EFiled: Apr 20 2026 02:57PM EDT
Filing ID 79098048
Case Number 412,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELAWARE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, *et al.*,	
	No. 412, 2025
Appellants / Cross-Plaintiffs, Defendants-Below,	
	Court Below: Superior Court of the State of Delaware
v.	C.A. No. K23C-07-019 RLG
GAVIN J. BIRNEY, *et al.*,	
Plaintiffs / Cross-Appellants, Plaintiffs-Below.	

CORRECTED APPELLANTS' REPLY BRIEF ON APPEAL AND CROSS-APPELLEES' ANSWERING BRIEF ON CROSS-APPEAL

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DEFENDANTS' ANSWERING ARGUMENT ON CROSS-APPEAL

I. Denied. This Court has been clear that interpretation of Section 20 is not dependent upon federal interpretations of the Second Amendment, particularly when Plaintiffs chose to challenge state law in state court under the state constitution. To hold otherwise undermines the sovereignty of this Court and its rejection of the "lockstep" approach. Further, the test set forth in *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022) is just that - a test. No court has held state courts must apply the methodology set forth in *Bruen* to interpret their own state constitution. Moreover, federal courts have split in the wake of an explosion of Second Amendment litigation as courts have struggled to apply *Bruen*. Section 20 was adopted specifically to protect Delawareans from uncertainty in federal jurisprudence and this Court has been mindful of that as it has consistently interpreted Section 20 as affording a greater bundle of rights than the Second Amendment.

II. Denied. Even if this Court applies the *Bruen* test, HB 451 satisfies the text and historical tradition analysis. First, 18-20-year-olds are a narrow class whose access to firearms has always been restricted because "minors" are by virtue of their immaturity and impulsivity presumptively dangerous when in possession of guns; therefore, they were excluded from Second Amendment protections. Second, even if they are "persons" meriting Second Amendment protections, HB 451 aligns with

the Nation's and Delaware's long historical tradition of regulations (dating back to common law) restricting "minors" access to firearms, as several courts have affirmed.

DEFENDANTS' REPLY ARGUMENT ON APPEAL

HB 451 does not impose a "total ban" on Section 20 rights. Indeed, 18-20-year-olds may currently possess shotguns and muzzle-loading rifles without qualification. 11 Del. C. § 1448(a)(5)(a); A-58. They may possess and carry handguns inside and outside their homes, and anywhere else permitted by law, provided they obtain a CCDW permit. 1448(a)(5)(c); A-59. Persons 18-20 in the military or law enforcement may also possess any firearm. *Id*. § 1448(a)(5)(b); A-59. Similarly, individuals under 21 may possess firearms for supervised hunting, instruction, sporting or recreational activity. *Id.* § 1448(a)(5)(c); A-59. Without supervision, 18-20-year-olds may possess particular rifles and handguns, including revolvers and single shot pistols during hunting seasons as provided for in 7 Del. C. § 704(g). And, even in the absence of a CCDW license, 18-20-year-olds who use any firearm in defense of self, others or home have an absolute defense for any alleged violation. *Id.* § 1448(a)(5)(d); A-59.

Rather, in the interest of public safety, HB 451 provides guardrails for a limited time to a specific class of persons empirically proven to be prone to misuse firearms, especially handguns, while maintaining avenues for the meaningful exercise of the core rights set forth in Section 20, should they so choose. *Bridgeville Rifle & Pistol Club, LTD. v. Small,* 176 A.3d 632, ~~at~~ 639 (Del. 2017).

I. THE LEGISLATURE IS ENTITLED TO DEFERENCE IN ENACTING HB 451 AND THEIR ACTIONS ARE ENTITLED TO A PRESUMPTION OF CONSTITUTIONALITY

"[A] legislative enactment is cloaked with a presumption of constitutionality and should not be declared invalid unless its invalidity is beyond doubt." *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974) (quoting *Klein v. Nat'l Pressure Cooker Co.*, 64 A.2d 529, 532 (Del. 1949). This is Delaware judicial tradition, as is the requirement that "one who challenges the constitutionality of a statute has the burden of overcoming the presumption of its validity." *Wilmington Med. Ctr., Inc. v. Bradford*, 382 A.2d 1338, 1342 (1978). Plaintiffs claim the burden shifts back to the State when a fundamental right is at stake; yet fail to cite any proper authority for this shift. *See* D.I. 29: Plaintiffs' Opening Brief ("D.I. 29, Pl. Br.") at 51. Even if true, the General Assembly satisfied that burden through a carefully crafted set of exemptions that, when viewed as a whole, provide several meaningful and reasonable paths to allow the subject class to exercise their rights to self-defense - the only right the Court found unreasonably burdened by HB 451.

Legislative deference is even more critical when the challenged law involves an issue of significant public interest and for which data plays an integral role in the development of the law, something Plaintiffs conveniently ignore. *State v. Rumpff*, 308 A.3d 169, 181 (Del. Super. Ct. 2023) ("There must be some deference given to the legislature when analyzing the importance of these public policy laws because

'the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks.'") (quoting *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012)).

II. THE SUPERIOR COURT FAILED TO PROVIDE DEFERENCE TO THE LEGISLATURE'S THOUGHTFUL BALANCING IN ENACTING HB 451.

A. Delaware Has a Storied History of Regulating Firearm Possession For Categories Of Presumptively Dangerous Individuals, Minors Included.

Broadly speaking, categorical firearm restrictions are constitutionally permissible when applied to individuals who pose a heightened risk when armed. *See, e.g.*, *United States v. Rahimi*, 602 U.S. 680, 693 (2024); *Rumpff*, 308 A.3d at 181 ("'[L]egislatures have the power to prohibit dangerous people from possessing guns,' and can 'disqualif[y] categories of people from the right to bear arms ... when they judged that doing so [is] necessary to protect the public safety.'") (quoting *Kanter v. Barr*, 919 F.3d 437, 449 (7th Cir. 2019) (Barrett, J., dissenting)). Notably, HB 451 is not categorical: with its comprehensive exemptions, even the impacted population can lawfully exercise their rights.

Categorical restrictions survive constitutional scrutiny because the right to bear arms is "not absolute," *Doe v. Wilmington Housing Auth.*, 88 A.3d 654, 667 (Del. 2014), and thus subject to reasonable restrictions to protect the public from presumptively dangerous individuals. *Rumpff*, 308 A.3d at 180-200 (upholding prohibition on firearm possession during protective order period); *Short v. State*, 1991 WL 12101, at *1 (Del. Jan. 14, 1991) (upholding prohibition on deadly weapon possession by convicted felons); 11 Del. C. § 1460 (prohibiting possession of a

firearm while under the influence of alcohol or drugs in a public place); 24 Del. C. § 903 (prohibiting sale of firearms to minors). Delaware courts have historically upheld comparably limited or temporary category restrictions, banning people subject to protective orders from possessing firearms, prohibiting possession of a firearm while under the influence in a public place, and temporarily banning persons subject to emergency *ex parte* protection orders from possessing guns. *See Bridgeville*, 176 A.3d at 652; *Rumpff*, 308 A.3d at 191-92 ("In the 19th century, states began to ban the sale of guns to persons of unsound mind, armed vagrants, intoxicated individuals, or those who were not known to be peaceable and quiet persons. . . felons, drug addicts, the mentally ill, and domestic violence misdemeanants.") (internal citations and quotations omitted).

Of import here, not every prohibition requires a judicial determination of dangerousness. For example, possession of a firearm while under the influence of alcohol or drugs is prohibited. 11 Del. C. § 1460.[1] There is no adjudicatory determination of dangerousness prior to the prohibition on possessing a firearm while intoxicated; the prohibition is based on a presumption that individuals under the influence are categorically dangerous and thus, categorically, subject to

[1] Delaware had laws prohibiting the sale of firearms to intoxicated persons (dating back to at least 1911), *see* 24 Del. C. § 903, but until 2012 did not have a specific criminal statute broadly prohibiting possession while under the influence in public.

regulation, regardless of whether dangerousness has been previously or individually adjudicated.[2]

This is precisely what the legislature accomplished in HB 451. It reviewed Delaware crime and suicide statistics. It found that 18-20-year-olds were more likely to engage in gun violence. It considered neuroscientific evidence showing persons in this age group do not have fully developed brain structures, and are specifically prone to lack neurological self-control and prone to increased aggression, yielding an increase in both gun violence and gun-related suicide. *See* D.I. 15; Defendants Opening Brief ("Def. Br.") at 9. Based on this robust body of evidence, the legislature determined this class of persons is presumptively dangerous and enacted a statute imposing *temporary* limits on their ability to possess certain firearms to protect the public. A-57; A-411.

States have "great latitude" "under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *see also District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (governments have "a variety of tools" to combat gun violence, including "impos[ing] conditions and qualifications on the commercial sale of

[2] Section 903, which prohibits the sale of firearms to persons under 21, was never challenged, even though the State set the age for adulthood at 18 in 1972. 1 Del. C. §. 701. In 1987, when the legislature adopted art. I, § 20, the legislature also amended §903, substituting the word "minor" for "under the age of 21." . https://legis.delaware.gov/SessionLaws/Chapter?id=22428.

arms."); *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (the Second Amendment "by no means eliminates" the States' "ability to devise solutions to social problems that suit local needs").

Contrary to Plaintiffs' claim, the Superior Court failed to exercise judicial restraint – it did not respect the legislature's conclusion that Delawareans' safety is best enhanced by temporarily limiting those under the age of 21 from purchasing and possessing certain firearms, absent a demonstration of their maturity as responsible, law-abiding citizens. 11 Del. C. §1448(a)(5)(b)(3).

B. Courts Appropriately Defer to Legislative Findings When Upholding Restrictions on Gun Use for 18-20 Year-Olds.

Federal courts have upheld regulations on gun access for individuals under 21. *See Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025), *cert. docketed*, No. 24-1185 (U.S. May 25, 2025) (en banc) ("*NRA*"); *McCoy v. ATF*, 140 F.4th 568 (4th Cir. 2025), *cert. docketed*, No. 25-24 (U.S. July 8, 2025); *Rocky Mtn. Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024) ("*RMGO*"); *Chavez v. Bonta*, 773 F.Supp.3d 1028 (S.D. Cal. 2025); *Pinales v. Lopez*, 765 F.Supp.3d 1024 (D. Haw. 2025). In *McCoy*, the Fourth Circuit acknowledged legislative findings on the importance of age restrictions in protecting the public and noted Congress "found 'a causal relationship between the availability of [handguns] and juvenile and youthful criminal behavior' and sought to prohibit handgun sales 'to emotionally immature' and 'thrill-bent juveniles and minors.'" *McCoy*, 140 F.4th at 572 (quoting Omnibus

Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 225–26); *see also NRA*, 133 F.4th at 1112 (upholding gun law enacted after Parkland massacre).

Contrary to Plaintiffs' argument, federal courts have found age restrictions are analogous to Founding era laws restricting access for "infants" and "minors" thus satisfying *Bruen*. *McCoy*, 140 F.4th at 576-76, 580; *NRA*, 133 F.4th at 1117-18. The Founding era's "infancy doctrine" precluded minors from purchasing goods on credit, including firearms, because they "lacked the judgment and discretion to enter contracts and to receive the wages of their labor." *NRA*, 133 F.4th at 1118. This tradition of restricting firearms access until 21 was "reinforced" by mid-to-late nineteenth-century statutory prohibitions. *McCoy*, 140 F.4th at 578; *NRA*, 133 F.4th at 1121–22. Courts have also determined historical and modern age restrictions were intended to address public safety concerns, much like HB 451. *See McCoy*, 140 F.4th at 578; *NRA*, 133 F.4th at 1126–27; *see also* RMGO, 121 F.4th at 126–27 (detailing "compelling scientific evidence… that setting 21 as the threshold purchase age is designed to ensure purchasers are law-abiding and responsible."). Accordingly, the

challenged age restrictions did not violate the Second Amendment.[3] *Id.*[4] Notably, the age restrictions deemed constitutional in federal courts are more restrictive than HB 451: restricting *all* firearms;[5] providing exemptions only for law enforcement and armed service members under 21;[6] and including no liability exemption for self-defense. *See* 11 Del. C. § 1448(a)(5)(a)-(d).

Plaintiffs stress *Lara v. Comm'r Pa. State Police*, 125 F.4th 428 (3d Cir. 2025) controls this case, but fail to acknowledge it involved a restriction on different conduct (public carry of firearms) than HB 451 (purchase and possession). The

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[3] Federal district courts have also upheld restrictions on firearms access for those under 21, including states with fewer exemptions than HB 451. *See, e.g., Pinales*, 765 F.Supp.3d at 1053; *Chavez*, 773 F. Supp.3d at 1044.

[4] Of note, the federal decisions upholding age restrictions on the purchase and possession of firearms rely on laws and historical information similar or identical to the evidence the State presented to the Superior Court. *Compare* expert declarations and rebuttal declarations of Saul Cornell (A-93-217; AR-82-111), Brennan Rivas (A-364-406; AR-113-135), and Robert J. Spitzer) (A-219-362; AR-39-80) *with, e.g.*, *NRA*, 133 F.4th at 1118, 1120, 1138 (relying on Cornell and Spitzer articles); *RMGO*, 121 F.4th at 106 (noting experts declarations submitted by Colorado from Cornell, Rivas, and Spitzer); *Chavez*, 773 F.Supp.3d at 1039 (noting expert declarations submitted by California from Cornell, Rivas, and Spitzer).

[5] *See, e.g.*, Colo. Rev. Stat. §§ 18-12-112, 18-12-112.5 (applies to all firearms); Fla. Stat. § 790.065 (same); Haw. Rev. Stat. §§ 134-2(a), 134-2(d) (same).

[6] *See, e.g.*, Cal. Pen. Code § 27510 (no exceptions for handguns; purchases of certain long guns for an individual with a valid state hunting license: police officer or member of the Armed Forces); Colo. Rev. Stat. §§ 18-12-112, 18-12-112.5 (includes exceptions of firearms sales to persons under 21 who are members of the Armed Forces, peace officers, and/or law enforcement officers); Fla. Stat. § 790.065(13) (exceptions permitting the purchase of a *rifle or shotgun*—but not a handgun—by peace officers, correctional officers, or military personnel).

difference in conduct restricted by these laws is not semantic given *Bruen*'s focus on the *specific conduct* subject to regulation. *Bruen*, 597 U.S. at 17. Given the specific conduct in *Lara* and *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024) involving different gun regulations than possession and purchase, the cases are less persuasive than the many federal cases upholding restrictions on conduct similar to HB 451.

Only one federal appellate court has struck down a restriction on conduct similar to that governed by HB 451, but that case too is easily distinguishable. In *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025), the Fifth Circuit struck down the federal handgun age purchasing restriction upheld by the Fourth Circuit in *McCoy*. *Reese* is unpersuasive because the Fifth Circuit failed to consider relevant Founding era common law analogues, something that troubled other courts. *See, e.g.*, *Chavez*, 773 F.Supp.3d at 1041 (finding *Reese* "unpersuasive" because it "did not consider the Founding Era historical analogues" such as the infancy doctrine's restrictions on individuals under 21).

III. THE SUPERIOR COURT ERRED BY NOT EVALUATING HB 451'S PROTECTIONS OF SECTION 20 RIGHTS AS A WHOLE.

Plaintiffs defend the Superior Court's invalidation of HB 451 on a theory that the legislature did not craft the least restrictive means to protect Section 20 rights. D.I. 29; Pl. Br. at 40. Their argument, like the Superior Court's reasoning, overlooks that HB 451, like any statute, must be read as a unified whole, exemptions included, not in isolated fragments. *Bridgeville* 176 A.3d at 652. When viewed in its totality, HB 451 preserves a myriad of avenues for the meaningful exercise of Section 20 rights. The CCDW exemption effectively nullifies every HB 451 restriction and does so with little more than administrative inconvenience.

A. The Court Failed to Consider HB 541 in its Totality, Including the Practical Implications of its Numerous Exemptions, When Analyzing Whether The Burdens Were More than Reasonably Necessary.

HB 451 allows any individual age 18 or older unfettered access to shotguns and muzzle-loading rifles; possession of any firearm if in the military, law enforcement, or who have a CCDW license; allows supervised possession of any firearm when engaged in recreational activities; and immunizes 18-20-year-olds who use any firearm in defense of self, others, or of one's home. 11 Del. C. § 1448(a)(5)(a)-(d). Both Plaintiffs and the Superior Court failed to consider all the exemptions together, and the practical, on-the-ground effect when it comes to firearm access during this modest period of time. *Bridgeville*, 176 A.3d at 652

(considering the regulations and much narrower exceptions *as a whole*). Indeed, the Superior Court did not even consider, let alone analyze, the self-defense exception, which the legislature included as a protective catchall provision.

Plaintiffs misapply both the facts and this Court's reasoning in *Bridgeville*. *Bridgeville* involved a challenge to regulations restricting firearms in state parks and forests, except in certain areas for hunting or with authorization. *Id.* at 636-37. Given their parsimonious exceptions, this Court found the regulations unconstitutionally "permit[ted] only a very limited class of visitors to Delaware Parks and Forests to exercise a narrow sliver of their Section 20 rights." *Id.* at 652. The regulations were not tailored sufficiently to address only "sensitive" areas of state parks and forests where firearm restrictions may otherwise be appropriate. *Id*. at 658-59. Lastly, while state agencies can impose firearm restrictions, the agencies are "required to show more than a 'general safety concern.'" *Id*. at 656. The Court found the regulations could have attempted to specifically delineate restricted gun areas of the parks and forests to not infringe unnecessarily on Section 20 rights as opposed to an overbroad regulation that prohibited firearms throughout the parks and forests. *Id*. at 659.

Here, the General Assembly appreciated this Court's concern regarding the breadth of restrictions on gun rights. It made sure the temporary restrictions placed on a class of presumptively dangerous people were not based on a "general safety

concern," but on undisputed, cumulative evidence of the dangerousness of persons at this age with easy handgun access. *See* D.I. 29; Pl. Br. at 15. The Legislature narrowly tailored HB 451 to address the danger inherent to this specific population by implementing restrictions and exemptions in a manner that still allowed this class of persons to possess firearms, including handguns, should they so wish. It even included a self-defense exemption, something this Court found missing in the *Bridgeville* regulations. 176 A.3d at 638 (noting the challenged regulations did not allow for exercising self-defense while camping or hiking in remote wilderness areas—not even using a hunting rifle or shotgun.). Unlike *Bridgeville*, there is no binary choice here between the right to enjoy the state's parks and forests and right to possess a firearm. HB 451 intentionally offers meaningful paths for an 18-20-year-old to exercise the right to self-defense, as well as hunt and recreate, should they so choose.

B. Shotguns and Other Deadly Weapons Are Avenues Preserved By the Legislature for the Meaningful Exercise of the Right of Self-Defense

Key to HB 451 and its constitutionality is that the law specifically allows 18-20-year-olds access to shotguns and other firearms with no restrictions. § 1448(a)(5)(d)(1-3).

Plaintiffs appear to suggest that the Delaware legislature may not temporarily limit 18-20-year-olds' access to handguns because handguns are the preferred

firearm for self-defense. D.I. 29; Pl. Br. at 49-50. Plaintiffs' argument is flawed for the same reasons as the Superior Court's analysis: Plaintiffs sidestep the legislature's regulatory authority to constitutionally limit access to firearms by dangerous individuals, *Bridgeville*, 176 A.3d at 652; bypasses the deference due the legislature in its formulation of policy and implementation of solutions to address pressing social issues of our time, and fails to consider all of the avenues afforded 18-20-year-olds to exercise their right to self-defense, *supra*. The CCDW exemption lifts all limitations on the access to handguns, consistent with Delaware and the nation's historical tradition, and valid as an administrative regulatory measure that seeks to ensure 18-20-year-olds who possess handguns are law-abiding citizens.

The duration of HB 451's limitation on the full exercise of an 18-20-year-old's right to possess a handgun in self-defense is, by statute, two years, but the length of the restriction is dependent on whether the individual wants the restriction lifted. If yes, the person must simply demonstrate they are, in fact, a law-abiding citizen in the CCDW process. In the interim, during the brief pendency of their CCDW application, an individual is free to exercise their right to self-defense with a shotgun.

Plaintiffs further argue access to shotguns does not suffice under *Heller*, 554 U.S. at 629 (handguns are the "quintessential self-defense weapon"). While *Heller* may be correct that the handgun is the quintessential self-defense firearm, one only

need hear a shotgun racking to know the handgun it is not the only effective firearm for self-defense.

C. CCDW Is Yet Another Means By Which 18-20-Year-Olds Can Obtain A Handgun.

Plaintiffs defend the Superior Court's determination that HB 451's CCDW exemption does not "adequately protect the right of self-defense" by focusing this Court on 11 Del. C. §1441's "practical operation," D.I. 29; Pl. Br. at 49, which they describe as "travers[ing] a "complicated," "expensive," and "discretionary" "administrative obstacle course" "with significant procedural hurdles" that "can take longer than a year if one is fortunate enough to successfully complete the onerous requirements." *Id*. at 49, 50. Plaintiffs' conclusory assertions are not supported by the record.

The Superior Court did not have a full record on the CCDW process. Had a record been developed, Defendants would have demonstrated Section 1441 effectively operates as a constitutional "shall-issue" regime through records from the Superior Court, the Department of Justice, and Birney himself, who successfully navigated the purported "administrative obstacle course" that "involves multiple layers of discretion, indeterminate timelines and significant procedural hurdles" in a mere 65 days. *Id*. Accordingly, this appeal should be remanded to develop a record.

Plaintiffs offer "independent reasons" why the Superior Court was correct that HB 451's "practical operation" does not protect the right to self-defense. D.I. 29; Pl. Br. at 50, 52. None has merit.

Plaintiffs first argue "a licensing regime directed at carry rights cannot preserve a right that has already been extinguished at the possession." *Id*. at 50. Plaintiffs cite zero authority for their argument, which is perhaps not surprising as their position is contrary to Delaware law.

It is axiomatic that the right to self-defense is "not absolute," *Doe*, 88 A.3d at 667. Neither the Delaware nor the federal constitution guarantees the right to possession of any gun, by any person, at any age. *See, e.g.*, *Bruen*, 597 U.S. at 21 (affirming the Second Amendment right is "not unlimited"). In *Bridgeville*, this Court reiterated the constitutionality of Delaware restrictions on gun possession. *Bridgeville*, 176 A.3d at 652 (citing numerous statutes). And since the Founding era, jurisdictions have limited access to guns for those considered dangerous in their communities. *See Rahimi*, 602 U.S. at 693–98 (summarizing national history).

Here, the legislature determined 18-20-year-olds lack the maturity and judgment to possess handguns and certain long guns, absent basic firearms training and verification from five people (personally familiar with the applicant) that the person is a responsible, law-abiding citizen. Contrary to Plaintiffs' position,

Delaware law is clear: the legislature has the authority to regulate who, where, and when as it relates to firearm possession.

To survive constitutional scrutiny, a regulatory measure must preserve an avenue for the meaningful exercise of the right to self-defense, *Bridgeville*, 176 A.3d at 659. HB 451 does that. Regarding self-defense with the quintessential handgun, the CCDW exemption effectively and efficiently preserves the right to exercise self-defense (while simultaneously achieving public safety by ensuring those who possess handguns are mature, law-abiding citizens). There was no record on Section 1441's "practical operation;" but it took only 65 days for Birney. A 65-day wait does not impose an unreasonable burden on self-defense with a handgun, particularly when the objective is the prevention of gun violence and suicide by 18-20-year-olds and shotguns are possessable in the interim.

Plaintiffs additionally posit the CCDW exemption impermissibly shifts the burden in intermediate scrutiny analysis because it "is not the citizens obligation to petition the government for permission to exercise a constitutional right." D.I. 29; Pl. Br. at 52. Plaintiffs again cite no authority for their position.

The legislature undoubtedly can place parameters on the exercise of constitutional rights, including requiring an affirmative act to exercise a constitutional right. *See generally Rumpff*, 308 A.3d 169. The question is whether

HB 451 affords an individual an avenue path for the meaningful exercise of the right to bear arms. As demonstrated through integrated exemptions, it does.

IV. THE SUPERIOR COURT ERRED IN CONSIDERING THE CONSTITUTIONALITY OF DELAWARE'S CONCEALED CARRY LICENSING SCHEME.

Delaware's CCDW licensing regime ensures, in the context of HB 451, that only law-abiding citizens 18-20 year-old possess handguns.

This Court set forth a framework for determining whether a state constitutional provision "affords an independent basis to reach a result different from what could be obtained under federal law." *Doe*, 88 A.3d at 662-663; *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2005), *overruled on other grounds by Rauf v. State*, 145 A.3d 430 (Del. 2016) (citing *Jones v. State*, 745 A.2d 856, 864-65 (Del. 1999)). The Superior Court *sua sponte* evaluated the "plain language" of Section 1441 in a vacuum, without a factual record or briefing. In doing so, the Court failed to consider not only the "statute's practical operation," but also whether, under Section 20, § 1441 is consistent with Delaware's tradition of regulation and *Bruen*'s finding of constitutionality.

Interestingly, Plaintiffs blame Defendants for the Court's unexpected determination that Section 1441 is discretionary, claiming that once Defendants argued the CCDW exemption provided an avenue for the meaningful exercise of the right to bear arms, the constitutional status was "ripe" to address. D.I. 29; Pl. Br. at 56. Again, Plaintiffs cite no authority for their position. They also ignore the Superior Court resorted to quoting the Amended Complaint for Plaintiffs' position

on the CCDW exemption, because Plaintiffs never raised a challenge to Section 1441 in briefing. Op. at *20.

Despite urging this Court to ignore the criteria in *Doe* and *Jones*, Plaintiffs argue *there is a reason* to deviate from federal law, i.e. *Bruen*. Their reason: "whatever can be said about [*Bruen's*] *dicta* regarding permits to carry a concealed deadly weapon - it says nothing about the materially different concept of requiring a permit before a firearm may be purchased." D.I. 29; Pl. Br. at n. 16. Yet, federal and state statutes not at issue in this case prohibit the purchase of handguns by anyone under the age of 21, 24 Del. C. §903; 18 U.S.C. §922(b)(1), and federal courts have upheld "shall-issue" licensing schemes for permits to purchase and conceal carry.

Since *Bruen*, federal courts have had no trouble upholding the constitutionality of shall-issue licensing regimes. *See e.g.*, *Antonyuk v. Chiumento*, 89 F.4th 271, 315 n.24 (2d Cir. 2023) *cert. granted, judgment vacated*, 144 S. Ct. 2707 (Mem.) (July 2, 2024); *Oregon Firearms Federation v. Kotek*, 682 F. Supp. 3d 874, 936 (D. Ore. 2023), *appeal filed sub nom Azzopardi v. Rosenblum*, No. 23-35479 (9th Cir. July 17, 2023), *appeal filed sub nom Fitz v. Rosenblum*, No. 23-35478 (9th Cir. July 17, 2023) (Oregon's permit-to-purchase regime is

"constitutional under *Bruen* [because it] constitutes a *shall-issue* licensing regime" (emphasis in original)).[7]

Ironically, while Plaintiffs urge this Court to adopt the *Bruen* test, they make no effort to explain why *Bruen*'s express approval of Delaware's licensing regime is not persuasive here. *Bruen's* shall-issue discussion is analogous. Were this Court to set aside Delaware's shall-issue scheme, the practical effect would be to render presumptively unconstitutional *any* gun law.

Alternatively, remand is appropriate for the development of a factual record.

[7] *See also, e.g.*, *Giambalvo v. Suffolk County*, 656 F. Supp. 3d 374, 381 (E.D.N.Y. 2023), *aff'd in party, vacated in part*, No. 23-208 (2d Cir. Sept. 12, 2025) (relying on *Bruen*'s shall-issue discussion to conclude that "certain state handgun licensing regimes are constitutionally permissible"); *cf. United States v. Childs*, 2023 WL 6845830, *5 (N.D. Ga. Oct. 16, 2023) (referencing Justice Kavanaugh's concurrence and stating: "If such administrative burdens on the carrying of firearms are permissible, it follows that administrative steps required to purchase firearms are also permissible").

DEFENDANTS' ANSWERING BRIEF ON CROSS-APPEAL

I. THE SUPERIOR COURT CORRECTLY CHOSE INTERMEDIATE SCRUTINY

A. Question Presented

Whether this Court should abandon precedent and, in lockstep with federal courts, apply the text-and-history analysis of *Bruen* to HB 451?

B. Scope of Review

This Court reviews questions of law and constitutional claims *de novo* for errors of law. *Bridgeville*, 176 A.3d at 640.

C. Merits of the Argument

1. This Court Should Apply Intermediate Scrutiny To State Gun Laws Challenged Under Delaware Law In Delaware State Court

Plaintiffs chose to bring this action in state court alleging a violation of Section 20. There is no Second Amendment claim - that claim was properly removed to federal court. Plaintiffs then filed this action challenging HB 451 only under Delaware law. They are bound by that decision and should not be surprised that the Superior Court found Section 20 to be distinct from the Second Amendment, and thus warrant precedential intermediate scrutiny analysis. Op. at *5. Plaintiffs concede this point, admitting that *Bridgeville* held that "regardless of what the United States Supreme Court decides regarding the Second Amendment, in this State, the text of our Delaware Constitution is clear…" Op. at *16.

Plaintiffs cannot cite one case supporting their view that (1) this Court should entertain a federal claim never pled below, and (2) must abandon its precedent on how to analyze the Delaware constitution simply because of a change in jurisprudence in how to analyze Second Amendment claims. Instead, they concede that Section 20 interpretations are not dependent on Second Amendment cases. D.I. 29; Pl. Br. at 16. They must. This Court has consistently applied intermediate scrutiny where the challenged law, like HB 451, is not a total ban. *See Bridgeville*, 176 A.3d at 637; *Doe*, 88 A.3d at 665.

2. *Lara* is Not Binding Precedent

Plaintiffs lean heavily on the federal Third Circuit's ruling in *Lara v. Comm'r Pa. State Police*, 125 F.4th 428, 431 (3d Cir. 2025), because that federal court applied *Bruen* in a case involving a challenge to a Pennsylvania (not Delaware) age-restriction gun law under the Second Amendment (not state constitution) in federal (not state) court. D.I. 29; Pl. Br. at 27-30. But, as just seen, *Lara* is distinguishable and non-binding. Plaintiffs cite no other authority showing a federal court decision for overruling this Court's longstanding jurisprudence in interpreting its own constitution. Indeed, a federal court's determination that another state's gun regulation violated the Second Amendment, not the state's constitution, cannot provide the basis for such a requirement here. As the Superior Court correctly noted, "although federal jurisprudence surrounding the Second Amendment may prove

persuasive," analysis of Delaware statute must be based on this Court's interpretation of the Delaware Constitution. Op. at *24. Plaintiffs specifically chose their venue (this one) and their legal claim (under Delaware law). The applicable law is Delaware's.[8]

3. *Bruen* Does Not Provide More Rights Than Delaware Jurisprudence

Plaintiffs charge the *Bruen* test must control because *Bruen* set a constitutional floor that all states must now follow. D.I. 29; Pl. Br. at 11.

Plaintiffs' argument erroneously conflates the rights afforded under each constitution with the means used by courts to protect them. *See Op. at *29-30* finding not bound to mirror federal court interpretations of the federal constitution, especially when Section 20 affords more rights and was enacted in part to "insulate Delaware from tidal shifts in the federal judiciary." (citing *Bridgeville* at 648 n. 79).

Despite Plaintiffs' claim, D.I. 29; Pl. Br. at 11, *Bruen* does not result in a test that affords more protection; it does not create a test that is now the "floor" that all states must incorporate into their state constitutional analysis. *Bruen* simply applies

[8] In *State v. Hall*, 564 P.3d 786 (Kan. Ct. App. 2025), in applying *Bruen* but intermediate scrutiny to a state constitution gun challenge, the court noted "[T]he language of [the Kansas law in question] sets it apart from the Second Amendment and establishes a distinct, if kindred, constitutional right. So we have no reason to examine the intersection of the Second Amendment and the Kansas prohibition on felons possessing firearms or to consider federal caselaw generally construing the Second Amendment." *Id*. at 789-90.

a different test or methodology; a test that Justice Kavanaugh, when still on the D.C. Circuit, pointed out actually allows more flexibility for gun regulations than means-end scrutiny. *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011), *remanded to*, 45 F.Supp.3d 35 (D.C. Cir. May 15, 2014), *aff'd in part, reversed in part*, 801 F.3d 264 (D.C. Cir. Sept. 18, 2015) (Kavanaugh, J., dissenting) (noting that "governments appear to have *more* flexibility and power to impose gun regulations under a test based on text, history, and tradition than they would under strict scrutiny"). Section 20's explicit reservation of gun rights already limits Delaware's General Assembly ability to regulate firearms, both in and outside the home. And, to date, this Court has balanced the need to protect the public with the proper exercise of those rights through application of its own constitutional jurisprudence. *See Bridgeville* 176 A.3d *at* 656*; Doe,* 88 A.3d at 667. [9]

Plaintiffs argue that both *Heller* and *Bruen* stand for the proposition that intermediate scrutiny, across the board, is less protective when it comes to gun rights; therefore under the Supremacy Clause, all courts must apply the *Bruen* test.

[9] Both *Doe* and *Bridgeville* are distinguishable. Neither *Doe* nor *Bridgeville* involved laws or rules intended to protect the public from presumptively dangerous persons. Neither case involved a legislative enactment, undertaken by elected officials, and involving extensive analysis of science and data to determine the need for safety precautions and careful analysis to tailor the precautions so as to protect Section 20 considerations. And both cases enacted policies that could be seen as overbroad to meet their objectives because they failed to put forward reasonable restrictions that would not eliminate one's ability to defend themselves or others outside the home.

D.I. 29; Pl. Br. at 20-27. This Court was fully aware of the *Heller* case when it continued to apply intermediate scrutiny in *Doe* and *Bridgeville.* It reiterated what was already known: that this Court does not follow the lockstep method when analyzing its own constitution. *Doe* 88 A.3d at 662 (quoting *Dorsey v. State*, 761 A.2d 807, 814 (Del. 2000)) (explicitly rejecting a lockstep system)).

Plaintiffs wrongly extrapolate *Bruen's* criticism of how *federal* courts applied intermediate scrutiny into the conclusion that *any* application of intermediate scrutiny by *any* court is "self-evidently" more restrictive of the right to bear arms. D.I. 29; Pl. Br. at 26. Plaintiffs fail to cite any authority that *Bruen* should be interpreted as rewriting the jurisprudence of state courts interpreting state constitutional provisions. Plaintiffs improperly argue for "prospective lockstepping," whereby the Supreme Court "announces that not for this instant case, but also *in the future*, it will interpret the state and federal clauses the same." *See* Robert F. Williams, *State Courts Adopting Federal Constitutional Doctrine: Case-by-Case Adoptionism or Prospective Lockstepping?*, 1509 46 W.. & Mary L. Rev. 1499 (2005). This Court should not incorporate "future interpretations" of the U.S. Constitution into future state precedent.

Plaintiffs' position, if accepted, would undermine the sovereignty of this Court and disrespect foundational concepts of federalism. This Court can and should reject the notion that the methodology set forward in *Bruen*, which courts have found

challenging to interpret and implement, should replace this Court's longstanding approach to analyzing its own state constitution. *See, e.g.*, *United States v. Brown*, 764 F. Supp. 3d 456, 464-65 (S.D. Miss. 2025) (noting that the *Bruen* test is "deeply concerning to many," and that "this Court understands the confusion" and "feels the frustration."); *United States v. Neal*, 715 F. Supp. 3d 1084, 1091-92 (N.D. Ill. 2024) (explaining the "difficulties district courts face in conducting the required *Bruen* inquiry" including "concerns about misreading the historical record").

4. Plaintiffs Lack Standing to Challenge HB 451

Plaintiffs lacked standing to challenge HB 451. Contrary to representations in court filings, Birney obtained a CCDW permit months before filing suit. While Defendants did not challenge standing below, litigants cannot waive standing requirements. *Employers Insurance Company of Wausau v. First State Orthopaedics, P.A.*, 312 A.3d 597, 612 (Del. 2004). Courts retain their ability to consider justiciability at any time. *Id*.

To establish standing, Plaintiffs must allege an injury in fact, which is both concrete and actual or imminent, meaning one that is neither hypothetical nor conjectural. *Employers Insurance*, 312 A.3d at 608. In the Complaint filed on July 24, 2023, and Amended Complaint filed October 18, 2023, Birney alleged that he suffered the threat of imminent harm (criminal liability) for violation of Section

1448(a)(5) and stated he did not have a CCDW permit. B-51-52; ¶110. Records from the Department of Justice's investigator assigned internally to process background checks for conceal carry applicants, however, show that Birney received a CCDW permit on January 4, 2023, six months before filing his initial complaint.[10] As a permit holder, he was exempt from the enforcement of HB 451. 11 Del. C. §1448(a)(5)(b)(3). He was also free to carry a handgun at all times. Therefore, there was, and now is, no justiciable case or controversy.[11] *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973)

The Complaint also names as Plaintiffs the Delaware State Sportsmen's Association and the Bridgeville Rifle and Pistol Club. These organizations can have standing if a member has standing. *See Del. State Sportsmen's Ass'n v. Garvin*, 196 A.3d 1254, 1264 (Del. Super. Ct. 2018) (citing *Oceanport v. Wilmington Stevedores*, 636 A.2d, 892 (Del. 1994)). Yet, Plaintiffs presented no declarations or evidentiary support for this notion. D.I. 29; Pl. Br. at 6. *In re Del. Pub. Sch. Litig.*, 239 A.3d 451, 527 (Del. Ch. 2020)(an organization must provide "credible testimony

[10] Defendants incorporate by reference their Motion to Remand filed on March 13, 2026. Mtn Remand D.I. 32.

[11] Even had Birney originally had standing as alleged in the Complaint, his claim is now moot. As of September 19, 2025, he turned 21 and would no longer have been subject to Section 1448(d)(5) even if he lacked a permit. Other courts have dismissed similar claims based on the plaintiff aging out of the population governed by the challenged statute. *See e.g. Hirschfeld v. ATF*, 14 F.4th 322, 326 (4th Cir. 2021).

regarding its members."); *see also Employers Insurance*, 312 A.3d at 607-608 ("a plaintiff bears the burden of proving standing."). The Superior Court decision should be vacated; or, in the alternative, remanded.

5. Plaintiffs Lack Standing To Cross-Appeal

As a general rule, the prevailing party may not appeal a decision in its favor. *Hercules Inc. v. AIU Ins. Co.*, 783 A.2d 1275, 1277 (Del. 2000). There are two recognized exceptions: if a party did not receive the relief sought, and if a judgment includes a "collateral adverse ruling." *Id*. Plaintiffs fall into neither exception. Plaintiffs were not denied any of the relief they requested, and cannot show the trial court's ruling was a "collateral adverse ruling" that could serve as the basis for the bar of res judicata, collateral estoppel, or law of the case in the same or subsequent litigation. *Id.*

Plaintiffs merely contend that the Superior Court "reached the correct result utilizing the wrong test." D.I. 29; Pl. Br. at 11. No law entitles Plaintiffs to a given test. The doctrine of collateral estoppel provides that once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Id*. at 1278. There is no such issue in this case. As discussed, *Bruen* does not provide an expansion of rights, thus a decision not to apply its

framework is not a collaterally adverse ruling. Plaintiffs may pursue their pending challenge in federal court.

6. Plaintiffs' Facial Challenge Fails As A Matter Of Law

A statute is generally presumed constitutional unless a challenger can show clear and convincing evidence to the contrary. *Schnell v. Dep't of Servs. for Child., Youth & Their Fams.*, 338 A.3d 1279, 1286 (Del. 2025); *Opinion of the Justs.*, 425 A.2d 604, 605 (Del. 1981).

Plaintiffs launched a facial challenge to HB 451, which is a "heavy burden" and "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Johns v. State*, -- A.2d --, 2025 WL 3637521 at * 17 (Del. Dec. 16, 2025) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987). To defeat a facial challenge, the State need only show that a statute is constitutional in some of its applications. *Id*. (citing *Rahimi*, 602 U.S. at 693). This Court recently recognized "*Bruen* and *Rahimi* strongly suggest there are constitutional applications of §1448, because the legislature may constitutionally disarm individuals who "pose a credible threat to the physical safety of others." *Johns*, 2025 WL 3637521, at *17.[12] In

[12] A challenge to the constitutionality of a statute can be facial or as applied. *Schnell*, 338 A.3d at 1286.

Rahimi, the challenged provision was constitutional as applied to Rahimi's own case. *Rahimi*, 602 U.S. at 693.[13] The same is true here.

Birney[14] filed a CCDW application on or about October 31, 2022. As set forth in Defendants' Motion to Remand, a permit was issued on January 4, 2023, 65 days later. Birney navigated the application process, completed a firearms training course, obtained letters of reference, paid a $65 fee and received a permit– a feat Plaintiffs claim is a "complicated, " "expensive," "administrative obstacle course" that "can take longer than a year if one is fortunate enough to successfully complete the onerous requirements." D.I. 29; Pl. Br. at 49-50.

The Superior Court rejected Defendants' argument that HB 451's CCDW exemption "preserve[s] an avenue for carrying out §20's core purposes," *Bridgeville*, 176 A.3d at 638, which led to the Court's conclusion that HB 451 burdens Section 20 rights more than is reasonably necessary. Op. at *21-22. Glaringly absent from the court's analysis, however, was the ease with which Birney met the purportedly onerous requirements and obtained his license within 65 days from the date he

[13] Contrary to Plaintiffs claims, the Court in *Rahimi* did not rule out categorical restrictions." *Rahimi*, 602 U.S. at 700 (stating that "Section 922(g)(8)(C)(i) . . . presumes . . . that the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others" to distinguish an unconstitutional law that "effectively presumed that no citizen had such a right [to carry], absent a special need").

[14] Birney's date of birth is September 19, 2004.

applied. While the Superior Court rejected reliance on what it deemed a "discretionary" licensing procedure to exercise a constitutionally-protected right, *id.*, the fact that Birney has a CCDW permit proves the license procedure (regardless of discretionary "plain language") effectively preserves an avenue for 18-20-year-olds to exercise Section 20 rights. Birney himself demonstrated HB 451's CCDW exemption and Section1441's CCDW licensing process work in tandem, further rendering HB 451 constitutional.

II. HB 451 IS CONSTITUTIONAL EVEN IF *BRUEN* ANALYSIS APPLIED

A. Questions Presented

Assuming *arguendo* that this Court decides the *Bruen* test is the appropriate test, is HB 451 constitutional?

B. Standard of Review

Questions of law and constitutional claims are reviewed *de novo*. *Bridgeville*, 176 A.3d at 640.

C. Merits of the Argument

The Second Amendment reads: "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., Amen. II*. *Bruen's* analysis is two-fold: first, whether the law and conduct in question is covered by the "plain text" of the Second Amendment, and, second, whether that law squares with the Nation's historical tradition of firearm regulation. 597 U.S. at 17. HB 451 satisfies *Bruen* – aligning with our Nation's historical tradition of limiting access to firearms by presumptively dangerous "minors" who have always been recognized as lacking the maturity necessary for unfettered access to firearms.

1. Plaintiffs Are an Excluded Class For Purposes Of The Second Amendment

Contrary to Plaintiff's assertion, the Supreme Court has been explicit – categorical limitations on the sale, possession, and use of firearms for certain persons

may be constitutional. *Heller*, 554 U.S. 570, 626 (2008) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms"). *Rahimi* reiterated that "[f]rom the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others," discussing not just individualized analysis but categorical prohibitions for presumptive dangerous people. 602 U.S. at 693. The authority of states to establish categorical limitations is "within the original meaning of the Second Amendment," *Rumpff*, 308 A.3d at 180.

Constitutionally permissible category bans on firearm purchase and use have applied to prohibit presumptively dangerous citizens. *Rahimi*, 602 U.S. at 693; *Rumpff*, 308 A.3d at 181; *see discussion supra*. Courts of Delaware and elsewhere, have historically upheld comparably limited or temporary category restrictions. *Id.* at 180-82; *see discussion supra*. When legislatures make such determinations, the people that fall within the subject categories are "excluded from the Second Amendment's protections." *United States v. Boyd*, 999 F.3d 171, 176 (3d Cir. 2021); *see also Rumpff*, 308 A.3d at 181-82 (persons falling in a categorical limitation are "an excluded class under the Second Amendment.").

2. HB 451 Aligns With The Nation's Historical Tradition of Firearm Regulation

Consistent with *Bruen*, our Nation's history of firearm regulation is analogous to HB 451's temporary restriction on "minors."

a . Infancy Doctrine Limited Firearm Purchase For Those 21 and Younger

At the Founding, a person was a "minor" or an "infant" under the law until the age of 21. *NRA*, 133 F.4th at 1117 (quoting 1 Zephaniah Swift, *A System of the Laws of the State of Connecticut* 213 (1795)); *see also McCoy*, 140 F.4th at 575-76; *RMGO*, 121 F.4th at 124-25. This was based on English common law, which "set the age of majority at 21 years of age because of the relative lack of maturity and judgment of younger individuals." *NRA*, 133 F.4th at 1117; *see also* 1 W. Blackstone, Commentaries on the Laws of England 463 (1st Ed. 1765) ("full age in male and female is twenty one years, which age is completed on the day preceding the anniversary of a person's birth; who till that time is an infant, and so styled in law.").

Similarly, Delaware's first constitution provided "unless otherwise altered by the State's legislature, the common law of England 'shall remain in force.'" *Bridgeville* 176 A.3d at 645 (quoting Del. Const. of 1776 art. 25). Delaware law incorporated English common law as of 1776, except as modified by statute. *Id.* n. 62; *see also Quillen v. State*, 110 A.2d 445, 450 (Del. 1955) ("our law is in general the common law of England as it existed in 1776 ...."); *Steele v. State*, 151 A.2d 127, 130 (Del. 1959) ("the common law of England is part of the law of this state. It was first adopted in the Constitution of 1776, Article 25" and reenacted in the three succeeding constitutions: Constitution of 1792, Article VIII, Section 10;

Constitution of 1831, Article VII, Section 9; and in our present Constitution of 1897, Schedule, § 18".).

Because persons under age 21 were deemed "infants" under both common law and Delaware law in the eighteenth century, they "lacked the capacity" to enter into contracts or purchase goods. *NRA*, 133 F.4th at 1118. As a result, this infancy doctrine "impeded minors from acquiring firearms during the Founding era." *Id.*; *see also* A-126-27 (Cornell) at ¶ 56 (noting Founding law never considered minors fully independent legal actors). While there was an exception to help minors obtain "necessities," firearms were not included in the exception. *Id*. ("Importantly, 'liquor, pistols, powder, saddles, bridles, [and] whips' were *not* necessaries.") (emphasis in original) (quoting *Saunders Glover & Co. v. Ott's Adm'r*, 12 S.C.L. 572, 572 (S.C. Const. App. 1822)); *McCoy*, 140 F.4th at 576 ("There is no evidence that the [necessities] exception was ever extended to firearms.").

That "minors generally could not purchase firearms" at the Founding reflected a recognition at the time that "they lacked the judgment and discretion to enter contracts and to receive the wages of their labor." *NRA*, 113 F4th at 1118; A-6 (Cornell ¶11). This is consistent with the Delaware legislature's conclusion that, with important exceptions noted, 18-20-year-olds lack the judgment, discretion, and neurological self-control to purchase and possess certain firearms. Op. at *9.

b. Founding Era Militia Laws Are Analogs

Founding-era militia laws, including the Delaware militia acts, confirm this Nation's historical acceptance of restricting persons under the age of 21 from purchasing or obtaining firearms. While Plaintiffs cite federal and Delaware militia statutes extensively, D.I. 29; Pl. Br. 36-38, these laws undercut their position because the laws "were a highly intrusive form of government regulation" that "imposed an *obligation* on Americans; they did not create or assert a *right* against government regulation." A-146-147 (Cornell ¶ 87) (emphasis in original). As a result, the impetus for enacting these Founding-era militia laws was to address minors' "inability to purchase firearms required for their militia service[.]" *NRA*, 133 F.4th at 1119. Though States enacted differing laws to permit minors to obtain firearms before their militia service, many "implicitly required parents to supply minors with firearms because those states held parents liable for minors' fines related to militia service, including the failure to obtain a firearm." *Id.* at 1119. In total, "at least 21 of the 24 states admitted to the Union—representing roughly 89 percent of the population ... —had enacted laws that placed the onus on parents to provide minors with firearms for militia service." *Id.* at 1120 (documenting and classifying Founding-era militia laws).

Delaware exempted those under 21 from the general requirement to bring one's own firearms to militia service. *See, e.g.*, 2 Laws of the State of Delaware

1135-36 (New Castle, Samuel Adams & John Adams 1797) (Statutes of 1793) ("all young men under the age of twenty-one ... shall be exempted from furnishing the necessary firearms, ammunition and accoutrements); A-150-151 (Cornell) ¶ 93-95; 1792 Pa. Laws 395 (same); Act of Aug. 13, 1807, ch. XLIX, §§ 1–2, 4, in 4 LAWS OF THE STATE, OF DELAWARE 123, 123–24, 125–26 (M. Bradford & R. Porter eds., 1816). *see generally* A- 139-156 (Cornell ¶¶ 76-99). As such, the parents and guardians of minors were required to acquire the necessary weapons. 2 Laws of the State of Delaware 1135-36 (New Castle, Samuel Adams & John Adams 1797) (Statutes of 1793); *see* A-147-156 (Cornell ¶¶ 88, 92-98); A- 152-153 (Cornell ¶¶ 88, 92-98); A-152-153 ("Table One: Founding Era Laws Requiring Parents to Supply Militia Arms for Minors in Their Household"); *see also* A-235-237 (Spitzer ¶ 25-26) (highlighting Plaintiffs' expert, Cramer, agrees with Spitzer on Delaware law treatment of persons under 21).

c. Surety Laws Are Analogs

Surety laws, tracing back to English common law and the Founding, "allowed 'any private man [who] hath just case to fear, that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him' to 'demand surety of the peace against such person.'" *Rumpff*, 308 A.3d at 189 (quoting *United States v. Brown*, 2023 WL 4826846, at *12 (D. Utah July 27, 2023)); A-381-383 (Rivas ¶33-35). If one received a surety demand, they were required *temporarily* to relinquish

their firearms until certain conditions were met, including posting bond. *Id. See also Rahimi*, 602 U.S. at 703 (Sotomayor, J., concurring). As with HB 451, surety laws were enacted to strike an appropriate balance between preventing public violence and protecting one's right to self-defense. *See e.g.*, *Rumpff*, 308 A.3d at 189. It achieved that balance, like HB 451, by a temporarily restriction until public safety could be assured. *Rumpff*, 308 A.3d at 189. So it was that Delaware enacted a surety statute "near the time of the nation's Founding." *Id. See also* 1 Laws of the State of Delaware from the Fourteenth Day of October, One Thousand Seven Hundred, to the Eighteenth Day of August, One Thousand Seven Hundred and Ninety-Seven, 52 (1797) (1700 statute).

d. University Firearm Restrictions Are Analogs

University bans on students access to firearms further confirm the historical tradition of regulating, and restricting, minors' ability to obtain and possess firearms.

By the eighteenth century, universities enjoyed a special legal relationship with the students, in which the college stood "in the place of parents to the students entrusted to their care." *NRA*, 133 F.4th at 1120 (internal citation omitted). Acting in this capacity, many universities restricted students' firearm access on and off campus. *Id. See also* A-135-138 (Cornell) ¶¶ 69-75); A-347-362 ¶¶ 67-75; A-347-362 (Spitzer Ex. D, "College Campus Weapons Restrictions"). In the Revolutionary era, Harvard and Yale, among others, prohibited students from possessing guns and

gun powder. A-351-352; (Cornell ¶70-72). Delaware universities similarly imposed such restrictions. By 1828, the University of Delaware restricted students from possessing a gun or ammunition without "the rector's approval." A-348 (Spitzer Ex. D) (citing Academy minutes, April 17, 1828; American Watchman, August 1, 1828).

e. Vagrancy Laws Are Analogs

Vagrancy laws were adopted broadly at "the founding[.]" *City of Chicago v. Morales*, 527 U.S. 41, 103 (1999) (Thomas, J., dissenting) (noting that such laws have been a "fixture of Anglo-American law at least since the time of the Norman Conquest."). Delaware was among the very early adopters. *See* Act of Mar. 29, 1775, in 1 THE FIRST LAWS OF DELAWARE, pt. 2, at 544 (John D. Cushing ed., 1981); Act of Jan. 29, 1791, in 2 THE FIRST LAWS OF THE STATE OF DELAWARE, pt. 1, at 988 (John D. Cushing ed., 1981).

These Founding era statutes were enacted for varied reasons, including to "stop crimes before they were committed[.]" Risa Goluboff, *Vagrant Nation* 2-3 (2016); *see also* Christopher Roberts, *Discretion and the Rule of Law*, 33 Duke J. Compar. & Int'l L. 181, 223 (2023); Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 U. Pa. L. Rev. 603, 625 (1956) (noting an early justification for these type of vagrancy laws was "police regulations to prevent crime."). Among their targets was the often-temporary condition of drunkenness. *Id*. As a practical matter, these laws were firearm restrictions: they subjected "vagrants" to specific housing

or jailing, which "necessarily" disarmed them. *United States v. Ledvina*, 166 F.4th 716, 726 (8th Cir. 2026) (Stras, J., concurring).

f. Age Restrictions on Firearm Purchase and Access From Reconstruction Era And Beyond Support HB 451

Beyond the Founding era, as society and technology evolved, ensuing age-based restrictions on firearm acquisition and use have been ubiquitous. In the nineteenth century, changes in firearm technology resulted in substantially increased gun violence. A- 118, 120-121, 162-164, 166-167 (Cornell ¶¶42, 46), 112-115, 120; *see also NRA*, 133 F.4th at 1135 (Rosenbaum, J., concurring) ("[I]n [the nineteenth] century, ... an unprecedented kind of lethal, gun-related violence that Under-21s largely inflicted ... became possible because of revolutionary advances in firearms technology."). The nineteenth century also brought with it a public safety concern related to gun violence not anticipated by the Founders. *See Bruen*, 597 U.S. at 28. As a result, the "law of the Founding era, which restricted the purchase of firearms by minors, continued into the nineteenth century in the form of statutory prohibitions." *NRA*, 133 F.4th at 1122; *see also Bruen*, 597 U.S. at 28.[15]

[15] This also explains the scarcity of statutes regulating or prohibiting the purchase and/or possession of firearms for those under 21 in the Founding era. The state governments did not "maximally exercise[] their power to regulate" during the Founding era because "limitations on the legal rights of minors were so pervasive that states had no need to enact restrictions that prohibited their purchase of firearms. *NRA*, 133 F.4th at 1123. But, by the Reconstruction Era, the societal norms, rights

Delaware was one such state. In 1812, the Delaware legislature prohibited the discharge of any firearm within any towns or village limit and held parents accountable for their child's violation of the statute. 195 Del. Laws 522 (1812) ("An Act to prevent the discharging of fire-arms within the towns and villages, and other public places within this State, and for other purposes."); A-303-304. Thereafter, in 1881, the Delaware legislature prohibited the conceal carry of a firearm and prohibited the sale of firearms and deadly weapons (except a pocket knife) to a minor. 16 Del. Laws 716 (1881) ("An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons"); 1881 Del. Laws 987 ("An Act Providing for the Punishment of Persons Carrying Concealed Deadly Weapons"); A-304-305; *see also* Vol. 26 Del. Laws 28, 28- 29 (1911); Vol. 30 Del. Laws 55, 55-56 (1919). These statutes demonstrate that the Delaware legislature has historically regulated and restricted minors' access and use of firearms *for over 145 years*.

The state of Delaware was no outlier. In fact, as of 1856, "at least twenty jurisdictions enacted laws criminalizing the sale of firearms, often handguns specifically, to individuals under the age of 21." *McCoy*, 140 F.4th at 578; *see also NRA*, 133 F.4th at 1121 (listing states that prohibited transferring pistols and other dangerous weapons to individuals under 21). The first three jurisdictions to enact

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of those under 21, and gun technology, had shifted in such a way that required state regulation – which was enacted very early on. *See McCoy*, 140 F.4th at 578.

such laws–Alabama, Tennessee, and Kentucky–saw their legislation either unchallenged or survive constitutional scrutiny where challenged, resulting in jurisdictions nationwide, representing over half the population, enacting similar age restrictions. *NRA*, 133 F.4th at 1140–42 (Rosenbaum, J., concurring).

Historically, states enacted laws regulating the purchase, possession and carry by individuals under 21. That States continue to enact firearms age restrictions in response to societal and technological changes reaffirms the critical holding in *Rumpff*: the Constitution must "keep up with the times" because the "law, like technology, will continue to advance *ad infinitum*." *Rumpff,* 308 A.3d at 192 ("Just as the First Amendment and Fourth Amendment have been extended to comport with the modernization of technology, so too must the Second Amendment.") (emphasis is in original). HB 451 satisfies that analysis.

CONCLUSION

Based on the foregoing, HB 451 and 11 Del. C. Section 1441 are constitutional. Should the Court prefer full consideration in the first instance below, remand is appropriate.

Respectfully submitted,

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Dated: April 20, 2026