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SJC-13856

COMMONWEALTH vs. MIKAI THOMSON.

Suffolk. March 2, 2026. - October 20, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Firearms. Constitutional Law, Right to bear arms, Standing to question constitutionality. Evidence, Firearm, Age, Expert opinion. Practice, Criminal, Standing. License.

Complaint received and sworn to in the Dorchester Division of the Boston Municipal Court Department on December 27, 2021.

The case was tried before Samir Zaganjori, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Elizabeth C. Lazar for the defendant.

Ian MacLean, Assistant District Attorney (Charles Marshall, Assistant District Attorney, also present) for the Commonwealth.

K. Hayne Barnwell, for youth advocacy division of the Committee for Public Counsel Services, amicus curiae, submitted a brief.

Joseph N. Schneiderman, for E.V., amicus curiae, submitted a brief.

WOLOHOJIAN, J. A police officer stopped a car after it went through a red light. The defendant was seated in the front passenger seat; a lit marijuana "blunt" was in the center console;¹ and a plastic bag containing a pound of marijuana was on the back seat.² The officer asked for identification from all three occupants of the car, none of whom was wearing a seat belt.³ The officer also asked whether anyone in the car had a weapon. The defendant (unlike his companions) did not answer, and the officer asked him to get out of the car. The defendant complied, and then pushed the officer and ran away. Along his flight, he discarded a loaded nine millimeter semiautomatic handgun. He was subsequently charged with and convicted of carrying a firearm without a license, under G. L. c. 269, § 10 (a).

¹ "'Blunt' is a term used to describe a cigar from which the tobacco has been removed and replaced with marijuana." Commonwealth v. Cotto, 69 Mass. App. Ct. 589, 590 n.1 (2007).

² All three occupants were under the age of twenty-one and thus prohibited from possessing marijuana. G. L. c. 94G, § 2 (b). In any event, the amount of marijuana in the car exceeded the amount for which possession has been decriminalized even for those over twenty-one. G. L. c. 94G, § 7 (a) (1).

³ An officer may ask for identification in order to write a citation for a seat belt infraction, G. L. c. 90, § 13A. Commonwealth v. Elysee, 77 Mass. App. Ct. 833, 844 (2010). Commonwealth v. Goewey, 69 Mass. App. Ct. 429, 433-434 (2007), S.C., 452 Mass. 399 (2008).

It is undisputed that the defendant neither possessed, nor had ever applied for, a license to carry a firearm. At the time these events occurred in December 2021, the defendant was twenty years old, and our firearm licensing scheme did not (and still does not) permit persons under twenty-one years of age to obtain a license to carry (hereinafter, licensing age restriction). G. L. c. 140, § 131 (d) (iv), as appearing in St. 2014, c. 284, § 48. G. L. c. 140, § 131 (d), as appearing in St. 2024, c. 135, § 49.

In this direct appeal from his convictions, the defendant challenges this licensing age restriction as violating the Second Amendment to the United States Constitution. Because restriction of firearm possession by those deemed too young to handle them safely outside of supervised settings is consistent with the nation's regulatory tradition, we affirm.⁴

Background. No further recitation of the background facts being necessary, we proceed directly to the case's procedural history.

The defendant was charged by way of a criminal complaint on December 27, 2021, with assault and battery on a police officer, G. L. c. 265, § 13D, and unlawful possession of a firearm

⁴ We acknowledge the amicus briefs submitted by the youth advocacy division of the Committee for Public Counsel Services and by E.V., a juvenile.

without a license, G. L. c. 269, § 10 (a). The defendant was convicted by a jury of both charges. He timely appealed, and we transferred the case from the Appeals Court on our own initiative. The defendant raises no issue in this appeal concerning his assault and battery conviction, and it is accordingly affirmed without further discussion. This appeal concerns only the defendant's conviction of unlawful possession of a firearm without a license.

Discussion. The defendant was convicted under G. L. c. 269, § 10 (a), which makes it a crime to possess or carry a firearm except as otherwise provided or exempted by statute. As pertinent here, one of those exemptions is if a person has "in effect a license to carry firearms issued under [G. L. c. 140, § 131]." G. L. c. 269, § 10 (a) (2). At the time these events occurred in December 2021, the defendant was twenty years old, and our firearm licensing scheme did not permit persons under twenty-one to apply for a license to carry. G. L. c. 140, § 131 (d) (iv), as appearing in St. 2014, c. 284, § 48. The evidence showed that the defendant was under twenty-one years old, and the jury were instructed that persons under twenty-one are ineligible for a license to carry and that they could use that fact to find that the Commonwealth met its burden to prove that the defendant did not have a license to carry. See Commonwealth v. Guardado, 491 Mass. 666, 690, S.C., 493 Mass. 1

(2023), cert. denied, 602 U.S. 1039 (2024) ("failure to obtain a license is a 'fact necessary to constitute' the crime of unlawful possession of a firearm").

The defendant does not challenge the constitutionality of G. L. c. 269, § 10 (a), the statute of his conviction. Rather, he challenges the constitutionality of the licensing age restriction. He argues that the minimum age requirement for obtaining a license to carry violates the Second Amendment, both on its face and as applied to him.⁵ He did not raise these claims below. The standard of review for unpreserved errors in noncapital cases is whether there is a substantial risk of a miscarriage of justice. Commonwealth v. Desiderio, 491 Mass. 809, 815-816 (2023).

Our discussion proceeds as follows. First, we address the defendant's standing. Second, we set out the United States Supreme Court's Second Amendment jurisprudence, which frames and controls the analysis of the constitutional question presented. Third, we assess whether the defendant's conduct falls within

⁵ In his opening brief, the defendant also raised a facial challenge to the "may issue" language of G. L. c. 140, § 131 (d), as appearing in St. 2014, c. 284, § 48, which he subsequently withdrew in light of our decision in Commonwealth v. Rodriguez, 496 Mass. 627, 642 n.8 (2025). We note that that language has been removed from the current version of the statute. See G. L. c. 140, § 131 (d), as appearing in St. 2024, c. 135, § 49.

the text of the Second Amendment. Fourth, we describe our contemporary regulatory scheme for firearms, focusing particularly on those aspects concerning minors. Fifth, we identify the "why" and "how" of that regulatory scheme. Sixth, we assess whether the licensing age restriction is consistent with the historical tradition of firearm regulations for minors and use analogical reasoning to evaluate the current regulatory scheme against the historical one and conclude that they are strongly analogous. Finally, we address the dissent's proposal that the case be remanded to the Boston Municipal Court for an evidentiary hearing.

1. Standing. The defendant does not dispute that he has never applied for a license to carry a firearm. We have "long held that standing to bring an as-applied challenge to the Commonwealth's firearm licensing scheme requires having applied for (and been denied) a license or [firearm identification (FID)] card pursuant to that scheme."⁶ Commonwealth v. Rodriguez, 496 Mass. 627, 640 (2025), quoting Commonwealth v.

⁶ This principle "is not premised on any substantive position, one way or the other, about the constitutional validity of th[e] particular [licensing] scheme. Rather, it simply reflects the more general principle that one may not challenge a licensing scheme if one has 'never applied for a license, was never denied a hearing, and in no way was ever refused a license.'" Commonwealth v. Marquis, 495 Mass. 434, 440 (2025), cert. denied, 146 S. Ct. 1445 (2026), quoting Commonwealth v. Gordon, 354 Mass. 722, 724-725 (1968).

Marquis, 495 Mass. 434, 439 (2025), cert. denied, 146 S. Ct. 1445 (2026). See Commonwealth v. Johnson, 461 Mass. 44, 58 (2011); Commonwealth v. Loadholt, 460 Mass. 723, 725 (2011); Powell v. Tompkins, 783 F.3d 332, 344 (1st Cir. 2015), cert. denied, 577 U.S. 1219 (2016). And we have hewed to this principle even in a case, such as this one, involving a defendant's license ineligibility due to age, explaining that where a defendant has not applied for or been denied a license, "the defendant has not demonstrated that a denial of the issuance of a § 131 license to him would have been rendered on account of his age alone." Commonwealth v. Powell, 459 Mass. 572, 590 (2011), cert. denied, 565 U.S. 1262 (2012), abrogated on other grounds as recognized by Commonwealth v. Crowder, 495 Mass. 552, 557-558 (2025). It is significant here that the defendant does not even contend, let alone establish, that only his age stood between him and obtaining a license to carry. Moreover, there is no factual record upon which to make such a determination, and the defendant may have been ineligible for a license on one or more other grounds.

Nonetheless, the defendant points to Lara v. Commissioner Pa. State Police, 91 F.4th 122, 138-140 (3d Cir.), vacated on other grounds, 604 U.S. 904 (2024), for the proposition that eighteen to twenty year olds have standing to pursue an as-applied challenge to a firearm licensing scheme even when they

have not applied for a license if such an application would have been futile. Lara (a civil case seeking injunctive relief) does not mention, let alone rest on, the concept of futility. Setting that aside, Lara involved a question of standing under art. III of the United States Constitution, which is not implicated here. "[B]ecause Federal limitations on justiciability are grounded in the case or controversy limitation in art. III of the United States Constitution, and because art. III does not apply to State courts, State courts remain free to define their own jurisdictional limits even when adjudicating Federal claims." LaChance v. Commissioner of Correction, 475 Mass. 757, 771 n.14 (2016). Lara, accordingly, does not persuade us to abandon our traditional standing requirement for as-applied challenges to the Commonwealth's firearm licensing scheme in the context of a criminal conviction.

That said, we have previously acknowledged the "possibility of standing to bring an as-applied challenge to the firearm licensing scheme absent license denial where the defendant can show that applying would have been futile." Marquis, 495 Mass. at 439 n.5, citing Commonwealth v. Harris, 481 Mass. 767, 771 n.5 (2019). We do not now foreclose that possibility in an appropriate case on an adequate record. But this is not that case. As we have already said, the defendant has not attempted

to show, let alone succeeded in showing, that age alone was the basis for his ineligibility to obtain a license to carry. For all that appears, the defendant was ineligible on some other, independent ground raising no constitutional or other concern -- such as having been convicted of or adjudicated a youthful offender or delinquent child for the commission of, for example, a violent crime. See G. L. c. 140, § 131 (d) (i), as appearing in St. 2014, c. 284, § 48; G. L. c. 140, § 121F (j) (i), inserted by St. 2024, c. 135, § 32 (current firearm licensing statute).⁷ In these circumstances, there is no reason for us to explore the possibility of standing based on futility.

But the defendant's failure to apply for a license does not deprive him of standing to raise a facial challenge to the licensing age restriction. "[I]n a prosecution for violation of a licensing statute which is unconstitutional on its face, the issue of its validity is presented even in the absence of an application for a license." Commonwealth v. Gordon, 354 Mass.

⁷ "Violent crime" for purposes of the firearm licensing scheme is "any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another." G. L. c. 140, § 121.

722, 725 (1968). Because the defendant has standing to raise a facial challenge to the licensing age restriction, we consider his arguments on that footing, while noting that the substance of his as-applied challenge as a twenty year old will be encompassed in our discussion of his facial challenge in any event.

2. Supreme Court Second Amendment jurisprudence. The Second Amendment provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." This text has been the subject of several important Supreme Court opinions over the past twenty years, beginning with the Court's 2008 decision in District of Columbia v. Heller, 554 U.S. 570 (2008). We trace that history now.

In Heller, the Court conducted a textual analysis of the Second Amendment and concluded that its prefatory clause does not limit its operative clause. Id. at 577-578. Although the Court closely examined the text of both clauses, we need only concentrate here on the Court's explication of the operative clause.

As to "the people," the Court said that the phrase "unambiguously refers to all members of the political community, not an unspecified subset." Id. at 580. Put otherwise, it "refers to a class of persons who are part of a national

community or who have otherwise developed sufficient connection with this country to be considered part of that community."

Id., quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). It is these people who are the "holder[s]" of the Second Amendment right. Heller, 554 U.S. at 581. Turning to the phrase "keep and bear Arms," the Court concluded that "the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." Id. at 582. And it determined that "'[k]eep[ing] arms' was simply a common way of referring to possessing arms," id. at 583, and that to "bear" arms means to carry them, id. at 584. "Putting all of these textual elements together, [the Court found] that they guarantee the individual right to possess and carry weapons in case of confrontation." Id. at 592.

Although Heller concluded that the Second Amendment codified a preexisting natural "right of having and using arms for self-preservation and defence," id. at 593-594, quoting 1 W. Blackstone, Commentaries *140, the Court also determined that the right is "not unlimited," Heller, 554 U.S. at 595, 626-628. The Second Amendment does not protect "the right of citizens to carry arms for any sort of confrontation." Id. at 595. Nor is it "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Id. at 626.

Furthermore, the Court expressly noted that it did not intend "to cast doubt on longstanding prohibitions on the possession of firearms," and provided nonexhaustive examples of such regulations. Id. at 626-627.

In summary, Heller announced an individual right under the Second Amendment, but not an unlimited one, and one that is subject to regulations of long standing.

In McDonald v. Chicago, 561 U.S. 742, 791 (2010), the Supreme Court incorporated the Second Amendment right as against the States through the Fourteenth Amendment to the United States Constitution. While doing so, the Court recognized that "[t]he right to keep and bear arms . . . has controversial public safety implications" of concern to the States. Id. at 783. But the Court reassured that "[S]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment," id. at 785, and repeated that Heller "did not cast doubt on . . . longstanding regulatory measures," id. at 786.

Neither Heller nor McDonald explained how courts were to determine whether any particular firearm regulation passed constitutional muster. Eventually, the Federal Courts of Appeals coalesced around a two-step framework that combined history with means-end scrutiny. See New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 17 (2022) (Bruen). This

approach was rejected by the Supreme Court in Bruen. Instead of that two-step framework, the Court held

"that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

Id., quoting Konigsberg v. State Bar of Cal., 366 U.S. 36, 50 n.10 (1961). This test "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding," Bruen, 597 U.S. at 26, by engaging in "analogical reasoning" to determine "whether the two regulations are 'relevantly similar,'" id. at 28-29, quoting Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993).

The Court did not attempt in Bruen to "provide an exhaustive survey of the features that render regulations relevantly similar," but it expressed the view that "Heller and McDonald point toward at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense." Bruen, 597 U.S. at 29. The Court further explained that "analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check." Id.

at 30. It "requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." Id.

The Court returned to these topics in United States v. Rahimi, 602 U.S. 680 (2024), where it reiterated that the Second Amendment "secures for Americans a means of self-defense" and that the right is not unlimited. Id. at 690. Because the Second Amendment is not "a law trapped in amber," id. at 691, and "permits more than just those regulations identical to ones that could be found in 1791," id. at 691-692, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition" in order to determine whether the modern firearm regulation is "relevantly similar" to that historical tradition, id. at 692. Central to this inquiry are how and why the regulation burdens the Second Amendment right. Id. The Court reiterated that, while a modern firearm regulation "must comport with the principle underlying the Second Amendment, . . . it need not be a 'dead ringer' or a 'historical twin.'" Id., quoting Bruen, 597 U.S. at 30. Thus, even when a challenged regulation does not "precisely match its historical precursors, 'it still may be analogous enough to pass constitutional

muster.'" Rahimi, 602 U.S. at 692, quoting Bruen, 597 U.S. at 30.

Rahimi is instructive in its application of analogical reasoning to examine a modern firearm regulation against historical ones. At issue was a Federal law criminalizing the possession of a firearm while subject to a domestic violence restraining order. 18 U.S.C. § 922(g)(8). Among other things, the Federal statute required the existence of a restraining order containing a finding that "the defendant 'represents a credible threat to the physical safety' of his intimate partner or his or his partner's child, § 922(g)(8)(C)(i), or 'by its terms explicitly prohibit[ing] the use,' attempted use, or threatened use of 'physical force' against those individuals, § 922(g)(8)(C)(ii)." Rahimi, 602 U.S. at 688.

The Court found that this Federal law was "relevantly similar" to Massachusetts's (and other States') historical surety and going armed laws "in both why and how it burdens the Second Amendment right." Rahimi, 602 U.S. at 698. More specifically, the Court identified the following points of similarity: (i) the Federal law and the historical ones both "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon"; (ii) they both imposed only temporary restrictions of limited duration; and (iii) they both provided for penal

punishment. Id. at 698-699. The Court was satisfied that "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." Id. at 690.

It is important to observe that no single historical regulation matched the Federal statute in all respects, but a combination of pertinent historical regulations matched the "how" and "why" of the current Federal statute. And the Court concluded that that was enough, using analogical reasoning, to satisfy the Second Amendment.

The Court next demonstrated application of the analogical reasoning process in United States v. Hemani, 608 U.S. 772, 779-783 (2026), which involved a Federal statute that automatically banned anyone who is an "unlawful user of" or "addicted to" a "controlled substance" from possessing a firearm. 18 U.S.C. § 922(g)(3). The defendant admitted that he used marijuana a few times a week, but there was no evidence that the defendant's "drug use had ever led him to pose a danger to himself or others." Hemani, 608 U.S. at 779. Nor was there any evidence that the defendant had done anything with his firearm other than to keep it in his home. Id. In these circumstances, the Court rejected the government's reliance on historical laws concerning habitual drunkards as historical analogues satisfying the "how" and "why" of the modern statute. Id. at 782-783. The

historical laws fell into three categories: vagrancy laws, which permitted drunkards to be confined to workhouses or jailed, civil commitment statutes, which allowed courts to appoint guardians or commit the drunkard to an asylum, and surety laws, which allowed judges to compel habitual drunkards to post bonds to ensure their good behavior. Id. at 781-782. The Court found that the historical laws differed dramatically from the current one because they "targeted different kinds of people, did so for different purposes, and operated in different ways." Id. at 783. Because the comparison failed on all of these metrics taken cumulatively, the Federal statute violated the Second Amendment. The Court left open the question whether "any one of these problems taken in isolation would prove fatal to the government's cause." Id. In addition, the Court reiterated that its decision "should not be taken to 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.'" Id. at 791 n.6, quoting Rahimi, 602 U.S. at 698.

Shortly after it decided Hemani, the Court supplied another example of analogic reasoning in Wolford v. Lopez, 609 U.S. 185 (2026), where the Court concluded that historical laws were not sufficiently analogous to a contemporary Hawaii statute prohibiting a person carrying a firearm from entering private

property without express authorization "by the owner, lessee, operator, or manager of the property." Id. at 201, citing Haw. Rev. Stat. § 134-9.5(a). The Court concluded that historical laws prohibiting unauthorized hunting of deer or small game on someone else's private property, Wolford, 609 U.S. at 208-210, an Oregon law prohibiting armed persons from trespassing on "enclosed premises or land," id. at 210-211, and a Nineteenth Century Louisiana law restricting the carrying of firearms on "the premises or plantations of any citizen" without the consent of the owner unless pursuant to a military or civil order, id. at 211, were not sufficiently analogous to the current Hawaii law.

3. Conduct protected by Second Amendment. "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." Bruen, 597 U.S. at 17. As we have already discussed above, there are two components of the text that must be examined: "the people" and "keep and bear Arms." As to the latter, "'keep[ing] arms' was simply a common way of referring to possessing arms," Heller, 554 U.S. at 583, and "bear[ing]" arms means to carry them, id. at 584. It requires no discussion to conclude that the defendant's carrying of a semiautomatic handgun falls within the plain text of the Second Amendment. See id. at 582 ("the Second Amendment extends, *prima facie*, to all instruments that

constitute bearable arms, even those that were not in existence at the time of the founding").

What remains is whether the twenty year old defendant is part of "the people" despite his age. Whether someone under the age of twenty-one is a member of "the people" has been a matter of disagreement. Compare, e.g., Lara, 91 F.4th at 141-147 (Restrepo, J., dissenting), with Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583, 592-593 (5th Cir. 2025), and Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 114-116 (10th Cir. 2024). We do not need to wade into this debate, but instead proceed on the assumption, without deciding the issue, that the defendant, despite his age, is a member of "the people." See McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 140 F.4th 568, 575 (4th Cir. 2025), cert. denied, 146 S. Ct. 2808 (2026); National Rifle Ass'n v. Bondi, 133 F.4th 1108, 1130 (11th Cir. 2025) (en banc), cert. denied, 146 S. Ct. 2811 (2026) (Bondi). We accordingly move to the next step of the Bruen analysis, which is to determine whether the Commonwealth has met its burden to establish that the licensing age restriction is consistent with the historical tradition of firearm regulation. See Bruen, 597 U.S. at 17, 24.

4. Firearm age restrictions. Our Legislature has created a licensing scheme that gives progressively greater unsupervised access to the possession and use of firearms by young people as

they mature in age. The scheme reflects calibrated legislative determinations regarding the ages at which young people may be entrusted with deadly weapons in supervised and unsupervised settings. We now lay out that graduated scheme as it was in effect at the time of the defendant's offenses.⁸ See Commonwealth v. Bellard, 494 Mass. 446, 448 n.4 (2024); Commonwealth v. Lutskov, 480 Mass. 575, 580 n.4 (2018).

The licensing scheme has two intersecting permitting components: FID cards, see G. L. c. 140, § 129B, as amended through St. 2018, c. 123, §§ 9, 10; G. L. c. 140, § 129C, as amended through St. 2014, c. 284, §§ 40-41, and licenses to carry (license or license to carry), G. L. c. 140, § 131, as amended through St. 2018, c. 123, §§ 11, 12. An FID card entitles its holder to possess a nonlarge capacity rifle or shotgun. An FID card holder is also allowed to possess

⁸ We note that the firearm licensing scheme was significantly reorganized and revised after the time of the defendant's offenses in December 2021. The citations in this opinion are to the statutes as they existed at the time of the offenses except as otherwise noted; although the substantive provisions are largely the same in the current scheme, they may not appear in the same place.

firearms,⁹ large capacity rifles, and large capacity shotguns,¹⁰ under the license of a shooting range or club or under "the direct supervision of a holder of a license issued under [G. L.

⁹ At the time of offenses, "firearm" was defined as "a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk-through metal detectors." G. L. c. 140, § 121, as amended through St. 2018, c. 123.

¹⁰ At the time of offenses, "large capacity weapon" was defined as "any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term 'large capacity weapon' shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon." G. L. c. 140, § 121, as amended through St. 2018, c. 123.

c. 140, § 131], " while at an "incorporated shooting club or licensed shooting range." G. L. c. 140, § 129B (6), as appearing in St. 2014, c. 284, § 33.

A license to carry entitles its holder to "purchase, rent, lease, borrow, possess and carry" firearms, rifles, shotguns, large capacity weapons, and feeding devices and ammunition therefor. G. L. c. 140, § 131 (a), as appearing in St. 2014, c. 284, § 47. In addition, a license to carry entitles its holder to "own, possess, purchase and transfer non-large capacity rifles and shotguns, consistent with the entitlements conferred by [an FID] card." G. L. c. 140, § 131 (c), as appearing in St. 2014, c. 284, § 47.

Rather than structuring our discussion of the regulatory scheme according to these two types of permits (i.e., FID cards and licenses to carry), however, we structure our discussion according to the age distinctions made by the scheme. We begin with the youngest ages and work our way up to age twenty-one, which is the age the Legislature has set for a qualified person to obtain a license to carry a firearm.

a. Any age. A person under the age of twenty-one (young person) -- even while he or she is an infant, toddler, or child -- is permitted to hold, handle, and fire firearms for examination, trial, or instruction in the presence of a license holder and is permitted to do the same with respect to rifles

and shotguns in the presence of an FID card holder. G. L. c. 140, § 129C (m), as appearing in St. 1969, c. 799, § 8. Provided the young person is supervised in this manner, the young person is not him- or herself required to have either an FID card or a license in order to hold, handle, or fire a firearm, rifle, or shotgun. See id.

In addition, a young person not having an FID card or license may use large capacity weapons, ammunition, and feeding devices at a licensed club or facility with an on-site shooting range or gallery "while under the direct supervision of a certified firearms safety instructor or club member who . . . possesses a license to carry."¹¹ G. L. c. 140, § 131 (b), as appearing in St. 2014, c. 284, § 47.

b. Under age fifteen. Without themselves holding an FID card or license to carry, young persons under the age of fifteen are permitted to use a rifle or a shotgun in hunting or target

¹¹ Also without needing an FID card or license to carry, a young person may possess firearms for the purpose of firing at duly licensed target concessions at amusement parks, "provided that the firearms, rifles or shotguns to be so used are firmly chained or affixed to the counter and that the proprietor is in possession of a firearm identification card or license to carry firearms." G. L. c. 140, § 129C (e), as appearing in St. 1969, c. 799, § 8. They may also possess and utilize any rifle or shotgun during the course of theatrical productions, provided such possession or use is "under the immediate possession of a holder of [an FID] card or a license to carry firearms." G. L. c. 140, § 129C (l), as appearing in St. 1969, c. 799, § 8.

shooting if under the "immediate supervision of a person holding [an FID] card or a license to carry firearms, or a duly commissioned officer, noncommissioned officer or enlisted member of the United States Army, Navy, Marine Corps, Air Force or Coast Guard, or the National Guard or military service of the commonwealth or reserve components thereof, while in the performance of his duty." G. L. c. 140, § 129C (k), as appearing in St. 1969, c. 799, § 8.

c. Age fifteen. A young person who is at least fifteen years old, and not otherwise prohibited, is entitled to an FID card. See G. L. c. 140, § 129B (1) (iv), as appearing in St. 2014, c. 284, § 30. Until the young person reaches the age of eighteen, the young person's application for an FID card must include a certificate from a parent or guardian.¹² G. L. c. 140, § 129B (1) (v), as appearing in St. 2014, c. 284, § 30. Because we have already set them out above, we do not repeat here the entitlements that come with holding an FID card.

d. Age seventeen and above. A young person "in the military or other service of any state or of the United States, and police officers and other peace officers of any

¹² Starting at age fourteen, a young person, unless otherwise prohibited, may apply for an FID card, to be issued once the person reaches age fifteen. G. L. c. 140, § 129B (iv), as appearing in St. 2014, c. 284, § 30.

jurisdiction, in the performance of their official duty or when duly authorized to possess them" is exempt from the need to obtain an FID card and may possess and use firearms, rifles, and pistols. Although this statutory provision does not itself identify a minimum age, the minimum ages are set elsewhere at age seventeen for members of the United States military and twenty-one for State and local law police and law enforcement officers.^{13,14} G. L. c. 140, § 129C (o), as appearing in St. 1975, c. 378, § 1.

e. Age eighteen and above. Once a young person reaches the age of eighteen, he or she may apply for, and obtain, an FID card without parental or guardian certification. See G. L. c. 140, § 129B (1) (v), as appearing in St. 2014, c. 284, § 30.

f. Age twenty-one. Unless otherwise prohibited, a person who attains the age of twenty-one may apply for, and obtain, a license to carry. See G. L. c. 140, § 131 (d) (iv), as appearing in St. 2014, c. 284, § 48.

g. Summary. In summary, the Legislature has created a graduated firearm licensing scheme tied to three primary

¹³ Currently, a person must be at least seventeen years old to be eligible to serve in the United States military, and parental consent is required for those under age eighteen. 10 U.S.C. § 505(a).

¹⁴ A person must be twenty-one years old to be appointed as a police officer in Massachusetts, G. L. c. 31, § 58, or to be appointed as a State trooper, G. L. c. 22C, § 10.

considerations: age, supervision, and setting. At the younger ages of childhood, the Legislature requires that firearm possession and use be within structured settings and under supervision by licensed adults. As the young person matures, the Legislature has reduced the amount of supervision required and expanded the settings in which firearms may be used. Finally, our Legislature, like the legislatures of other States, has determined that twenty-one is the age of competence to possess and carry a firearm without any supervision.¹⁵

5. "How" and "why" of the licensing age restriction. We are instructed by the Supreme Court to consider "how" and "why" the licensing age restriction burdens young persons' Second Amendment rights. See part 2, supra. We turn to those topics now, beginning with the "how."

The licensing scheme accomplishes its ends through gradations of adult supervision tied to age until the young person matures to the age of twenty-one for a license to carry. Licensure in and of itself is not the sole "how" of the scheme. To the contrary, even the very youngest of children are not

¹⁵ Several other State legislatures have similarly restricted possession of firearms by people under twenty-one. See Conn. Gen. Stat. § 29-28(c)(10); 11 Del. Code Ann. § 1448(a)(5); D.C. Code § 7-2502.03; Haw. Rev. Stat. § 134-7(g); 720 Ill. Comp. Stat. 5/24-1.6; Md. Code Ann., Pub. Safety § 5-133(d); N.J. Stat. Ann. § 2C:58-6.1; N.Y. Penal Law § 400.00; Wash. Rev. Code § 9A.41.240.

required to have FID cards or licenses in order to possess and use firearms when under supervision in structured settings. Instead, the "how" is in large part the temporary imposition of supervision within those settings, which is gradually withdrawn as the young person matures.

Temporary age-based restrictions are common throughout our statutes,¹⁶ even when they implicate constitutional rights. For example, one must be at least eighteen years old to serve on a jury, G. L. c. 234A, § 4, to marry, G. L. c. 207, § 7, or enter into binding and enforceable contracts, G. L. c. 231, § 850. And even the fundamental right to exercise religion guaranteed by the First Amendment to the United States Constitution may be restricted where necessary to effectuate the State's duty to protect the young from dangers caused by the exercise of that right. See Prince v. Massachusetts, 321 U.S. 158, 168 (1944). "The state's authority over children's activities is broader than over like actions of adults" because a "democratic society rests, for its continuance, upon the healthy, well-rounded

¹⁶ For example, one must be eighteen to purchase lottery tickets or drive a common carrier motor vehicle. See G. L. c. 10, § 29; G. L. c. 159A, § 9. Additionally, "one must be twenty-one years of age to purchase and sell alcoholic beverages, to purchase tobacco products, to obtain a license to carry a handgun, to be a police officer, and to gamble. See G. L. c. 138, § 34; G. L. c. 270, § 6; G. L. c. 140, § 131 (d) (iv); G. L. c. 31, § 58; G. L. c. 22C, § 10; G. L. c. 23K, §§ 25 (h), 43." Commonwealth v. Mattis, 493 Mass. 216, 232 (2024).

growth of young people into full maturity as citizens, with all that implies." Id. Age-based restrictions "reflect the commonly held view that [young persons] generally are not equipped to assume all the responsibilities of adulthood, especially with respect to high risk activities." Commonwealth v. Mattis, 493 Mass. 216, 232 (2024).

To be sure, one might debate what age the Legislature should choose as the age of competence to obtain a license to carry. And some might argue that if, for example, a young person is competent to vote or responsible enough to marry at age eighteen, then he or she is competent to carry a firearm. But see Rocky Mountain Gun Owners, 121 F.4th at 124 ("we reject the notion that the minimum age for purchasing a firearm should automatically mirror the minimum voting age"). Another might take the position that carrying a firearm poses risks to the young person -- such as the risk of death or incarceration from its misuse -- that voting does not, or that carrying a firearm unsupervised requires at least as much maturity as purchasing alcohol, which cannot be legally accomplished until age twenty-one. These are legitimate points of disagreement and debate. But it has always been for the Legislature, within constitutional limits, to set the age of competence. See Wassum v. Feeney, 121 Mass. 93, 95 (1876) ("The age at which persons shall be deemed competent to do any acts or perform any duties

depends wholly on the Legislature"); T. Rutherford, *Institutes of Natural Law*, c. VI, § XIV, at 388 (2d Am. ed. 1832) ("civil legislator of any community is at liberty to fix that period of life, as the age of discretion, at which experience and observation have shown the judgement of those, who live in the same climate with himself, to be usually ripe"). See also Rocky Mountain Gun Owners, 121 F.4th at 123-124 (legislatures have power to define twenty-one as minimum age to purchase firearm).

We now turn to the "why" of the firearm licensing scheme. The purpose of the scheme is to "limit access to deadly weapons by irresponsible persons." Chief of Police of Worcester v. Holden, 470 Mass. 845, 853 (2015), quoting Ruggiero v. Police Comm'r of Boston, 18 Mass. App. Ct. 256, 258 (1984). The scheme stems "[f]rom a realization that prevention of harm is often preferable to meting out punishment after an unfortunate event." Ruggiero, 18 Mass. App. Ct. at 258-259. That purpose is not limited to protecting the safety of the public in general but extends additionally and specifically to that of young persons from the serious consequences to themselves and others that youth and inexperience may cause through firearm possession. These consequences are not only potentially deadly, but also penological. And our Legislature has determined that people under the age of twenty-one "require different treatment from

older adults, specifically in the penological context." Mattis, 493 Mass. at 230.

We thus conclude that the "how" of the licensing age restriction is to impose progressively lessening supervision and structure over the possession and use of firearms as young people mature. The "why" is to protect young people from the consequences of firearm possession -- to themselves and others -- stemming from their own immaturity. The degree of supervision required along the trajectory from infancy to majority is for the Legislature, not us, to evaluate. "By its plain text, the Constitution does not establish a one-age-fits-all standard for all rights." Rocky Mountain Gun Owners, 121 F.4th at 124.

6. Consistency with historical tradition.¹⁷ An extensive survey of the nation's historical regulations concerning minors and firearms at the time of the founding is contained in Bondi, 133 F.4th at 1115-1125, and we do not repeat it here. Instead, we adopt and supplement it with Massachusetts's historical

¹⁷ It is an open question "'whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868' or when the Bill of Rights was ratified in 1791." Hemani, 608 U.S. at 783 n.3, quoting Bruen, 597 U.S. at 37-38. Deciding this case as we do on the robust evidence from the period surrounding ratification of the Second Amendment, we do not, and need not, address that question.

regulations, which we note are consistent with those described in Bondi, both in terms of their provisions and principles.

We begin with the historical fact that the Massachusetts Constitution, which was ratified in 1780, did not (and does not) guarantee an individual's right to keep or bear arms except when called to service in a duly constituted militia:

"The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and shall be governed by it."

Art. 17 of the Massachusetts Declaration of Rights.¹⁸ See Commonwealth v. Loadholt, 456 Mass. 411, 429 n.11, vacated on other grounds by 562 U.S. 956 (2010), S.C., 460 Mass. 723 (2011) ("art. 17 was intended to provide for the common defense and not to guarantee an individual right to keep and bear arms"); Commonwealth v. Depina, 456 Mass. 238, 252 (2010) (same); Commonwealth v. Davis, 369 Mass. 886, 888 (1976) ("Provisions like art. 17 were not directed to guaranteeing individual ownership or possession of weapons"). See also Plouffe v. Dighton, 984 F. Supp. 2d 1, 4 (D. Mass. 2013) ("Article 17 of

¹⁸ The towns of Northampton and Williamsburg objected to art. 17 when it was submitted to the towns for ratification on the ground that it did not include an express individual right to bear arms. The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780 572-574, 624 (O. Handlin & M. Handlin eds., 1966).

the Massachusetts Declaration of Rights does not guarantee an individual's right to possess and bear arms except when called to service in a duly constituted militia"). Accordingly, for example, we long ago held that although art. 17 guarantees an individual the right to carry arms in the organized militia, it extended no such guarantee to do the same during a private military parade. Commonwealth v. Murphy, 166 Mass. 171, 172 (1896). Instead, the carrying and bearing of arms outside the confines of the organized militia was "within the police powers of the Legislature to regulate." Id.

As of 1776 in Massachusetts, all able-bodied males, with certain exceptions,¹⁹ from sixteen to fifty years old were obligated to enroll in the part of the militia known as the

¹⁹ Excepted from enrollment were "members of the American Congress, members of the council and of the house of representatives, for the time being, the secretary of the colony, all civil officers that have been or shall be appointed by the general court or either branch of it, officers and students of Harvard College, ministers of the gospel, elders and deacons of churches, church-wardens, grammar-school masters, masters of arts, the denomination of Christians called Quakers, selectmen, for the time being, those who have by commission under any government or congress, or by election in pursuance of the vote of any congress, of the continent, or of this or any other colony, held the post of a subaltern, or higher officer, persons while actually employed as masters of vessels of more than thirty tons burthen, other than fishing vessels and vessels coasting in this colony, and to and from this colony to the other New-England governments, constables, and deputy sheriffs, negroes, Indians, and moulatoes." Province Laws 1775-1776, c. 10, § 2, reprinted in 5 Acts and Resolves of the Province of the Massachusetts Bay 445.

training band.²⁰ Province Laws 1775-1776, c. 10, § 2, reprinted in 5 Acts and Resolves of the Province of the Massachusetts Bay 445. Those subject to enrollment were to have

"a good fire-arm, with a steel or iron ramrod and a spring to retain the same, a worm, priming-wire and brush, and a bayonet fitted to his gun, a scabbard and belt therefor, and a cutting-sword, or a tomahawk or hatchet, a pouch containing a cartridge-box that will hold fifteen rounds of cartridges, at least, a hundred buck-shot, a jack-knife, and tow for wadding, six flints, one pound of powder, forty leaden balls fitted to his gun, a knapsack and blanket, a canteen or wooden bottle sufficient to hold one quart."

Province Laws 1775-1776, c. 10, § 8, at 448. However, minors were not required to supply these provisions themselves.

Instead, it was the obligation of their parents, guardians, or masters to "furnish and equip [them] . . . with the arms, equipments, and accoutrements aforesaid."²¹ Id. Accord An Act for establishing a Militia within this State § 6, 1781 Del. Laws 3, Acts of the General Assembly of the Delaware State; An Act for forming and regulating the militia within this State, and

²⁰ Males to the age of sixty-five not included in the training band were included on what was known as the "alarm list." Province Laws 1775-1776, c. 10, § 18, reprinted in 5 Acts and Resolves of the Province of the Massachusetts Bay 451.

²¹ All firearms manufactured in Massachusetts were to be inspected to ensure that they were manufactured to the specifications required for provisioning the militia and were to bear a stamp so certifying. St. 1804, c. 81, reprinted in Acts and Laws of the Commonwealth of Massachusetts 111. Any person selling, delivering, or purchasing, a firearm that was not so stamped was subject to a fine of ten dollars. St. 1804, c. 81, § 3, at 112.

for repealing all the laws heretofore made for that purpose, 1786 N.H. Laws 360, 5 Laws of the State of New Hampshire (1792); An Act for better settling and regulating the Militia of this Colony of New Jersey, for the Repelling Invasions, and Suppressing Insurrections and Rebellions, 3 Laws of the Royal Colony of New Jersey, 1746 N.J. Laws 9 (1746); Act Regulating and Governing the Militia of Vermont § 17 (1818). Where the parent or guardian of the minor could not afford to provision the minor, it was the obligation of the town to provide the required arms and equipment.²² Province Laws 1775-1776, c. 10, § 8, reprinted in 5 Acts and Resolves of the Province of the Massachusetts Bay 448.

It was a matter for the State Legislature to decide the minimum age for enrollment in the militia, Opinion of the Justices, 22 Pick. 571, 576 (1838), and by 1809, the minimum age had been raised to eighteen, in line with the Federal Militia

²² Those items remained the property of the town that supplied them, and if the enrolled person (whether adult or minor) embezzled or destroyed them, he could be punished or fined. Province Laws 1775-1776, c. 10, § 8, reprinted in 5 Acts and Resolves of the Province of the Massachusetts Bay 448 (person to "be punished at the discretion of the justice or court before whom he may be convicted thereof, by paying double the value of the arms or accoutrements so wilfully destroyed or embezzled; and on default thereof, to be publicly whipped not exceeding twenty stripes"). Accord 1786 N.H. Laws 360; Act Regulating and Governing the Militia of Vermont § 17.

Act of 1792,²³ R.S. (1836), c. 12, § 5; Federal Militia Act of 1792, 2d Cong., c. 33, § 1. Regardless of the rise in the minimum age, those enrolled continued to be required to furnish their own arms and equipment, see R.S. (1836), c. 12, § 36, and it remained the obligation of "parents, masters, and guardians" to furnish enrolled minors with "the arms and equipments required by law," R.S. (1836), c. 12, § 38; 1781 Del. Laws 3 (obligation to supply arms continued until enrollee was twenty-one years old). Also as before, poor enrolled minors were to be equipped by the town. R.S. (1836), c. 12, § 37. Arms supplied by the town were to be stored in "some safe and convenient place," and the commanding officer was responsible for delivering the items to the enrolled person "whenever he shall be required by law to use the same" and then to return the items to the original place of deposit when no longer required to be so used. Id. See also St. 1810, c. 107, § 9. An enrolled minor whose parent, guardian, or master failed to supply arms and equipment was not to be punished for that failure; instead, it was the parent, guardian, or master who was to bear the fine

²³ Different States exercised this authority in different ways. For example, Virginia determined that those between the ages of eighteen and twenty-five were to be enrolled only in a "light company," with enrollment in the general militia to begin later at age twenty-five. An act for regulating the militia of this Commonwealth § 12, 1619 Va. Laws 344, Laws of Virginia (1823).

or punishment. St. 1810, c. 107, § 28. See also 1746 N.J. Laws 9; An Act for imposing fines for neglect of military duty and for other purposes, 1829 N.H. Laws 423, 9 Laws of the State of New Hampshire (1828). By contrast, an enrolled minor could himself be fined for his failure to appear for service when required.²⁴ Winslow v. Anderson, 4 Mass. 376, 377 (1808).

Contrast An Act for arranging and regulating the militia within this state, and for repealing all laws heretofore made for that purpose § 28, 1819 N.H. Laws 850, 8 Laws of New Hampshire (1920) (parents, master, and guardians liable for minor's nonappearance).

In sum, the law obligated male citizens, with certain exceptions, see note 19, supra, between certain ages to enroll in the militia. Adults (those over twenty-one) so enrolled were required to provision themselves with specified arms and equipment. Enrolled minors were to be similarly equipped.²⁵

²⁴ A minor between the ages of eighteen and twenty-one could choose to enlist in the company of artillery rather than to train with the standing company of the militia. Commonwealth v. Frost, 13 Mass. 491, 492 (1816).

²⁵ Those under twenty-one years of age were considered minors for purposes of militia service and did not have full rights or entitlements. See 1781 Del. Laws 3 (defining minors in militia as those under twenty-one). For example, minors did not have the right to vote in the election of officers of the militia until 1821. Part II, c. 2, § 1, art. 10, of the Constitution of the Commonwealth, as amended by art. 5 of the Amendments, annulled by art. 53 of the Amendments.

However, enrolled minors were not expected or required to equip themselves. Instead, they were to be supplied by their parent or guardian if the parent or guardian had the means to do so; otherwise, enrolled minors were to be supplied by the town in which they lived. It is clear from these regulations that the Legislature did not expect or anticipate that minors would or could supply their own arms for militia service, nor were they to be punished if they did not do so. See Commonwealth v. Williams, 341 A.3d 144, 156 (Pa. Super. Ct. 2025) (militia laws "are indicative of a founding-era assumption that minors were restricted in their access to firearms").

A similar conclusion can be drawn from the infancy doctrine. For their own protection, minors could not be bound by contract except for the purchase of "necessaries," Stone v. Dennison, 13 Pick. 1, 6 (1832), such as board and clothing, necessary for the maintenance and education of the minor, see Trainer v. Trumbull, 141 Mass. 527, 531 (1886); Baker v. Lovett, 6 Mass. 78, 80 (1809).²⁶ And the infancy doctrine "[drew] no

²⁶ The purpose of the infancy doctrine was to protect the minor. "The readiness of young persons to engage themselves in burdensome contracts without sufficient consideration, and of older ones to take advantage of their inexperience, would produce general mischief in the community, did not this wholesome principle interpose to produce a degree of caution in looking to the character of those with whom they deal." Smith v. Mayo, 9 Mass. 62, 64-65 (1812). See Whitney v. Dutch, 14 Mass. 457, 463 (1817) ("The object of the law, in disabling

line between an infant of six years old, and one of twenty years old; for all infants [were] entitled to equal protection."

Baker, 6 Mass. at 81. We have found no case holding that firearms were "necessaries," see Merriam v. Cunningham, 11 Cush. 40, 44 (1853) (whether particular article falls within class of "necessaries" is question of law for court), and "[t]he infancy doctrine imposed a severe burden on a minor's ability to purchase goods, including firearms, during the founding era," McCoy, 140 F.4th at 576.

A similar constraint stemmed from the fact that minors could not control or retain their own earnings. See Benson v. Remington, 2 Mass. 113, 115 (1806) ("The law is very well settled, that parents are under obligations to support their children, and that they are entitled to their earnings").²⁷ For

infants from binding themselves, is to prevent their being imposed upon and injured by the crafty and designing").

²⁷ A father had the common-law right to "assign, or contract for, the services of his children for the term of their minority, or of any part thereof," which right was codified by statute. R.S. (1836), c. 80, § 26. Similarly, minors could be bound as apprentices or servants by their father (or by their mother if the father was deceased) and could be indentured until the age of twenty-one (in the case of males) or eighteen (in the case of females). See R.S. (1836), c. 79, § 4; St. 1794, c. 64, § 1; Day v. Everett, 7 Mass. 145, 147 (1810) ("There is no question but that a father, who is entitled to the services of his minor son, and for whom he is obliged to provide, may, at the common law, assign those services to others, for a consideration to enure to himself"). The "overseers of the poor" could bind the minor children of a poor person to the same extent. St. 1793, c. 59, § 4.

example, the military wages of minors serving as soldiers were to be paid to their fathers. Province Laws 1705-1706, c. 4, § 4, reprinted in 1 Acts and Resolves of the Province of the Massachusetts Bay 572.

Finally, we note that the militia was a structured setting in which "those [having] the militia under their charge" were to oversee the use of firearms to preserve public safety. Moody v. Ward, 13 Mass. 299, 301 (1816) (commanding officers were to restrain "[t]he mischievous and disgraceful practice of firing guns in and near the highways" during muster). See Cole v. Fisher, 11 Mass. 137, 139 (1814) (party injured by "discharge of a gun, even when the act is lawful, as at a military muster and parade, and under the orders of a commanding officer, is entitled to redress in a civil action," and where conduct was wanton or reckless offender may also be criminally liable).

We discern several salient points concerning the historical landscape we have set out above together with that described in Bondi. See Picon v. United States, 343 A.3d 57, 63 (D.C. 2025), cert. denied, 146 S. Ct. 2809 (2026) (adopting Bondi historical analysis while upholding constitutionality of District of Columbia's restriction on possession of firearms by those under twenty-one); State v. Fields, 270 Md. App. 321, 349-352 (2026) (same with respect to Maryland statute); Escher vs. Noble, U.S. Dist. Ct., No. 25-10389-GAO (D. Mass. Aug. 21, 2026) (same

approach taken while upholding constitutionality of Massachusetts firearm licensing restriction at issue in this case). First, the Legislature had the authority to determine the age of competence for the exercise of rights, privileges, and obligations of all sorts. This authority extended to areas implicating constitutional rights, such as the right to marry, to serve on a jury, and to enter into contracts. See part 5, supra. The purpose behind these age requirements was to protect minors (then known as infants) from the consequences of their own immaturity:

"In order to prevent, as far as possible, the evils which would arise from the imbecility and inexperience to which every man is subject on his entrance into the world, the legislature has imposed on him, for a given period, those disabilities, and endued him with those privileges, which, with their modifications, are implied in the legal acceptance of the term infant; and every person is, in our law, considered as an infant, until he has completed the age of twenty-one years."

P. Bingham, *Infancy and Coverture* 2 (1824). Accord 1 W. Blackstone, *Commentaries* *464 ("Infants have various privileges, and various disabilities: but their very disabilities are privileges; in order to secure them from hurting themselves by their own improvident acts"); 2 J. Kent, *Commentaries on American Law* 232 (3d ed. 1836) ("The necessity of guardians results from the inability of infants to take care of themselves; and this inability continues, in contemplation of law, until the infant has attained the age of twenty-one

years"); State v. Callicutt, 69 Tenn. 714, 716-717 (1878) ("we do not deem it necessary to do more than say that we regard the acts to prevent the sale, gift, or loan of a pistol or other like dangerous weapon to a minor, not only constitutional as tending to prevent crime but wise and salutary in all its provisions").²⁸

Second, the Legislature required minors above a certain age to enroll in the militia. As part of that obligation, minors could be entrusted with the arms necessary for militia service by their parent, guardian, master, or town. There was no expectation that minors would -- or could -- furnish their own arms when summoned. Nor could a minor be punished or fined for failing to furnish his own arms. Instead, the obligation to furnish arms rested with the enrolled minor's parent, guardian, master, or, in the case of the poor, with the town. Finally, the organized militia was a supervised setting where commanders were responsible to protect the public at large from the hazards posed by the use of firearms.

From these salient points, we discern both the "why" and the "how" of the historical regulations. The "why" of age-based restrictions was to protect minors from the consequences of

²⁸ We note these examples as historical evidence of the Legislature's authority to determine the age of competence and not, as the dissent claims, to suggest that they are the historical analogues for the firearm licensing restriction.

their own lack of maturity. See Bondi, 133 F.4th at 1122-1123. With respect to firearms, the "how" was to allow minors of sufficient maturity access to firearms for the purpose and during the duration of organized militia service, under the supervision of commanders, with arms supplied by responsible adults, which were to be returned at the end of that service. See generally Walsh & Cornell, Age Restrictions and the Right to Keep and Bear Arms, 1791-1868, 108 Minn. L. Rev. 3049, 3075-3086 (2024). Outside of supervised militia service, minors had little -- if any -- ability independent of their parents to obtain a firearm because they could not enter into binding contracts except for necessities and had no separate income. McCoy, 140 F.4th at 575-576.

It should be apparent from what we have already said that the "why" and "how" of the licensing age restriction in effect at the time of the defendant's offense and the historical regulatory tradition regarding minors and firearms are closely analogous. See Picon, 343 A.3d at 66-67 (minimum age of twenty-one to obtain license to carry is constitutional); Fields, 270 Md. App. at 354 (same). Of necessity, minors enrolled in the militia were required to be equipped with the arms required for that service. But the minor's possession of firearms was under the control of responsible adults who supplied the arms, and the minor's use of those firearms was subject to the oversight and

supervision of commanders in the militia. Our modern licensing scheme is consistent with that regulatory tradition in that it temporarily ties young persons' possession and use of firearms to age, setting, and supervision to protect them from the consequences of their own immaturity. More specifically, we conclude that the licensing age restriction -- i.e., that one be at least twenty-one years old to obtain a license to carry a firearm unsupervised -- is consistent with the historical requirement that parents or other responsible adults be involved in supplying arms to those under twenty-one, who otherwise were not able to obtain firearms on their own, for use within the supervised setting of the militia. See Bondi, 133 F.4th at 1122. Both the modern and historical regulatory schemes temporarily restrict the same defined population (young persons) for similarly limited periods of time (the period before they turn twenty-one) for the same purpose (to protect them and others from the consequences of their immaturity). This is not a case where historical law "targeted different kinds of people, did so for different reasons, and operated in different ways." Hemani, 608 U.S. at 795.

7. Remand. Pointing to the principle of party presentation, the dissent advocates that we defer reaching the legal question presented in this case until after a remand to the Boston Municipal Court in order for expert evidence to be

adduced concerning Eighteenth Century mores and customs. The dissent both misapprehends the principle of party presentation and ignores the procedural history of this case.

There is no question of lack of party presentation here; indeed, the question we answer in this opinion is precisely the one the parties have presented to us for decision, namely, the constitutionality under the Second Amendment of the licensing age restriction. This court transferred the defendant's appeal to this court on its own motion to answer that question based on the briefing submitted by the parties in the Appeals Court; there was thus never any ambiguity as to the questions to be decided or the ones the parties had placed before the court for adjudication. Indeed, the court solicited amicus briefs specifically identifying the two issues raised: the defendant's standing to raise an as-applied challenge to the licensing age restriction, and his facial challenge to that restriction. See Mass. R. A. P. 17, as appearing in 481 Mass. 1635 (2019). In these circumstances, the principle of party presentation has been fully satisfied; this is not a case where a court decides an issue on a legal ground not argued by the parties or about which the parties had no notice. Contrast, e.g., United States v. Sineneng-Smith, 590 U.S. 371, 374-375 (2020) (principle of party presentation violated when court struck down statute on theory not raised by either party). Our decision here addresses

no issue other than the ones raised and argued by the parties on appeal and relies heavily -- although not exclusively -- on the authorities they have cited.

To be sure, the parties' briefing has not been all that it could have been. The reasons for this, of course, are not available to us. We thus have proceeded in this case -- as we have in countless others -- on the submissions the parties and the amici have supplied, supplemented by our own legal research as necessitated to answer the legal question put before us for decision. This is no different from the process routinely followed when we must ascertain the law as best as it can be determined in order to answer the legal question presented. See, e.g., Bernard v. Nantucket Boys' Club, Inc., 391 Mass. 823, 827 (1984) (resolving case using rule of construction not cited by parties); Seibolt v. County of Middlesex, 366 Mass. 411, 415 n.6 (1974) (supporting holding with cases not cited by parties); Trustees of Tufts College v. Volpe Constr. Co., 358 Mass. 331, 335 (1970) (acknowledging court's own research to identify relevant cases in other jurisdictions); Upjohn Co. v. State Tax Comm'n, 347 Mass. 281, 283 (1964) (relying on case not cited in Appellate Tax Board opinion or in State Tax Commission's brief). Certainly, we are not bound to decide cases within the confines of the parties' imperfect legal research. Nor do we see any reason to give the parties an opportunity to build a different

record than they did either in the trial court (where, in fact, the defendant waived the issue entirely) or on appeal.

Furthermore, neither side has requested, suggested, or even hinted that a remand is called for, necessary, or advisable. This is hardly surprising, as the defendant never raised the issue in the trial court in the first instance and, therefore, could hardly expect that the court would order a "do-over" to develop a record on a waived issue. Instead, the defendant was entitled to have us consider his argument on the footing we have done here, namely, under the standard for waived claims in noncapital cases. See Desiderio, 491 Mass. at 817 ("where a defendant has waived a claim of error, our review is limited to the substantial risk of a miscarriage of justice standard").

The dissent's remand approach is inconsistent with our own precedent in similar circumstances. In Commonwealth v. Canjura, 494 Mass. 508 (2024), which challenged our law concerning the possession of switchblade knives, G. L. c. 269, § 10 (b), under the Second Amendment, the court declined to remand the case to the trial court for the purpose of developing a "more robust evidentiary record on whether and to what extent State and local governments regulated knives during the founding and Reconstruction eras." Canjura, 494 Mass. at 517-518. As in this case, no record of historical laws had been developed in the trial court in the first instance. Also similar to this

case, the parties' appellate briefs were limited in terms of their examination of historical regulations. Additionally, as here, there was no evidence or briefing from historians concerning the historical regulation of knives. See id. at 509 n.1. In these parallel circumstances -- and despite the fact that the Attorney General, as an amicus, subsequently supported by the Commonwealth, as a party, requested that we do so -- we declined to remand the case.²⁹

The dissent's proposed approach is also inconsistent with that taken by the vast majority of other jurisdictions. See Blocher & Garrett, Applying History as Law: The Role of Historical Facts in Implementing Constitutional Doctrine, 104

²⁹ The dissent suggests that the fact that we ordered a remand in Mattis, 493 Mass. 216, means one should be ordered in this case. There are several reasons why Mattis is not a model for this case. To begin with, the issue there was one of new brain science. See Commonwealth v. Watt, 484 Mass. 742, 755-756 (2020), S.C., 493 Mass. 216 and 493 Mass. 322 (2024). Here, we are not tasked with understanding the biological workings of the defendant's brain or some other scientific principle or discipline we do not have the capacity to assess through ordinary legal research. In Mattis, we did not remand the case for information about the constitutional or legal backdrop for the defendant's claim, as the dissent suggests we do here; we can gather legal history through public sources. Moreover, the defendant here raises his challenge to the licensing age restriction for the first time on appeal, impliedly having waived his entitlement to an evidentiary hearing to build a factual record. By contrast, the defendant in Mattis was ready and willing to develop a record from the start but was prevented from doing so in the trial court. See id. at 756 ("Because Mattis was prepared to present additional evidence on this issue, it would be manifestly unjust to reject Mattis's constitutional argument on the insufficiency of the record").

Tex. L. Rev. 679, 708-724 (2026) (describing challenges and limits of historical fact finding in recent United States District Court practice, and finding only a single instance in which circuit courts remanded a case for development of historical facts). See also United States v. Bullock, 679 F. Supp. 3d 501, 504-505 (S.D. Miss. 2023), rev'd and remanded, 123 F.4th 183 (5th Cir. 2024) (of 120 United States District Court decisions on Second Amendment challenges to felon-in-possession statute, no court had expert report or amicus brief from historians).

More fundamentally, the problem with the dissent is that it advocates an adventure into unnecessary territory. The analogical reasoning process required by Bruen and its progeny requires a comparison of the contemporary firearm regulation against historical firearm regulatory traditions. See Wolford, 609 U.S. at 205-212 (comparing Hawaii's concealed carry law with historical hunting laws, armed trespass law, and law restricting firearms on plantations, and rejecting reliance on Hawaii's customs and laws for purposes of interpreting Second Amendment rights); Hemani, 608 U.S. at 781-786 (comparing Federal Gun Control Act with founding era habitual drunkard laws, not with historical customs); Rahimi, 602 U.S. at 693-700 (comparing 18 U.S.C. § 922[g][8] with founding era surety and affray laws, not with historical customs); Bruen, 597 U.S. at 38-70 (comparing

New York's public carry law with historical Anglo-American public carry regulations, not with historical customs). It is not an invitation to rummage through history at large concerning customs and mores such as Eighteenth Century farming practices or relations with the Native American population in the Pioneer Valley of western Massachusetts. Instead, the question here is a legal one: whether the "how" and "why" of our current firearm regulatory scheme for minors is analogous to the "how" and "why" of the nation's historical firearm regulations. See Bruen, 597 U.S. at 25 n.6 ("The job of judges is not to resolve historical questions in the abstract; it is to resolve legal questions presented in particular cases or controversies"). And this question is comfortably within our bailiwick to answer on the grounds presented by the parties.

Conclusion. The defendant's convictions are affirmed.

So ordered.

KAFKER, J. (concurring in part and dissenting in part, with whom Wendlandt, J., joins). I agree with the court's conclusion that the defendant may raise a facial challenge to the licensing age restriction and its comprehensive exposition of our existing gun laws, including its explanation of how and why our existing gun laws regulate the possession of firearms by those under twenty-one. I part company with the court, however, regarding its methodology for determining the appropriate historical analogy. I believe further briefing and expert historical analysis are required to draw the appropriate analogy reliably and correctly. Lamentably, as a result of the court's chosen course, the first time the defendant will see much of the history undergirding the court's legal conclusion will be when the court's opinion issues.

As the United States Supreme Court explained in Bruen, "That 'legal inquiry is a refined subset' of a broader 'historical inquiry,' and it relies on 'various evidentiary principles and default rules' to resolve uncertainties." New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 25 n.6 (2022) (Bruen), quoting Baude & Sachs, Originalism and the Law of the Past, 37 L. & Hist. Rev. 809, 810-811 (2019). More specifically, "[i]n our adversarial system of adjudication, we follow the principle of party presentation." Bruen, supra, quoting United States v. Sineneng-Smith, 590 U.S. 371, 375

(2020). See also United States v. Hemani, 608 U.S. 772, 783 (2026), quoting Bruen, supra ("We decide cases 'based on the historical record' and arguments 'compiled by the parties' before us"); Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 113 (10th Cir. 2024), quoting Bruen, supra ("In our analysis, 'we follow the principle of party presentation'").

The party presentation here, however, provided only slim pickings. The Commonwealth's deficiencies in this regard are significant and counsel in favor of remand to permit the defendant to respond to the court's historical research and conclusions. Recall that under Bruen:

"When the [Second Amendment to the United States Constitution'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. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" (Emphasis added; citation omitted.)

Bruen, 597 U.S. at 24. The Commonwealth, the party bearing the burden of proof regarding the existence of an appropriate analogous regulation at the time of the framing, relied on one case and one statute. The extent of its argument was as follows:

"Age[-]based restrictions on the sale and transfer of firearms to persons under the age of twenty-one were common around the adoption of both the Second and Fourteenth Amendments [to the United States Constitution]. See United States v. Rene E., 583 F.3d 8, 14 ([1st] Cir. 2009)

(collecting cases showing longstanding historical tradition of states regulating access to firearms by juveniles). In 1776, Massachusetts passed an act that in order to possess a firearm, 'every Male Person above sixteen Years of Age' had to take a loyalty oath to the American colonies -- failure to do so resulted in disarmament. [Cornell & DeDino, A Well Regulated Right: The Early American Origins of Gun Control], 73 Fordham L. Rev. 487, 507 [(2024), quoting Province Laws 1775-1776, c. 21, § 1]. The point being, there were age[-]based restrictions in Massachusetts on firearms as far back as 1776."

The only statute referenced, however, appears on its face to treat juveniles over sixteen years of age no differently from adults, see Province Laws 1775-1776, c. 21, § 1, and the only case the Commonwealth cited, Rene E., references no statutes or regulations from the founding era, relying instead on law review articles that emphasize:

"Perhaps the most accurate way to describe the dominant understanding of the right to bear arms in the [f]ounding era is as a civic right. Such a right was not something that all persons could claim, but was limited to those members of the polity who were deemed capable of exercising it in a virtuous manner." (Footnote omitted.)

Cornell, "Don't Know Much About History": The Current Crisis in Second Amendment Scholarship, 29 N. Ky. L. Rev. 657, 679 (2002).¹

¹ In Rene E., the United States Court of Appeals for the First Circuit referenced other statutes from the time of the passage of the Fourteenth Amendment, but the Supreme Court directs that our focus is on the founding era. See Samia v. United States, 599 U.S. 635, 655 (2023) (Barrett, J., concurring in part and concurring in the judgment) (historical evidence "largely from the late [Nineteenth] and early [Twentieth] [C]enturies [was] . . . far too late to inform the meaning of the Confrontation Clause 'at the time of the founding'" [citation omitted]); Atkinson v. Garland, 70 F.4th 1018, 1020 (7th Cir. 2023) ("The pertinent question, the [Bruen] Court

See Rene E., 583 F.3d at 15-16. The meaning of the virtuous restriction, the Rene E. court recognized, was unclear, although it concluded nonetheless that it encompassed regulations that precluded minors from possessing weapons. See Rene E., supra at 16.

The defendant's presentation here was also limited, understandably in view of the aforementioned limitations in the Commonwealth's showing. The defendant emphasized, quoting Bruen, 597 U.S. at 60: "Mr. Thomson is not obligated to 'sift the historical materials for evidence to sustain' this age restriction[;] that is the Commonwealth's burden." The defendant also cited three Federal appellate court decisions striking down firearm age restrictions for those eighteen to twenty years old where the courts found that the government had failed to identify a relevantly similar historical analogue. See, e.g., Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 127 F.4th 583, 600 (5th Cir. 2025) (holding regulation prohibiting eighteen to twenty year olds from purchasing handguns unconstitutional); Worth v. Jacobson, 108 F.4th 677, 698 (8th Cir. 2024), cert. denied, 145 S. Ct. 1924 (2025) (striking down State law limiting permits for public

explained, is what the [f]ounders understood the Second Amendment to mean. The Court therefore cautioned against giving too much weight to laws passed before or after the [f]ounding . . . " [citation omitted]).

carrying of handguns to people twenty-one or older, to extent law applied to eighteen to twenty year old Minnesotans); Lara v. Commissioner Pa. State Police, 125 F.4th 428, 443-445 (3d Cir. 2025), cert. denied sub nom. Bivens v. Second Amendment Found., 146 S. Ct. 2812 (2026) (striking down provision prohibiting eighteen to twenty year olds from carrying firearms outside homes during state of emergency).

In his reply brief, the defendant, who again does not bear the burden under the Second Amendment jurisprudence, addressed other recent decisions from United States Courts of Appeals upholding bans on the sales of guns to minors, including the Bondi decision relied on heavily by this court in the instant case, distinguishing these cases on the grounds that sales are different from possession, and the only Federal appellate court decisions on possession came out the other way. Contrast National Rifle Ass'n v. Bondi, 133 F.4th 1108, 1111 (11th Cir. 2025) (en banc), cert. denied, 146 S. Ct. 2811 (2026) (Bondi), with Lara, 125 F.4th at 445, and Worth, 108 F.4th at 698.

This limited briefing was not accompanied by any informative amicus briefing, as was the case in Commonwealth v. Canjura, 494 Mass. 508, 509 n.1 (2024). The Attorney General, responsible for defending the constitutionality of Commonwealth statutes, see Commonwealth v. Exxon Mobil Corp., 489 Mass. 724, 730 (2022), citing Secretary of Admin. & Fin. v. Attorney Gen.,

367 Mass. 154, 159 (1975), also did not file anything in this case. Again, this contrasts with the Attorney General's briefing in Canjura, supra.² Nor did the court receive amicus briefs exploring the Eighteenth Century statutes or regulations or their historical context.³

Given this dearth of materials and analysis and the importance and complexity of the question the court is required to decide, the appropriate response, in my opinion, is to remand the case for further proceedings that would inform the parties of the court's questions and concerns, further develop the historical record, and require supplemental briefing, including directly inviting the Attorney General and amici to weigh in on the contested constitutional question regarding the appropriate historical analogy. See United States v. Daniels, 77 F.4th 337, 360-361 (5th Cir. 2023), judgment vacated, 144 S. Ct. 2707 (2024) (Higginson, J., concurring) ("In my view, . . . Bruen

² Indeed, in her brief in Canjura, the Attorney General urged this court to vacate the defendant's conditional plea and remand for reconsideration of his Second Amendment defense in light of Bruen in order to "give [the defendant] and the Commonwealth the opportunity to develop the evidentiary materials and historical record contemplated by the Bruen framework."

³ The court did solicit amicus briefs in this case specifically on the questions whether G. L. c. 140, § 131 (d) (iv), as appearing in St. 2014, c. 284, § 48, is unconstitutional and whether the defendant is entitled to raise an as-applied challenge to the constitutionality of the statute although he did not apply for a firearms license.

requires that an evidentiary inquiry first be conducted in courts of original jurisdiction, subject to party presentation principles, aided by discovery and cross-examination and with authority to solicit expert opinion"); Atkinson v. Garland, 70 F.4th 1018, 1020 (7th Cir. 2023) ("The parties' briefing on appeal only scratches the surface of the historical analysis now required by Bruen. In these circumstances, we think the best course is to remand to allow the district court to undertake the Bruen analysis in the first instance"); Blocher & Garrett, Applying History as Law: The Role of Historical Facts in Implementing Constitutional Doctrine, 104 Tex. L. Rev. 679, 689 (2026) ("Appellate courts must insist on an adequate [historical] record, and they must respect the fact-finding ability of lower courts through deference and remands, to develop a factual record, as appropriate"). In every United States Supreme Court decision addressing the appropriate historical analogy in Second Amendment cases, expert historians did at least submit amicus briefs, and importantly the government had also done its homework much more carefully than in the instant case. See, e.g., United States v. Rahimi, 602 U.S. 680 (2024); Bruen, 597 U.S. 1; McDonald v. Chicago, 561

U.S. 742 (2010); District of Columbia v. Heller, 554 U.S. 570 (2008).^{4,5}

⁴ The following amicus briefs by professional historians appeared in each of these cases. In Heller, 554 U.S. 570, see Brief for Jack N. Rakove, Saul Cornell, David T. Konig, William J. Novak, Lois G. Schworer et al. in Support of Petitioners, Heller, supra (No. 07-290) (supporting government); Brief for the CATO Institute and History Professor Joyce Lee Macloim in Support of Respondent, Heller, supra (No. 07-290) (supporting gun owner); Brief for Organizations and Scholars Correcting Myths and Misrepresentations Commonly Deployed by Opponents of an Individual-Rights-Based Interpretation of the Second Amendment in Support of Respondent, Heller, supra (No. 07-290) (supporting gun owner); Brief for Academics in Support of Respondent, Heller, supra (No. 07-290) (supporting gun owner). In McDonald, 561 U.S. 742, see Brief for Thirty-four Professional Historians and Legal Historians in Support of Respondents, McDonald, supra (No. 08-1521) (supporting government); Brief for Historians and Legal Scholars in Support of Respondent, McDonald, supra, (No. 08-1521) (supporting government); Brief for English/Early American Historians in Support of Respondents, McDonald, supra (No. 08-1521) (supporting government); Brief for Historians on Early American Legal, Constitutional and Pennsylvania History in Support of Respondent, McDonald, supra (No. 08-1521) (supporting government). In Bruen, 597 U.S. 1, see Brief for the Firearms Policy Coalition and Professor Joyce Lee Malcolm in Support of Petitioners, Bruen, supra (No. 20-843) (supporting gun owner); Brief for Professors of History and Law in Support of Respondents, Bruen, supra (No. 20-843) (supporting government); Brief for Corpus Linguistics Professors and Experts Supporting Respondents, Bruen, supra (No. 20-843) (supporting government). In Rahimi, 602 U.S. 680, see Brief for Professors of History and Law in Support of Petitioner, Rahimi, supra (No. 22-915) (supporting government); Brief for Professors of Second Amendment Law, the Second Amendment Law Center, and the Independence Institute in Support of Respondent and Affirmance, Rahimi, supra (No. 22-915) (supporting gun owner).

The government's briefing in each case on the relevant history was also extensive. See Brief for Petitioners at 22-35, Heller, supra (No. 07-290); Brief for Respondents City of Chicago and Village of Oak Park at 31-37, McDonald, supra (No. 08-1521); Brief for Respondents at 21-36, Bruen, supra (No. 20-

Interestingly, none of the Federal appellate court opinions cited by the majority, including the Bondi decision adopted by this court, see ante at , had the benefit of any such amicus assistance from expert historians. The same is true for Picon v. United States, 343 A.3d 57 (D.C. 2025), cert. denied, 146 S. Ct. 2809 (2026), cited by this court, see ante at , which relies on the Bondi decision. There were also no affidavits or testimony from expert historians on which to rely in any case but Rocky Mountain Gun Owners, 121 F.4th 96. In that case, where there were submissions from two historians and a political scientist submitted by counsel for the Governor, see id. at 106,

843); Brief for the United States at 13-27, Rahimi, supra (No. 22-915).

⁵ Amicus briefing by historians of course differs from expert testimony subjected to cross-examination. As Justice Breyer explained in his dissent in Bruen, the majority in Heller, even with the benefit of some amicus briefing, interpreted language from the English Bill of Rights

"to mean a private right to bear arms for self-defense, 'having nothing whatever to do with service in a militia. . . . Two years later, however, [twenty-one] English and early American historians (including experts at top universities) told us in McDonald v. Chicago, 561 U.S. 742 (2010), that the Heller Court had gotten the history wrong: The English Bill of Rights 'did not . . . protect an individual's right to possess, own, or use arms for private purposes such as to defend a home against burglars.'"

Bruen, 597 U.S. at 108 (Breyer, J., dissenting), quoting Brief for English/Early American Historians in Support of Respondents at 2, McDonald, 561 U.S. 742 (No. 08-1521).

the court emphasized that the only assistance it received was from the government, see id. at 113; it relied on the principle of party presentation to rule in favor of the government on step one of the Bruen analysis, see id. at 113, 127-128; and it did not proceed to step two and the consideration of historical analogies, even though the court concluded that those under the age of twenty-one were among the people with the right to bear arms, see id. at 127-128.⁶

Instead of remanding the case or requiring further briefing, the court here decided to do all of the Massachusetts historical work and analysis itself. Indeed, I admire the court's efforts in this regard. Unfortunately, this is not the type of historical research we should undertake without the assistance of the parties and their experts. Also, the parties have not had any opportunity to weigh in on this research, so

⁶ Other courts have found step one of the Bruen analysis satisfied and moved onto step two, when they determined that those eighteen to twenty were among the people covered by the Second Amendment. See, e.g., Reese, 127 F.4th at 595 ("While the core of the right is rooted in self-defense and unconnected to the militia, the text of the Amendment's prefatory clause considered along with the overwhelming evidence of their militia service at the founding indicates that [eighteen to twenty year olds] were indeed part of 'the people' for Second Amendment purposes"); Lara, 125 F.4th at 438 ("[eighteen to twenty year olds] are, like other subsets of the American public, presumptively among 'the people' to whom Second Amendment rights extend"); Worth, 108 F.4th at 692 ("Ordinary, law-abiding [eighteen to twenty year old] Minnesotans are unambiguously members of the people").

they are unable to discuss whether it is complete or not. Instead, the court has done the Commonwealth's work and then forged ahead without providing the defendant an opportunity to respond.

The court also singles out the historical research in Bondi, simply adopting it to supplement its Massachusetts-specific research, see ante at , despite no expert historical testimony or amicus filing in the Bondi case, four dissenters in Bondi who questioned the historical foundation of its reasoning point by point, see Bondi, 133 F.4th at 1175-1181 (Brasher, J., dissenting), the opposite conclusions of other Federal Courts of Appeals on the very same question,⁷ and the important distinction that Bondi involved sales and not possession of firearms, see id. at 1111. Indeed, in the United States District Court decision that was affirmed by Bondi, the judge also weighed in on the lack of historical expertise involved:

"Judges are not historians. And this Court has tried to avoid engaging in what Judge Posner referred to as 'law office history' -- i.e., selectively parsing out pieces of historical evidence supporting a desired conclusion. This Court has not engaged in independent research, consulting

⁷ See, e.g., Lara, 125 F.4th at 444 ("That young adults had to serve in the military indicates that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms"); Worth, 108 F.4th at 693-698 (firearm regulations based on dangerousness, and founding-era, common-law, and Reconstruction-era analogues insufficient evidence "to rebut the presumption that [eighteen to twenty year olds] seeking to carry handguns in public for self-defense are protected by the right to keep and bear arms").

primary sources. Instead, it relies entirely on the historical citations provided by the parties and on secondary sources discussing the Second Amendment's historical background. In so doing, this Court is cognizant of criticisms that judges should 'refrain from relying on unfounded historical commentaries' and instead look to primary sources. But primary sources are no better than commentaries when you lack the training to interpret them. . . . The risk that judges -- untrained in historical inquiry -- looking to primary sources would make [a] mistake is quite high. Still, both Heller and subsequent Eleventh Circuit precedent direct this Court to look to the Second Amendment's history. And so, that is what this Court has done, ever conscious of its lack of historical expertise." (Citations omitted.)

Nat'l Rifle Ass'n of Am. v. Swearingen, 545 F. Supp. 3d 1247, 1254 n.8 (N.D. Fla. 2021), aff'd sub nom. Bondi, supra.

Commentators have emphasized the danger posed by unquestioned reliance on a case like Bondi, in which the court performed its own historical analysis without any expert assistance. "It risks entrenching factual mistakes or cementing outdated data. At bottom, the fear is that lower court judges will take something as authoritative from one who is not an authority on the subject" (quotation omitted). Larsen, *Is History Precedent?*, 78 Stan. L. Rev. 365, 369 (2026). See Blocher & Garrett, 104 Tex. L. Rev. at 722.

I am particularly concerned about the over-all conclusions the court is drawing. After reviewing the age provisions in a number of different statutes that it has identified, including statutes that have nothing to do with the possession or even ownership of firearms, the court concludes: "The purpose behind

these age requirements was to protect minors . . . from the consequences of their own immaturity." Ante at . The court concludes this applies to guns as well as other aspects of life. The only gun case it cites dates from 1878. The only gun statute it references, the one involving the militia, in no way restricts the possession of guns; rather, it requires such possession by those over sixteen. As for the survey of other age-based restrictions, including the infancy doctrine, this has been introduced by the court without any briefing by the parties, which would be most beneficial to understand its nuances, as the age of maturity for different activities, such as marriage, guardianship, contracting, militia service, testifying under oath, and being subject to the death penalty, differs significantly. No expert historian on either firearms or the founding era is cited to explain the purpose of these regulations, and their different age requirements. The court nonetheless concludes that "the historical regulatory tradition regarding minors and firearms are closely analogous" to Massachusetts modern day regulations. Id. at .

The court, I believe, is relying on its own unassisted characterizations of the purposes of these Eighteenth Century statutes to conclude that they are closely analogous to modern day statutes. As commentators have explained, "Claims about purpose ('X was enacted because people back then thought Y') lie

on the outer edge of a judge's expertise and thus raise greater concerns since they can easily be taken out of context."

Larsen, 78 Stan. L. Rev. at 369-370. See Schauer & Spellman, Guns, Analogies, and Constitutional Interpretation Across Centuries, 99 Notre Dame L. Rev. 1565, 1579 (2024) ("Analogizing contemporary . . . methods of firearms control to those existing in the distant past requires judges to go beyond their judicial qualifications, their judicial training, and their judicial experience and into the realm of empirically grounded knowledge and experience that judges do not necessarily share just by virtue of being judges"). See also Bruen, 597 U.S. at 107 (Breyer, J., dissenting) ("Courts are, after all, staffed by lawyers, not historians. Legal experts typically have little experience answering contested historical questions or applying those answers to resolve contemporary problems"). In my view, this type of overarching characterization and comparison requires briefing along with expert guidance and assistance.

My own review of the relevant regulations, without party briefing or expert assistance, leaves me with far more questions than answers. The only regulations the court has found and discussed on firearms relate to their use in the militia. As a well-armed and well-regulated militia was deemed necessary for the defense of the country, the regulations all appear to be designed to serve these important purposes. To fulfill these

same purposes, those eighteen to twenty years old -- indeed, those sixteen and over -- were critical to the functioning of that militia. They were necessary participants in the militia, subject to various limitations that reflected financial and legal constraints imposed on young men at the time. The purposes of those financial and legal constraints in an agricultural and patriarchal society very different from our own are by no means obvious to me. See Bondi, 133 F.4th at 1117-1118, quoting Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut, 1750-1820*, 47 Wm. & Mary Q. 235, 236 (1990) ("Families in New England were arranged so that the '[p]atriarchal household heads sp[oke] for their dependents in dealings with the larger world'"); Ditz, supra (in *Eighteenth Century New England*, only heads of household had "the formal right to make final decisions about internal matters"); R.A. Gross, *The Minutemen and Their World* 92-95 (rev. ed. 2022) (describing "semi-independent status" of young men in colonial Concord because "fathers effectively exploited their control of the land to delay the independence of their sons. Next to the land itself, a farmer's children were his basic resource. From sunup to sundown, throughout the year, and with only a few weeks off for winter school, his sons were with him on the farm, tilling his crops, building his income, easing his toil. No wonder, then, that farmers were reluctant to let their labor

force go"); Main, Gender, Work, and Wages in Colonial New England, 51 Wm. & Mary Q. 39, 39 (1994) ("In the preindustrial economies of western European countries and their colonies in the New World, the household constituted the basic unit of production and consumption. Individual members did not wield exclusive control over either their labor or their income. Rather, the household's head, who was usually the oldest resident male, supervised the assignment of tasks and distributed the rewards among members"). Do those regulations reflect, as the majority concludes, a society that deems eighteen to twenty year olds too immature to have a constitutional right to possess guns like their fathers, or a society that places eighteen to twenty year old men firmly under the control of their fathers for other reasons, including the importance of their labor, and the retention of their earnings, to maintain family farms and businesses? Expert historical analysis appears necessary to draw conclusions in that regard. See Atkinson, 70 F.4th at 1028-1029 (2023) (Wood, J., dissenting) ("Only a professional historian would know how to evaluate often-conflicting claims about the social, cultural, and legal landscape of an earlier period, and that person likely would not jump to any conclusions without devoting significant time to an evaluation of original sources"); Blocher & Garrett, 104 Tex. L. Rev. at 717 ("sound historians may resist

categorical answers to nuanced historical questions, especially where the documentary record is highly incomplete"); Schauer & Spellman, 99 Notre Dame L. Rev. at 1577 ("Drawing analogies is a knowledge-dependent process, such that people with a certain kind of knowledge will see analogies that those without that knowledge will not").

The fact that young men certainly were allowed to possess and fire weapons not only to serve in the militia but also to help their families hunt for food, defend themselves and their livestock from wild animals, and assist sheriffs and magistrates in law enforcement requires some consideration and, I suspect, some historical analysis.⁸ See Wolford v. Lopez, 609 U.S. 185, 192 (2026) ("We also identified the [Second] Amendment's 'central' concern: securing the fundamental right of self-defense. In late [Eighteenth Century] America, the need for firearms for self-defense was acute. There were no police forces, and most Americans lived in rural areas, often in homes located miles from the closest neighbor. If these homes were

⁸ At least on the frontier, settlers also used guns during conflicts with Native American tribes. See Kates, Handgun Prohibition and the Original Meaning of the Second Amendment, 82 Mich. L. Rev. 204, 214 (1983), citing Dowlut, The Right to Arms: Does the Constitution or the Predilection of Judges Reign?, 36 Okla. L. Rev. 65, 69 (1983) ("Throughout their existence, the American colonies had endured the constant threat of sudden attack by Indians or any of Britain's Dutch, French and Spanish colonial rivals").

attacked, the residents were on their own, and their survival might well depend on the availability of a firearm to ward off assailants" [citation and footnote omitted]; United States v. Wendt, 168 F.4th 1068, 1082-1083 (8th Cir. 2026) (Stras, J., concurring in part), quoting Province Laws 1696, c. 4, § 3 (collecting historical sources on sheriffs' authority, including 1696 Massachusetts law requiring sheriff to "take such a number of persons, with arms or otherwise, as he or they shall think meet, for the seizing and apprehending" of criminals); Bondi, 133 F.4th at 1177 (Brasher, J., dissenting), citing Kopel & Greenlee, The Second Amendment Rights of Young Adults, 43 S. Ill. U. L.J. 495, 533-535 (2019), and Kates, Handgun Prohibition and the Original Meaning of the Second Amendment, 82 Mich. L. Rev. 204, 273 n.53 (1983) (explaining that "abled-bodied males, including those between eighteen to twenty-one, [were required] to come to the sheriff's aid bearing their own arms"); Reese, 127 F.4th at 598, quoting Kopel & Greenlee, supra at 534 n.235 ("In addition to serving in the militia, [eighteen to twenty year olds] could be obliged to join the posse comitatus [to assist in law enforcement], for which the minimum age was often fifteen or sixteen, and bring 'such arms or weapons as they have or can provide'"); Parker v. District of Columbia, 478 F.3d 370, 382-383 (D.C. Cir. 2007), *aff'd sub nom. Heller*, 554 U.S. 570, citing United States v. Emerson, 270 F.3d 203, 251-255 (5th Cir.

2001), Shallope, *The Ideological Origins of the Second Amendment*, 69 J. Am. Hist. 599, 602-614 (1982), and Pa. Const. § 43 ("The correspondence and political dialogue of the founding era indicate that arms were kept for lawful use in self-defense and hunting"). Were there any regulations in place imposing any limitations on eighteen to twenty year olds from possessing firearms, given these concerns? None have been identified by the court in its own research, let alone by the Commonwealth. See Cornell & DeDino, 73 Fordham L. Rev. at 505-506 (cataloging founding-era firearms regulations).

Is that not significant, particularly if the possession and use of firearms by such eighteen to twenty year olds were necessary to serve in the militia, and to feed their families and keep them safe? See Lara, 125 F.4th at 443-444 ("Against the sparse record of [S]tate regulations on [eighteen to twenty year olds] at the time of the Second Amendment's ratification, we can juxtapose the Second Militia Act, passed by Congress . . . a mere five months after the Second Amendment was ratified," which "required all able-bodied men to enroll in the militia and to arm themselves upon turning [eighteen]. That young adults had to serve in the militia indicates that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms" [footnote and citation omitted]). As the Supreme Court has explained, "when a challenged

regulation addresses a general societal problem that has persisted since the [Eighteenth] [C]entury, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." Bruen, 597 U.S. at 26. Of course, a "dead ringer" or "historical twin" is not required, but at least an analogical ancestor is. Wolford, 609 U.S. at 197, quoting Bruen, supra at 30.

Even more historical questions are raised when the court broadens its scope beyond firearm regulations to regulations governing eighteen to twenty year olds more generally. None of these is cited by the Commonwealth, and the defendant has not been given an opportunity to address them. Yet questions persist. Is such a widening of the gyre of analogy stretching the comparison too far? See Hemani, 608 U.S. at 783 ("the habitual drunkard laws on which the government relies here differ dramatically from [18 U.S.C.] § 922[g][3]'s unlawful user provision on every single metric the government invites us to consider: They targeted different kinds of people, did so for different purposes, and operated in different ways"); Rahimi, 602 U.S. at 745 (Jackson, J., concurring) (Supreme Court has not "adequately clarified" the "level of generality" for evaluating analogies); Bondi, 133 F.4th at 1165 (Branch, J., dissenting) ("Such a broadly applicable doctrine is a far cry from the

historical regulations that the [Supreme] Court has considered as proper analogues"); Blocher & Ruben, Originalism-by-Analogy and Second Amendment Adjudication, 133 Yale L.J. 99, 162 (2023) ("Deciding on an appropriate level of generality is a classic issue for tradition-based approaches to constitutional reasoning"). Analysis of the right to contract is certainly required when the question we must decide relates to the sale or purchase of firearms, as the sale or purchase of firearms combines elements of both firearms and contracting, but the sale or purchase of firearms is not the issue directly presented here; this is a possession case. Should not the parties be heard on these issues?

Furthermore, even if the unenforceability of contracts against minors is to be considered, along with the related restrictions on eighteen to twenty year olds' ability to retain their own earnings in a possession case, are these limitations imposed due to the immaturity of eighteen to twenty year olds in the founding era, as the court contends, or other more complex societal reasons? Blackstone's Commentaries, upon which the Bondi dissenters relied, identified important decisions, requiring some maturity, at least from a Twenty-first Century perspective, that were left to young boys and girls. See Bondi, 133 F.4th at 1178 (Brasher, J., dissenting), citing 1 W. Blackstone, Commentaries. Boys could take an oath at age

twelve, marry at fourteen, be sentenced to death in a capital case at fourteen, and serve as an executor at seventeen. 1 W. Blackstone, Commentaries *463-464. Girls could marry at twelve, choose a guardian at fourteen, and serve as an executrix at seventeen. Id. At the same time, other laws drew distinctions at older ages: officials could forcibly remove young men up to age twenty-one from unfit parents, see St. 1793, c. 59, and children under twenty-one could not create wills or serve on juries, see Perpetual Laws of the Commonwealth c. 1, § 1, at 135 (1799-1800). Again, expert testimony would be most helpful in understanding the different purposes for these different regulations and what overarching conclusions may be drawn from them. And of course, in our system of decision-making, allowing the parties to present their arguments alongside a developed historical record is central to our adversarial system of justice.

Finally, I address the court's critique of the proposed remand. The court contends that no remand is necessary to satisfy the principles of party presentation or due process because such principles have been fully satisfied, and "[o]ur decision here addresses no issue other than the ones raised and argued by the parties on appeal and relies heavily -- although not exclusively -- on the authorities they have cited." Ante at . As explained above, this is not the case. The

Commonwealth, which has the burden of demonstrating the appropriate analogy, did virtually none of the historical research performed by the court on its own initiative, nor did it develop the analogy relied on by the court. A comparison of the Commonwealth's brief, as described supra, and the court's decision readily establishes that point. It is also not surprising that the defendant did not request a remand in these circumstances, as the Commonwealth's briefing on the key issue upon which the Commonwealth had the burden of proof -- that is, establishing the relevant historical analogy -- was grossly deficient. The only gun statute or regulation referencing age cited by the Commonwealth, the militia statute, appeared to support the defendant's contention regarding gun possession by those under twenty-one rather than the Commonwealth's argument to the contrary. The court's survey and analysis of the purposes of other founding era statutes, regulations, cases and legal commentary, particularly the infancy doctrine and the conceptions of maturity it entails, is also absent from the Commonwealth's briefing.

I recognize that the principle of party presentation should not unduly limit the court's inquiry as we are being asked to decide a complicated constitutional question, and poor briefing should not result in poor decision-making. At the same time, the court should not assume important roles and

responsibilities assigned to the Commonwealth, the defense, expert witnesses, and the trial court. In particular, the defendant, whose liberty interest is at stake, should not be presented with a historical analogy that an appellate court has developed on its own and that the defense has not had a chance to at least research, examine, and question. Our adversarial system recognizes just how critical this adversarial process, and the defense's function in it, is to the integrity of the decision-making process. As the Supreme Court explained in Sineneng-Smith, 590 U.S. at 375:

"In our adversarial system of adjudication, we follow the principle of party presentation. . . . [I]n both civil and criminal cases, in the first instance and on appeal . . . , we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. In criminal cases, departures from the party presentation principle have usually occurred to protect a pro se litigant's rights." (Citations and quotations omitted.)

This is also not a case of ordinary or "routine" reasoning by analogy as the court contends. To be sure, the question whether a regulation is constitutional is a legal one; however, the historical analysis required by the Supreme Court involves complex, contextual analysis requiring some expertise and evidence, for the reasons explained above. See, e.g., Bruen, 597 U.S. at 25, quoting McDonald, 561 U.S. at 803-804 (Scalia, J., concurring) ("[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions, and making

nuanced judgments about which evidence to consult and how to interpret it"). It is also not, in the words of the court, a "rummage through history at large concerning customs and mores such as Eighteenth Century farming practices." Ante at . Rather, it is the required review of the "hows" and particularly the "whys" of regulations passed at least 240 years ago to address the concerns of a world very different from our own. See Commonwealth v. Escobar, 490 Mass. 488, 494 (2022) ("A fundamental principle of statutory interpretation is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated" [quotation and citation omitted]).

The difficult question the court must decide has also resulted in a Circuit Court split that only the Supreme Court can resolve. Contrast, e.g., Bondi, 133 F.4th at 1111, with Reese, 127 F.4th at 600, Lara, 125 F.4th at 443-445, and Worth, 108 F.4th at 698. The Federal Circuit Court decision upon which the court relies is also bitterly contested, even within its own circuit. Simply choosing one of these Circuit Court cases over the others, when their historical analysis and analogies greatly

differ, and no historical experts testified or briefed the issues in the different cases, is problematic. For all these reasons, a remand is required here to decide this case correctly.

Indeed, we adopted this very approach when deciding another difficult, contested constitutional question in Commonwealth v. Mattis, 493 Mass. 216, 219 (2024). That case, like this one, required knowledge of another discipline -- in that case, brain science. The remand there proved most beneficial in improving the quality of the legal conclusions as to the constitutionality of certain punishments, where those conclusions depended on the accuracy of the scientific analysis. The same is true for the legal conclusion here, which depends on a complete and accurate historical analysis.⁹ At the least, I cannot say with any assurance that the quality of the court's decision-making would not benefit from permitting the parties to address the historical record the court has unearthed.¹⁰

⁹ In support of its decision not to remand, the court points to Canjura, 494 Mass. at 509 n.1, but that case is distinguishable for the reasons I have explained supra, particularly the high quality of the amicus briefing.

¹⁰ In its critique of the proposed remand, the court also states that Mattis is "not a model for this case." Ante at note 29. It contends that here we "are not tasked with understanding the biological workings of the defendant's brain or some other scientific principle or discipline we do not have the capacity to assess through ordinary legal research." Id. Professional historians, required to undergo years of graduate study in their

Contrary to the court's suggestion, the procedural lapses here cannot be justified by the fact that the defendant "waived" the issue. Ante at . Where an issue is not raised at trial, our review is for the substantial risk of a miscarriage of justice. See Commonwealth v. Desiderio, 491 Mass. 809, 817 (2023). This does not mean that we should short circuit the Supreme Court's test that requires the Commonwealth to justify its regulation by historical analogue by shoring up the Commonwealth's lax showing in that regard and then foreclosing the defendant's ability to respond.

discipline to achieve a doctorate degree, would, I suspect, strongly disagree. Indeed, the court's undue confidence that it can perform the necessary historical research and analysis without expert historical assistance or the assistance of counsel who would subject such analysis to the rigors of cross-examination is a fundamental problem with the court's approach here. Expert testimony subject to cross-examination and credibility findings by the trial judge greatly strengthened the scientific and legal analysis in Mattis.

The court also incorrectly characterizes our remand in Mattis, stating that "we did not remand the case for information about the constitutional or legal backdrop for the defendant's claim." Ante at note 29. Rather, "[i]n addition to his other findings," our remand in Mattis required the Superior Court judge "to consider and address whether the imposition of a mandatory sentence of life without the possibility of parole for Mattis and those convicted of murder in the first degree who were eighteen to twenty-one at the time of the crime, violates article 26 of the Massachusetts Declaration of Rights." Commonwealth vs. Mattis, No. SJC-11693, Order at 2 (Dec. 24, 2021). The Superior Court carefully complied with this order, with the benefit of full briefing on the contested issues by the parties.

In sum, as I believe that the court cannot reliably answer many of these complex and important questions and define the appropriate historical analogy without further briefing and expert assistance, I conclude that a remand is required and therefore dissent in part.