment as Applied to Defendant.

Before this Court, defendant has abandoned his facial challenge to the UPWF statute. Def. Br. 9. Precedent is clear that prohibitions on possession of firearms by felons, generally, are constitutionally permissible. *See District*

[2] The appellate court reduced defendant's sentence for misdemeanor domestic battery to 364 days imprisonment.

of Columbia v. Heller, 554 U.S. 570, 626-27 (2008) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill"); *see also United States v. Rahimi*, 602 U.S. 680, 699 (2024) ((reiterating that such prohibitions "are 'presumptively lawful.'") (quoting *Heller*, 554 U.S. at 626, 627 n.26)). And defendant concedes that the statute may be constitutionally applied, at least to persons previously convicted of violent felonies. *See* Def. Br. 19.

Defendant's as-applied challenge fares no better. The United States Supreme Court has held, repeatedly and without limitation, that banning felons from possessing firearms comports with the Second Amendment. And even if this question were not settled, defendant cannot show that the UPWF statute violates the Second Amendment as applied to him under the text-and-tradition framework established by the Supreme Court in *Bruen*. There, the Court clarified the governing legal standard: "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." *Bruen*, 597 U.S. at 24. In other words, the *Bruen* framework requires a threshold textual inquiry, which is then followed by a historical inquiry, if warranted. First, the reviewing court asks whether "the Second Amendment's plain text covers an individual's conduct." *Id.* Then, if necessary, the court determines whether the government has shown

that its regulation is "consistent with this Nation's historical tradition of firearm regulation." *Id.*

Here, defendant's claim fails at the first step because the plain text of the Second Amendment does not apply to prohibitions on firearm possession by convicted felons. Even if that were not so, the UPWF statute comports with the Second Amendment because it is consistent with the nation's history and tradition of firearm regulation. This is true even as applied to those whose prior felony convictions are non-violent. In any event, defendant's felony history of illegally carrying firearms without a license demonstrates that he is precisely the kind of dangerous individual the State may constitutionally disarm.

A. The United States Supreme Court has always recognized that felon-in-possession laws are constitutional, without qualification.

As an initial matter, the Supreme Court has recognized the constitutionality of restrictions on firearm possession by felons, without qualification.

From the beginning, when *Heller* announced "an individual right to keep and bear arms," 554 U.S. at 595, the Supreme Court cautioned that "[l]ike most rights, the right secured by the Second Amendment is not unlimited," *id.* at 626. Indeed, the Court stressed,

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, *nothing 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 (emphasis added). The Court further emphasized that such limitations on the right to bear arms were "presumptively lawful regulatory measures." *Id.* at 627 n.26.

After *Heller*, the Supreme Court repeated its "assurances" that *Heller* "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill.'" *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (citation omitted). Relying on these assurances, this Court recognized that "[i]t would appear, therefore, that the legislature *could* constitutionally prohibit felons" from carrying or possessing firearms. *People v. Burns*, 2015 IL 117387, ¶ 29.

The Supreme Court's subsequent decisions in *Bruen* and *Rahimi* provide further support for this Court's reliance on that aspect of *Heller*. *See United States v. Duarte*, 137 F.4th 743, 750 (9th Cir. 2025) (en banc) ("*Bruen* and *Rahimi* support [the] holding that § 922(g)(1) constitutionally prohibits the possession of firearms by felons"). First, the *Bruen* Court largely derived its constitutional test from *Heller* and stated that its analysis was "consistent with *Heller* and *McDonald*." 597 U.S. at 10; *id.* at 26 ("The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding.").

Second, *Bruen* limited the scope of its opinion to "law-abiding citizens" — a phrase that excludes convicted felons — and repeated that term fourteen times throughout the opinion. *See, e.g., id.* at 8-9 ("In [*Heller* and *McDonald*], we recognized that the Second and Fourteenth Amendments protect the right of *an ordinary, law-abiding citizen* to possess a handgun in the home for self-defense." (emphasis added)); *id.* at 26 ("The Second Amendment 'is the very product of an interest balancing by the people' and it 'surely elevates above all other interests the right of *law-abiding, responsible citizens* to use arms' for self-defense." (citation omitted and emphasis added)). And six justices, including three in the majority, emphasized that *Bruen* did not disturb the limiting principles in *Heller* and *McDonald*, including the presumptive validity of prohibitions on felons possessing firearms. *See* 597 U.S. at 72 (Alito, J., concurring) ("Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun."); *id.* at 80-81 (Kavanaugh, J., concurring, joined by Roberts, C.J.) (quoting *Heller*'s language); *id.* at 129 (Breyer, J., dissenting, joined by Sotomayor and Kagan, JJ.) ("Like Justice Kavanaugh, I understand the Court's opinion today to cast no doubt on that aspect of *Heller*'s holding.").

Third, the continued validity of this aspect of *Heller* provided the basis for the *Bruen* Court's statement that "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes." *Id.* at 38 n.9. The Court explained that such "shall issue"

laws require background checks for the very purpose of ensuring that licenses are not issued to felons:

> Because these licensing regimes do not require applicants to show an atypical need for armed self-defense, they do not necessarily prevent "law-abiding, responsible citizens" from exercising their Second Amendment right to public carry. . . . Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens."

Id. (citations omitted). As multiple federal courts of appeal have recognized, the preservation of "'shall-issue' regimes and related background checks . . . implie[s] that it [is] constitutional to deny firearm licenses to individuals with felony convictions." *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *cert. granted, judgment vacated*, 144 S. Ct. 2708 (2024); *Vincent v. Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025) (readopting analysis on remand); *see also Duarte*, 137 F.4th at 747.

Finally, and most recently, in *Rahimi*, the Supreme Court again reaffirmed that "prohibitions . . . on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" 602 U.S. at 699 (citation omitted); *see also id.* at 698 ("we do not suggest 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" (citing *Heller*, 554 U.S. at 626)); *id.* at 735 (Kavanaugh, J., concurring) (observing that *Heller* "recognized a few categories of traditional exceptions to

the [Second Amendment] right," including the "longstanding prohibitions on the possession of firearms by felons" (quotation marks omitted)).

In short, beginning with *Heller* and continuing through *Rahimi*, the Supreme Court has consistently recognized the constitutionality of felon-in-possession statutes like Illinois's UPWF statute, without limiting the types of felonies that may underlie these statutes. Accordingly, as the Court's precedent makes clear, the UPWF statute comports with the Second Amendment.

B. Defendant cannot establish that the plain text of the Second Amendment protects the right of convicted felons to possess firearms.

Even if the constitutionality of the UPWF statute were not settled, defendant's as-applied challenge would fail at the first step of the *Bruen* analysis. At this threshold, textual step, defendant bears the burden to show that the Second Amendment's plain text covers and thus presumptively protects his conduct. *See Bruen*, 597 U.S. at 24. Only if the Amendment's "plain text covers an individual's conduct . . . must [the government] *then* justify its regulation." *Id.* (emphasis added). Here, defendant has not met his burden to show that the Second Amendment's plain text covers his conduct of possessing a firearm as a convicted felon. *See Bruen*, 597 U.S. at 24; *see also Rahimi*, 602 U.S. at 718 n.2 (Kavanaugh, J., concurring) ("The historical approach applies when the text is vague. But the text of the Constitution always controls.").

The Second Amendment's text does not protect the right of felons to possess firearms when possession is freely allowed for law-abiding citizens. Defendant's reliance on appellate court authority to the contrary is unavailing. *See* Def. Br. 12. As he acknowledges, *id.*, authority is split on this question, s*ee, e.g.*, *Baker*, 2023 IL App (1st) 220328, ¶¶ 37-38 (rejecting challenge to UPWF statute at first step of *Bruen* test); *see also Burns*, 2024 IL App (4th) 230428, ¶ 19 (same); *United States v. Dixon*, No. 22 CR 140, 2023 WL 2664076, at *3-4 (N.D. Ill. Mar. 28, 2023) (rejecting challenge to federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), at first step of *Bruen* analysis), and cases that have found that the plain text of the Second Amendment covers possession of firearms by felons are inconsistent with Supreme Court precedent.

The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend II. At issue in the first step is whether convicted felons are included among "the people" whom the Second Amendment protects. They are not. *Bruen* confirmed that "the people" includes only "law-abiding, responsible citizens," 597 U.S. at 26, as Illinois courts have recognized, *see*, *e.g.*, *People v. Hatcher*, 2024 IL App (1st) 220455, ¶¶ 56, 59 ("*Bruen* expressly and repeatedly limits the second amendment's scope to law-abiding citizens"); *see also Burns*, 2015 IL 117387, ¶ 41 ("the U.S. Supreme Court made clear that the right secured by the second amendment is held by 'law-abiding, responsible citizens'") (citing

Heller, 554 U.S at 635). Accordingly, Illinois's ban on possession by felons, which restricts only *non*-law-abiding citizens, does not regulate conduct protected by the Second Amendment's text. *See Baker*, 2023 IL App (1st) 220328, ¶ 37 ("The *Bruen* Court could not have been more clear that its newly announced test applie[s] only to laws that attempt[ ] to regulate the gun possession of 'law-abiding citizens").

Simply put, the UPWF statute has no impact at all on the Second Amendment rights of law-abiding citizens. Accordingly, defendant's challenge fails at the first step of the *Bruen* test because his conduct is not protected under the plain text of the Second Amendment.

C. The UPWF statute is consistent with the nation's history of firearm regulations.

Even if the possession of a firearm by a felon were covered by the plain text of the Second Amendment, the UPWF statute would be constitutional because it is consistent with a longstanding tradition of similar firearm regulations.

At the second step of the Second Amendment analysis, the government may show that a challenged regulation aligns with historical tradition by identifying analogous historical regulations, thus demonstrating that "the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. This standard directs courts to "ascertain 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.* (quoting *Bruen*, 597 U.S. at 29 & n.7) (modification in *Rahimi*). "The law must comport with the principles underlying the Second Amendment, but it need not be a dead ringer or a historical twin." *Id.* (cleaned up). "Why and how the regulation burdens the right are central to this inquiry." *Id.*; *see also Bruen*, 597 U.S. at 28-29 (comparing "how and why the regulations burden a law-abiding citizen's right to armed self-defense"); *Thompson*, 2025 IL 129965, ¶¶ 26-27 (applying this standard); *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 34 (same). Thus, "if the laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.*

The historical analogues to the UPWF statute share its goal of protecting the public by preventing non-law-abiding and otherwise dangerous individuals from possessing firearms. Most directly, felons — those convicted of offenses deemed serious by the legislatures of the era — have since the Colonial era been subject to punishments encompassing, and far more serious than, disarmament. In addition, in the eighteenth century, governments sought to protect the public safety by disarming categories of people deemed dangerous and by enacting "going armed" laws. This tradition continued into the nineteenth century in the form of surety statutes and licensing and taxation regimes that enabled governments to track firearms and restrict

their carriage by dangerous individuals. These regulations demonstrate a history and tradition of protecting public safety by preventing those considered dangerous from possessing firearms. The UPWF statute is consistent with this historical tradition.

1. There is a founding-era tradition of at least disarming felons and other categories of individuals perceived to be dangerous in order to protect public safety.

There is a tradition and history of disarming felons, or imposing far more serious punishments, dating back to the Colonial era. Indeed, death or estate forfeiture were the standard penalties available for serious offenses at the time of the founding. This applied equally to non-violent offenses such as horse theft and forgery. And, as the Supreme Court and others have recognized, if the greater penalty of death or estate forefeiture were available to punish felonies, then the lesser penalty of disarmament was also available. Indeed, the historical record shows that legislatures dating back to before the Constitution understood disarmament as an available alternative penalty to death or estate forfeiture. Moreover, the serious penalties, including death, imposed for felonies in the eighteenth century served the same deterrent purpose as modern disarmament statutes, like Illinois's UPWF statute.

In addition, the historical record demonstrates that legislatures had the power to recognize new crimes as felonies. And that authority was not limited to violent offenses. Accordingly, contrary to defendant's argument, it

does not undermine the People's position that conduct identified as a felony today might not have been so identified in the Colonial era. These two historical traditions (of legislative categorical disarmament and legislative power to define felonies eligible for severe punishment), taken together, justify Illinois's UPWF statute.

a. Legislatures historically subjected felons to punishments far more serious than disarmament.

The nation's history and tradition of firearm regulation includes laws disarming felons that go back to the Colonial era. *Heller* identified as a "highly influential" "precursor" to the Second Amendment the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents. 554 U.S. at 604. That report recognized the permissibility of disarming convicted felons because citizens have a personal right to bear arms "unless for crimes committed, or real danger of public injury." 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 662, 665 (1971). Likewise, Thomas M. Cooley's 1868 treatise, which *Heller* described as "massively popular," 554 U.S. at 616, explained that some classes of people were "almost universally excluded" from exercising certain civic rights, including "the idiot, the lunatic, and the felon, on obvious grounds." Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 29 (1st ed. 1868). Thus, the Second Amendment incorporates a common law tradition that permits restrictions directed at those who are not law-abiding

citizens and "does not preclude laws disarming the unvirtuous (i.e. criminals)." Don B. Kates, Jr., *The Second Amendment: A Dialogue*, Law & Contemp. Probs., Winter 1986, at 146.

Indeed, at the time of the founding, "death" — and not merely disarmament — "was the standard penalty for all serious crimes." *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) (cleaned up); *see also Tennessee v. Garner*, 471 U.S. 1, 13 (1985) (explaining that at common law "virtually all felonies were punishable by death"); *Duarte*, 137 F.4th at 756. In addition to death, "[c]olonies and states also routinely made use of estate forfeiture as punishment." *United States v. Diaz*, 116 F.4th 458, 468 (5th Cir. 2024) (citing Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 332 nn.275 & 276 (2014) (collecting statutes)); *see also Duarte*, 137 F.4th at 756; *Range v. Att'y Gen. United States*, 124 F.4th 218, 267-71 (3d Cir. 2022) (en banc) (Krause, J., concurring) (collecting statutes). In 1769, Blackstone defined a felony as "an offence which occasions a total forfeiture of either lands, or goods, or both, at the common law; and to which capital or other punishment may be superadded." 4 William Blackstone, Commentaries on the Laws of England 95 (1st ed. 1769).

Nor were these punishments limited to violent felonies, as "nonviolent crimes such as forgery and horse theft were capital offenses." *Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019); *accord United States v. Jackson*, 110 F.4th 1120, 1127 (8th Cir. 2024) (collecting laws that punished

non-violent offenses with death and estate forfeiture); *see also* Stuart Banner, *The Death Penalty: An American History* 23 (2002) (describing the escape attempts of men condemned to die for forgery and horse theft in Georgia between 1790 and 1805). For example, in 1790, the First Congress made counterfeiting and forgery capital offenses. *See* Act of Apr. 30, 1790, ch. 9 ("Crimes Act of 1790"), § 14, 1 Stat. 112, 115; *Duarte*, 137 F.4th at 756.

Defendant's argument that the historical treatment of felons is not an exact match for modern felony disarmament laws, *see* Def. Br. 22, misses the mark. Just because eighteenth century legislatures chose to punish offenses they deemed serious with death and estate forfeiture does not mean that they could not have enacted lesser punishments, including disarmament. The punishment of serious crimes by death also means that there was no need to draft a specific, additional provision addressing possession of firearms by those who had committed serious crimes. Thus, this historical tradition demonstrates that the framers would have understood felon-in-possession laws to be within the legislature's authority, for "it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms." *Medina*, 913 F.3d at 158.

Defendant argues that "'[t]he obvious point that the dead enjoy no rights does not tell us what the founding era generation would have understood about the right of felons who lived," Def. Br. 29 (quoting *Kanter v.*

Barr, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting)), but the historical application of a greater penalty means that a lesser penalty is also permissible. *See Rahimi*, 602 U.S. at 699 ("[I]f imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament that Section 922(g)(8) imposes is also permissible."). Accordingly, if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible. *See Duarte*, 137 F.4th at 756; *accord Diaz*, 116 F.4th at 469 ("[I]f capital punishment was permissible to respond to theft, then the lesser restriction of permanent disarmament that § 922(g)(1) imposes is also permissible."); *Jackson*, 110 F.4th at 1127 (similar); *Hunt*, 123 F.4th at 705-06 (similar).

Indeed, pre- and post-ratification regulations support the view that legislatures viewed disarmament as an alternative available remedy for those who committed serious crimes. The 1689 English Bill of Rights ("the 'predecessor to our Second Amendment'") guaranteed that "Protestants . . . may have Arms for their Defence suitable to their Conditions, and *as allowed by Law*[.]" *Bruen*, 597 U.S. at 44 (cleaned up and emphasis added). "The purpose of this clause, according to historians, was to leave no doubt that it was Parliament that had regulatory power over firearms, not the Crown." *Atkinson v. Garland*, 70 F.4th 1018, 1031 (7th Cir. 2023) (Wood, J., dissenting) (citing Carl T. Bogus, *The Hidden History of the Second*

Amendment, 31 U.C. Davis L. Rev. 309, 379-84 (1998)). And "[i]n Pennsylvania, Anti-Federalist delegates — who were adamant supporters of a declaration of fundamental rights — proposed that the people should have a right to bear arms 'unless for crimes committed, or real danger of public injury from individuals.'" *United States v. Perez-Garcia*, 96 F.4th 1166, 1188 (9th Cir. 2024) (cleaned up).

In fact, in 1820, when Edward Livingston prepared a systematic code of criminal law for Louisiana, he replaced the death penalty for crimes such as forgery, perjury, and fraud with permanent forfeiture of certain rights, including the "right of bearing arms." *Range*, 124 F.4th at 271-72 (Krause, J., concurring); *see* Edward Livingston, *A System of Penal Law for the State of Louisiana* 377, 378 (Phila., J. Kay, Jun. & Bro., Pittsburgh, J.L. Kay & Co. 1833) (including the right to bear arms as a civil right that may be forfeited); *id.* at 393 (between three and seven years in prison and permanent forfeiture of civil rights for perjury); *id.* at 409 (between seven and fifteen years in prison and permanent forfeiture of civil rights for forgery). Founders such as Thomas Jefferson, James Madison, Joseph Story, and John Marshall referenced Livingston's work approvingly. *See Range*, 124 F.4th at 272 (Krause, J., concurring). Accordingly, even though Livingston's code was not ultimately adopted, plainly these founders understood that the legislature *could* disarm those who committed even non-violent felonies. *See id.*

Defendant's effort to distinguish the UPWF statute because it constitutes a "lifetime ban" whereas "historical firearm restrictions were temporary or conditional, and easily lifted," Def. Br. 27, is unavailing for two reasons. First, history does not support the proposition that status-based disarmament laws were permissible *only* if they provided a mechanism for individuals to prove that they were not too dangerous to own a firearm. Although some of the historical laws provided such an exemption, not all of them did. *See Zherka v. Bondi*, 140 F.4th 68, 91-92 (2d Cir. 2025) (collecting examples).

Second, and in any event, the UPWF statute is not a "lifetime ban." Subsection 10(c) of the FOID Card Act provides that any felon can apply to the circuit court in the county where he resides "requesting relief from such prohibition," and the court may grant that relief as long as (1) "the applicant has not been convicted of a forcible felony. . . within 20 years," (2) the circumstances of the applicant's criminal conviction and criminal history "are such that the applicant will not be likely to act in a manner dangerous to public safety," (3) "granting relief would not be contrary to the public interest," and (4) "granting relief would not be contrary to federal law." 430 ILCS 65/10(c). Thus, any defendant convicted of a non-violent felony, whose crime and criminal record does not demonstrate dangerousness, may apply for relief from the UPWF statute's prohibition on firearm possession, and a circuit court may grant such relief. In other words, even if historical laws did

disarm people only temporarily or conditionally based on a showing of dangerousness, *see* Def. Br. 28-29, that is how contemporary Illinois law functions, as well.

Defendant's suggestion that the UPWF statute lacks an analogous historical tradition because not *every* felony was punished with death and estate forfeiture during the founding era, *see* Def. Br. 29, is equally misplaced. It matters only that, as a matter of constitutional authority, legislatures had the ability to impose such punishments. Limiting modern legislatures to disarming only those convicted of the same crimes that would have resulted in disarmament (or worse) in the eighteenth century would "force[] 21st-century regulations to follow late-18th-century policy choices, giving us 'a law trapped in amber' . . . [a]nd it assumes that founding-era legislatures maximally exercised their power to regulate." *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring).

Finally, not only does the UPWF statute share a "how" with these historical regulations (or, at the very least, offer a lesser restriction), it also share a "why." *See Bruen*, 598 U.S. at 29 ("how" and "why" modern and historical regulations burden a law-abiding citizen's right to armed self-defense is the central consideration to the analogical inquiry). "The purpose of capital punishment in colonial America was threefold: deterrence, retribution, and penitence." *Diaz*, 116 F.4th at 469. Similarly, "[t]he purpose of the unlawful possession of weapons by a felon statute is to protect the

health and safety of the public by deterring possession of weapons by convicted felons, a class of persons that the legislature has determined presents a higher risk of danger to the public when in possession of a weapon." *People v. Johnson*, 2023 IL App (5th) 230714, ¶ 27 (cleaned up; collecting similar cases).

So, in sum, historical felony punishments are relevantly similar — sharing a "how" and "why" — with the UPWF statute. That capital punishment and estate forfeiture comported with historical understandings of constitutionally permissible punishment demonstrates that the founding generation would view UPWF's lesser punishment of disarmament as consistent with the Second Amendment. That is backed up by a historical record that shows that disarmament was viewed pre- and post-ratification as a lesser, permissible alternative to death for serious offenses.

b. Legislatures historically had the authority to determine what offenses are most dangerous and label them as felonies, even where those offenses are "non-violent."

To be sure, today's felonies do not correspond perfectly with founding-era felonies. *See Lange v. California*, 594 U.S. 295, 311 (2021) ("The felony category then was a good deal narrower than now."). But granting legislatures the discretion to determine what offenses are the most serious — and therefore subject to the label and consequences of a "felony" — is also consistent with our nation's history. Since the founding, legislatures have been permitted to identify conduct that they deem the most serious, whether

violent or not, and to punish perpetrators with severe deprivations of liberty. *See Hunt*, 123 F.4th at 707 ("Just as early legislatures retained the discretion to disarm categories of people because they refused to adhere to legal norms in the pre-colonial and colonial era, today's legislatures may disarm people who have been convicted of conduct the legislature considers serious enough to render it a felony."); *Jackson*, 110 F.4th at 1127 ("This historical record suggests that legislatures traditionally possessed discretion to disqualify categories of people from possessing firearms to address a danger of misuse by those who deviated from legal norms, not merely to address a person's demonstrated propensity for violence.").

Indeed, Blackstone and others recognized that the legislature had the authority to expand the category of "felony" to include additional crimes and that the legislature could, if it wished, subject such newly defined offenses to the punishment of death that was typically allowed for felonies. See 4 Blackstone *98 ("And therefore if a statute makes any new offence felony, the law implies that it shall be punished with death. . ., as well as with forfeiture"); 1 Matthew Hale, the History of the Pleas of The Crown 703-04 (E & R. Nutt & R. Gosling 1st ed. 1736) (recognizing the legislature's authority to enact "new felonies"); 1 William Hawkins, a Treatise of the Pleas of The Crown 107 (London, E. Richardson & C. Lintot 4th ed. 1762) (similar).

Nor is the power to recognize new felonies limited to violent offenses. For example, "[s]hortly after proposing the Bill of Rights, the First

Congress. . . punished forgery of United States securities, 'running away with a ship or vessel, or any goods or merchandise to the value of fifty dollars,' treason, and murder on the high seas with the same penalty: death by hanging." *Harmelin v. Michigan*, 501 U.S. 957, 980-81 (1991) (opinion of Scalia, J.) (cleaned up) (quoting Crimes Act of 1790, 1 Stat. 112, 114-15 (1790)); *see also United States v. Tully*, 28 F. Cas. 226, 228 (C.C.D. Mass. 1812) (No. 16,545) (Story, Circuit Justice) (explaining that "run[ning] away with [a] ship or vessel, or any goods or merchandi[s]e to the value of fifty dollars" did not require "personal force or violence"). Legislatures around the time of ratification similarly identified robbery, certain thefts, fraudulent bankruptcy, forgery of coin, and forgery of a marriage license, among others, as felonies that could warrant death and forfeiture. 4 Blackstone *6, 156, 162-65, 238-39, 246-47.

Colonial legislatures in the decades directly preceding, or during, the Revolutionary War prescribed the death penalty for a variety of non-violent felonies, including counterfeiting, fraud, theft, and perjury. *See* Banner, *supra*, at 7-8 (describing pre-Revolution laws in New Hampshire, Connecticut, Pennsylvania, New York, Virginia, Delaware, and South Carolina that imposed capital punishment for non-violent crimes such as counterfeiting, perjury, theft, embezzlement, and burning timber); *see also, e.g.*, Acts of the General Assembly of the Province of New-Jersey 121 (Burlington, Samuel Allinson ed., Isaac Collins 1776) (1741 statute imposing

"the Pains of Death" for "Felons" convicted of impersonating another during bail proceedings); The History of the Province of New-York from the First Discovery to the Year 1732, at 216 (London, William Smith ed. 1757) (stating that "[t]o counterfeit . . . is Felony without Benefit of Clergy"); A Digest of the Laws of Maryland 255-56 (Baltimore, Thomas Herty ed. 1799) (1776-78 statutes imposing "death as a felon" for forgery and counterfeiting); A Digest of the Laws of the State of Georgia 181 (Philadelphia, Robert Watkins & George Watkins eds. 1800) (1773 statute providing that a counterfeiter of "paper money . . . shall be adjudged a felon, and shall suffer death without benefit of clergy").

And the same is true of state legislatures immediately *after* the founding. *See, e.g.*, 1 A Manual of the Laws of North-Carolina 199 (Raleigh, John Haywood ed., 2d ed. 1808) (1790 law imposing felon status and death for horse theft); A Collection of All Such Acts of the General Assembly of Virginia, of a Public or Permanent Nature, As Are Now in Force 260-61 (Richmond, Augustine Davis 1794) (1792 law imposing death and felon status for certain instances of theft, forgery, and counterfeiting); 2 Laws of the State of New-York 41-42 (New-York, Thomas Greenleaf 1792) (1788 law imposing "death as a felon" for certain instances of forgery and counterfeiting); *id.* at 73-75 (1788 law imposing capital punishment for certain thefts); 1 The Public Acts of the General Assembly of North-Carolina 242 (Newbern, James Iredell & Francois-Xavier Martin eds., Martin & Ogden 1804) (1784 law stating that

those convicted of committing forgery, counterfeiting, or fraud with respect to tobacco shipments "shall be adjudged a felon, and suffer as in cases of felony"). Accordingly, defendant's insistence that disarming him based on a "non-violent offense" is inconsistent with the nation's history and tradition of firearm regulation, *see* Def. Br. 33, is belied by an historical record that demonstrates legislatures pre- and post-ratification often identified nonviolent offenses as felonies punishable by death or estate forfeiture.

2. There is a founding-era tradition of disarming categories of individuals believed to be dangerous.

Nor was disarmament limited to those found guilty of a felony, and, contrary to defendant's position, *see* Def. Br. 19, felony disarmament is not the only historical tradition "plausibly relevant" to the UPWF statute. The widespread disarmament of individuals who either remained loyal to the British government or refused to swear allegiance to the Republic also provides a relevant historical analogue to felon-in-possession laws like Illinois'. "With the possible exception of Rhode Island, every state in the early Republic followed the Continental Congress's lead and disarmed loyalists and non-associators (i.e., colonists who refused to take an oath of allegiance or support volunteer military associations)." Br. for Amici Curiae Professors of History and Law in Support of Petitioner, *United States v.*

Rahimi, No. 22-915, 2023 WL 5489062, at *8.[3] State legislatures enacted such laws to protect society from potentially dangerous individuals whom the legislatures believed could not be trusted with weapons. *See id.* at *9 (citing George Washington's 1776 address to the Pennsylvania Council of Safety). Accordingly, the UPWF statute also is analogous to founding-era laws disarming British loyalists and those who refused to take a loyalty oath to the Republic because, like those laws, the challenged provision protects society by categorically disarming a group that the legislature has determined cannot be trusted with weapons.

In addition, many States historically disarmed individuals based on religious affiliation, political views, ethnicity, or other characteristic believed at the time to be dangerous. Some of these laws prohibited selling arms to American Indians and those from outside the jurisdiction. *See, e.g.,* 1631 Va. Acts 173, Act 46; Act of Dec. 1, 1642, Public Records of the Colony of Connecticut 79 (1850); 1757-1768 Md. Acts 53, ch. 4, § 3; 1763 Pa. Laws 319; 1639 N.J. Laws 18; *Charters and General Laws of the Colony and Province of Massachusetts Bay* 133, § 2 (1814); Duke of York's Laws, 1665-75, 1 *Colonial Laws of New York from the Year 1664 to the Revolution* 40-41 (1896); *Charter to William Penn, and Laws of the Province of Pennsylvania, Passed Between the Years 1682 and 1700*, at 32 (1879). Other laws targeted Catholics. *See,*

[3] *See also* 1776 Pa. Laws 11, § 1; 1777 Pa. Laws 61, ch. 21, §§ 2, 4; 1777 Va. Laws, ch. 3, in 9 Hening's Statutes at Large 281, 281-82 (1821); 1777 N.C. Sess. Laws 231, ch. 6, § 9; 1777 N.J. Laws 90, ch. 40, § 20.

e.g., 52 *Archives of Maryland* 454 (Pleasants ed., 1935); 1756 Va. Laws, ch. 2, in 7 Hening's Statutes at Large 26, 35 (1820); 5 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 627 (statute from 1759). Still others targeted slaves and freed Black people. *See, e.g.,* Aaron Leaming & Jacob Spicer, *The Grants, Concessions, and Original Constitutions of the Province of New Jersey* 341 (2d ed. 1881); 1715 Md. Laws 117, ch. 26, § 32; 1740 S.C. Acts 168, § 23. Indeed, even pacifist groups such as the Quakers were disarmed due to their refusal to pay taxes, and the perception that they therefore threatened the social order. *See* Philip A. Hamburger, *Religious Freedom in Philadelphia*, 54 Emory L.J. 1603, 1610-1615, 1621 (2005). To be sure, these regulations would not be tolerated today for the prejudices they embody. But the underlying principle that the government may disarm categories of individuals perceived to be dangerous remains unchanged.

Bruen and *Rahimi* instruct that modern gun regulations must be measured against the actual American tradition of gun regulation. *See Rahimi*, 602 U.S. at 692; *Bruen*, 597 U.S. at 29 & n.7. That historical tradition shows that at the time of the adoption of the Second Amendment, it was well understood that legislatures had the authority to identify categories of individuals thought to be too dangerous to possess firearms, providing a sufficient historical analogue to justify Illinois's UPWF statute.

3. There is a founding-era tradition of prohibiting individuals believed to be dangerous from "going armed."

"Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Rahimi*, 602 U.S. at 740. These laws are of particular relevance here, where defendant raises an as-applied challenge in a case where his predicate offense involves the illegal public carriage of a firearm.

In particular, founding-era laws "provided a mechanism for punishing those who had menaced others with firearms. These were 'going armed' laws, a particular subset of the ancient common-law prohibition on affrays." *Id.* at 1900-01. Such "laws prohibited 'riding or going armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land,'" *id.* at 1901 (quoting 4 Blackstone *149) (emphasis deleted)), because "such conduct disrupted 'the public order' and 'le[d] almost necessarily to actual violence,'" *id.* (quoting *State v. Huntly*, 25 N.C. 418, 421-422 (1843) (per curiam)). Conduct violating going-armed and affray laws was punished "with 'forfeiture of the arms . . . and imprisonment.'" *Id.* (quoting 4 Blackstone *149). Thus, going-armed and affray laws "confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.*

Consistent with these historical analogues, the UPWF statute punishes individuals who possess firearms after previously being convicted of

a felony. Here, defendant's predicate felony was the unlawful, unlicensed carriage of a firearm in public. A5. Accordingly, as applied to this defendant, the UPWF statute prohibits possession of firearms by someone considered to be dangerous for the same reason — because he misused firearms — and for the same purpose — to protect public safety and keep the peace. Put differently, UPWF as applied to defendant shares a "how" and a "why" with going-armed and affray laws.

4. The historical tradition of disarming categories of individuals perceived to be dangerous continued into the nineteenth century.

The founding-era tradition of regulating dangerous individuals' rights with respect to firearms continued into the nineteenth century. And, indeed, the UPWF statute finds ready historical analogues from around the time the Fourteenth Amendment was ratified. *See Bruen*, 597 U.S. at 34-38 (assessing both public understanding of right to keep and bear arms in 1791, when Second Amendment was ratified, and in 1868, when Fourteenth Amendment was ratified, as well as interpretation of right in years following both ratifications); *see also Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring) ("post-ratification history — sometimes referred to as tradition — can also be important for interpreting vague constitutional text and determining exceptions to individual constitutional rights").

For example, during the nineteenth century, many States and localities prohibited firearms sales to, or possession by, intoxicated people,

drug addicts, and minors. *See, e.g.*, 1878 Miss. Laws 175, ch. 46, § 2; Edwin R. Holmes, The Charter and Code of the Ordinances of Yazoo City, Mississippi § 297, at 174 (1908); 1911 Del. Laws 28-29, ch. 15, § 3; H.A. Lindsley, The Municipal Code of the City and County of Denver § 1447, at 674 (1917); 1856 Ala. Acts 17, No. 26, § 1; 1856 Tenn. Acts 92, ch. 81, § 2; Edward I. Bullock, The General Statutes of the Commonwealth of Kentucky, art. 29, § 1, at 359 (1873); 1875 Ind. Laws 59, ch. 40, § 1; 1876 Ga. Laws 112, No. 128 (O. No. 63.), § 1; 1878 Miss. Laws 175, ch. 66, §§ 1-2; John A. Hockaday & Thomas H. Parrish, Revised Statutes of the State of Missouri 224, § 1274 (1879); 1881 Del. Laws 987, ch. 548, § 1; 1881 Ill. Laws 73, § 2; 1882 Md. Laws 656, ch. 424, § 2; 1882 W. Va. Acts 421-422, ch. 135, § 1; 1883 Kan. Sess. Laws 159, ch. 105, §§ 1-2; 1883 Wis. Sess. Laws 290, ch. 329, §§ 1-2; 1884 Iowa Acts and Resolutions 86, ch. 78, § 1; 1890 La. Acts 39, No. 46, § 1; 1890 Wyo. Sess. Laws 140, § 97; Act of July 13, 1892, ch. 159, § 2, 27 Stat. 116, 116-117 (federal legislation applying to D.C.); 1893 N.C. Public Laws & Resolutions 468, ch. 514, § 1. Some governmental authorities, similarly, prohibited firearm sales to, or possession by, those considered to have mental illness, *see* James McClellan, *A Digest of the Laws of the State of Florida,* ch. 80 § 13, at 429 (1881); and those considered "disorderly," or "tramps" or "vagrants," *see*, *e.g.*, Cong. Globe, 39th Cong., 1st Sess. 908-909 (1866); 1879 Conn. Pub. Acts 394, ch. 59, § 4; 1880 N.Y. Laws, vol. 2, ch. 176,

§ 4, at 297; Josiah A.P. Campbell, *Revised Code of Statutes and Laws of Mississippi*, ch. 77, § 2964, at 772 (1880).

Specifically, in the latter half of the nineteenth century, various jurisdictions (including, Iowa, Massachusetts, New Hampshire, Ohio, Rhode Island, Vermont, and Wisconsin) prohibited so-called "'tramps' — typically defined as males begging for charity outside of their home county" — from possessing firearms. *See Zherka*, 140 F.4th at 88-89 (quoting Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 270 (2020) and collecting statutes). In fact, the Ohio Supreme Court upheld the Ohio tramp disarmament law against a state constitutional challenge. *Id.* at 89 (citing *State v. Hogan,* 63 Ohio St. 202, 219 (1900)). Notably, the Ohio law, like the other tramp laws, did not apply only to those who were found to have terrorized others, but rather, to any covered person who possessed a firearm, based on the legislative judgment that such individuals were presumptively dangerous. *Id.* (citing Greenlee, *Historical Justification*, 20 Wyo. L. Rev. at 269-70).

Indeed, by the late nineteenth century, governments were using licensing regimes to limit the right to keep and bear arms to "law-abiding" individuals, *see*, *e.g.*, Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in force January 1, 1881, ch. 8, art. 27, § 265 (1881) (permit to carry pistol can be issued if "applicant is a proper and law-abiding

person"); to people found "proper" to carry weapons, *see*, *e.g.,* Laws of Nebraska Relating to the City of Lincoln, Revised Ordinances 210 (1895) (allowing mayor to issue permits to carry concealed weapons to those he deems "proper"); or to "peaceable" individuals, *see*, *e.g.,* San Francisco Municipal Reports for the Fiscal Year 1874-5, Ending June 30, 1875, Order No. 1,226 Prohibiting the Carrying of Concealed Deadly Weapons (1875) (allowing police to issue license to carry a concealed weapon to a "peaceable person, whose profession or occupation may require him to be out at late hours of the night, to carry concealed deadly weapons for his protection"). Like Illinois's UPWF statute, these laws prevented people who had a demonstrated history of lawlessness from possessing or bearing firearms. And like Illinois's regime, the purpose of these regulations was to advance public safety.

* * *

Rahimi made clear that when assessing the relevant similarity of historical analogues, courts must focus on whether the challenged statute "comport[s] with the principles underlying the Second Amendment"; in other words, the government need not identify "a 'dead ringer' or a 'historical twin'" for the modern statute. 602 U.S. at 692. Indeed, as Justice Barrett explained, "a test that demands overly specific analogues has serious problems." *Id.* at 739 (Barrett, J., concurring). For one, "it assumes that founding-era legislatures maximally exercised their power to regulate,

thereby adopting a 'use it or lose it' view of legislative authority." *Id.* at 739-40 (Barrett, J., concurring). Additionally, requiring overly specific analogues "giv[es] us a law trapped in amber." *Id.* at 739 (Barrett, J., concurring) (cleaned up). This, the Supreme Court explained, is precisely what its Second Amendment cases were not meant to suggest. *Id.* at 692. "Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers." *Id.* at 693.

In sum, disarming felons has been recognized as constitutional by the Supreme Court and otherwise passes constitutional muster under the text-and-tradition standard that the Court outlined in *Rahimi* and *Bruen*. Defendant's challenge to the UPWF statute thus fails.

D. A case-by-case or crime-by-crime approach is unwarranted because the UPWF statute provides a means for felons to seek permission to lawfully possess firearms.

Finally, this Court should reject defendant's invitation to adjudicate whether a predicate felony was violent or dangerous in every case in the context of as-applied challenges to the UPWF statute. *See* Def. Br. 34-35. Although the General Assembly has presumptively disarmed all felons, it also has provided a judicial mechanism for felons to seek permission to lawfully possess firearms. *See* 720 ILCS 5/24-1.1(a); 430 ILCS 65/10(c); *see also supra* p. 24. This approach, which places the burden on felons to prove that they pose no danger to the public *before* possessing a firearm, is both

sensible and easy to apply. Defendant's approach, by contrast, would be contrary to this legislative scheme, and it would be unworkable.

Defendant asserts that the approach chosen by the legislature is constitutionally insufficient but does not identify a method that courts could use to consistently or reliably adjudicate claims of his sort after the fact. *See* Def. Br. 35-36. That alone should counsel hesitation on the Court's part before opening the courthouse doors to such as-applied constitutional challenges.

Indeed, litigation in other courts and in different contexts has shown that this is no easy task. First, there is no easy way to distinguish violent from non-violent crimes. *See Johnson v. United States*, 576 U.S. 591, 601 (2015) (determining which predicate offenses were sufficiently violent to qualify offender as career criminal yielded "pervasive disagreement about the nature of the inquiry one is supposed to conduct and the kinds of factors one is supposed to consider"). Defendant describes himself as a "non-violent" offender, but some purportedly non-violent conduct (for instance, illegally carrying a firearm in public, as defendant did) can still be "dangerous," in that it "often lead[s] to violence." *Folajtar v. Att'y Gen.*, 980 F.3d 897, 913 (3d Cir. 2020) (Bibas, J., dissenting) (abrogated by *Bruen*). Likely for this reason, even the small minority of States that restrict firearm possession only for "crimes of violence" generally define that phrase by statute to include crimes like drug offenses and burglary that do not in and of themselves necessarily

have an element of physical harm. *E.g.*, Ala. Code § 13A-11-70(3); R.I. Gen. Laws § 11-47-2(5); Vt. Stat. Ann., tit. 13, § 4017(d)(3). And, as explained, there is a historical tradition of disarming persons convicted of serious crimes that were not "violent" in nature, including forgery, horse theft, and more.

Second, defendant's proposal would mire courts in endless litigation over the application of the standard in individual cases, raising both "practical difficulties and potential unfairness." *Taylor v. United States*, 495 U.S. 575, 601 (1990). A case-by-case approach could also require courts to undertake fact-intensive inquiries on collateral matters, including into the conduct underlying the predicate conviction, any sentencing enhancements that the defendant received, the number of years that have passed since the conviction, whether the defendant is a repeat offender, and more. It was exactly these concerns that led the Supreme Court to reject just such a "factual" approach to deciding whether a defendant's prior conviction was sufficiently "violent" to trigger a sentencing enhancement under the Armed Career Criminal Act ("ACCA"); such an approach, the Court held, would be "utter[ly] impractica[l]." *Johnson*, 576 U.S. at 605. The same is true here.

As the Supreme Court observed in that context, requiring courts to consider on a case-by-case basis whether a defendant's past conduct was sufficiently "violent" (or whatever standard might apply) also raises fairness concerns. *See Taylor*, 495 U.S. at 601. Requiring courts to decide whether the facts and circumstances of a defendant's predicate conviction or

convictions warrant disarmament will yield "unpredictability and arbitrariness," *Johnson*, 576 U.S. at 598, as courts embark on the task of applying a nebulous standard to a wide range of fact patterns. *See, e.g.*, *Range v. Att'y Gen.*, 69 F.4th 96, 131 (3d Cir. 2023) (en banc) (Krause, J. dissenting) (criticizing the majority for replacing a "straightforward test with an opaque inquiry — whether [a] defendant is 'like Range'"), *vacated and remanded sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024). By contrast, the UPWF statute, which draws no distinction among felonies, is clear, workable, and democratically accountable.

Nor would it help for courts to look to the criminal statute under which a defendant was convicted. *See* Def. Br. 33. A crime-by-crime approach of this sort, likely modeled on the "categorial" approach that courts use in the sentencing-enhancement context, would present many of the same practical difficulties as a case-by-case approach, and would be no less arbitrary in application. Again, presuming that this Court were able to identify a standard for courts to apply in considering a defendant's prior felony conviction (for instance, under which a defendant could be disarmed only if he or she were convicted of a "violent" or "dangerous" crime), categorizing crimes in this manner would not be a straightforward task. *See Johnson*, 576 U.S. at 598 (requiring courts to decide, as a categorical matter, whether offenses were "violent" or not was "hopeless[ly] indetermina[te]" and so

produced "more unpredictability and arbitrariness than the Due Process Clause" allows).

These issues would arise repeatedly if this Court were to hold the UPWF statute unconstitutional as applied to individuals without a sufficiently "violent" prior conviction. Indeed, defendant's own case exemplifies the problem. Although defendant insists that his prior offense is a non-violent one, it requires no stretch of the imagination to conclude that carrying a gun in public without a license — when the lawful carriage of firearms is readily available to all law-abiding citizens in Illinois provided that they avail themselves of Illinois's shall-issue licensing regime — poses a risk to public safety and reflects a propensity for dangerous behavior.

Indeed, a 2020 study showed that licensing laws that require an in-person application or fingerprinting help prevent mass shootings: States with such laws have 56% fewer fatal mass shooting incidents. *See* Daniel W. Webster, *et al., Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 Crim. & Pub. Pol'y, 171, 181 (2020). Another study found that a dramatic *increase* in gun homicides followed Missouri's repeal of a handgun licensing law in 2007, and a dramatic *decrease* in gun homicides followed Connecticut's adoption of a handgun licensing law in 1995. *See* Alexander D. McCourt, *et al., Purchaser Licensing, Point-of-Sale Background Check Laws, and Firearm Homicide and Suicide in 4 U.S. States*, 1985-2017, 110 Am. J. Pub. Health 10, 1546, 1549

(2020). Similarly, a May 2018 study found that statewide permit-to-purchase and license-to-own laws were associated with an 11% reduction in gun homicides in populous urban counties, where homicides tend to be concentrated. *See* Cassandra K. Crifasi, *et al., Correction to: Association between Firearm Laws and Homicide in Urban Counties*, J. Urban Health (2018), https://tinyurl.com/2mbebnur. And not only does the licensed carriage of firearms result in less gun violence than the unlicensed carriage of firearms, unlicensed firearms are also far more likely to be diverted to criminals. *See* Daniel W. Webster, *et al., Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws*, Reducing Gun Violence In America 109, 112-14 (Daniel W. Webster & Jon S. Vernick eds., 2013).

Put differently, going through a licensing process to possess or carry a firearm greatly reduces the likelihood of gun violence. It is perhaps unsurprising then that defendant, who had a demonstrated history of illegally carrying a firearm without a license, menaced and assaulted his girlfriend with a gun on the night of his offense, resulting in convictions for domestic battery and recklessly discharging a firearm, in addition to the UPWF conviction at issue. Accordingly, defendant's contention that his "prior nonviolent offenses do not show that he posed a threat of physical danger," Def. Br. 35, is belied by the record and social science research.

Accordingly, regardless of whether courts employ a case-by-case or crime-by-crime approach, courts are likely to reach divergent results in

analogous cases. In the months after the Third Circuit's en banc opinion in *Range*, which recognized for the first time the validity of an as-applied challenge to the federal felon-in-possession statute in that jurisdiction, district courts granted relief to defendants previously convicted of felony drug trafficking, robbery, and other serious crimes. *See, e.g.*, *United States v. Quailes*, 688 F. Supp. 3d 184, 187-88 (M.D. Pa. 2023) (six felony convictions, including four for drug trafficking); *United States v. Harper*, 689 F. Supp. 3d 16, 19-20 (M.D. Pa. 2023) (thirteen felony convictions, including five for robbery and four for drug trafficking). By contrast, other district courts in that jurisdiction rejected Second Amendment claims brought by individuals with analogous criminal records. *See, e.g.*, *United States v. Reichenbach*, No. 22-cr-57, 2023 WL 5916467, at *1 (M.D. Pa. Sept. 11, 2023) (five felony convictions, including four for drug trafficking); *United States v. Pearson*, No. 22-cr-271, 2023 WL 6216527, at *1 (E.D. Pa. Sept. 25, 2023) (multiple prior drug trafficking offenses).

At bottom, accepting defendant's approach will produce uncertainty and confusion for litigants as well as courts, raising concerns about fairness. By contrast, the regime established by the General Assembly (prohibiting possession of firearms by all convicted felons unless their conviction is vacated or they receive relief pursuant to the FOID Card Act) is easily administrable by courts and readily ascertainable by Illinois residents.

Given the historical tradition of legislatures defining what constitutes a serious offense and penalizing those offenses with consequences far beyond mere disarmament, it is unsurprising that "the majority of. . . circuits that have considered similar arguments, . . . reject [the] contention that the prohibition on possession of firearms by convicted felons violates the Second Amendment as applied to 'nonviolent' felons." *Zherka*, 140 F. 4th at 96; *see also, e.g.*, *Vincent*, 127 F.4th at 1266 (upholding constitutionality of federal felon-in-possession statute as applied to non-violent offenders); *Jackson*, 110 F.4th at 1129 (upholding federal felon-in-possession statute as applied to defendant previously convicted of sale of a controlled substance). This Court should do the same and hold that Illinois's UPWF statute, as applied to defendant, comports with the Second Amendment.

CONCLUSION

This Court should affirm the appellate court's judgment.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 46 pages.

/s/ Garson S. Fischer
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 14, 2026, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by way this Court's Odyssey e-filing system:

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