

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

GUNS SAVE LIFE, INC.,

Plaintiff,

v.

BRENDAN KELLY, solely in his official capacity as Director of the Illinois State Police, *et al.*

Defendants.

No. 2019-CH-180

EXPERT REPORT OF PROFESSOR SAUL CORNELL

I. Assignment

I have been asked to provide an expert opinion on the history of firearms regulation in the Anglo-American legal tradition, with an emphasis on the connection between the current state of Illinois' license and permitting scheme—*i.e.*, the Firearm Owners Identification Card Act, also known as the “FOID” Act¹—and the history of firearms regulation over the long arc of Anglo-American legal history. I have further been asked to opine on how the Founding-era generation understood the right to bear arms, as well as the understanding of the right to bear arms held at the time of the ratification of the Fourteenth Amendment to the United States Constitution. Finally, I was also asked to assess the extent to which analogies between the Second Amendment and the First Amendment illuminate issues relating to legal challenges to the FOID Act.

II. Qualifications and Background

I am the Paul and Diane Guenther Chair in American History at Fordham University. The Guenther chair is one of three endowed chairs in the history department at Fordham and the only one in American history. In addition to teaching constitutional history at Fordham University to undergraduates and graduate students, I teach constitutional law at Fordham Law School. I have been a Senior Visiting research scholar on the faculty of Yale Law School, the University of Connecticut Law School, and Benjamin Cardozo Law School. I have given invited lectures, presented papers at faculty workshops, and participated in conferences on the topic of the Second Amendment and the history of gun regulation at Yale Law School, Harvard Law School, Stanford Law

¹ 430 ILCS 65/1 *et seq.*

School, UCLA Law School, the University of Pennsylvania Law School, Columbia Law School, Duke Law School, Pembroke College Oxford, Robinson College, Cambridge, Leiden University, and McGill University.²

My writings on the Second Amendment and gun regulation have been widely cited by state and federal courts, including the majority opinion and dissenting opinion in *NYSRPA v. Bruen*.³ My scholarship on this topic has appeared in leading law reviews and top peer reviewed legal history journals. I authored the chapter on the right to bear arms in *The Oxford Handbook of the U.S. Constitution* and co-authored the chapter in *The Cambridge History of Law in America* on the Founding era and the Marshall Court, the period that includes the adoption of the Constitution and the Second Amendment.⁴ Thus, my expertise not only includes the history of gun regulation and the right to keep and bear arms, but also extends to American legal and constitutional history broadly defined. I have provided expert witness testimony in *Rocky Mountain Gun Owners, Non-profit Corp. v. Hickenlooper*, 14-cv-02850 (D. Colo.); *Chambers, et al., v. City of Boulder*, 2018 CV 30581 (Colo. D. Ct. City of Boulder, filed June 14, 2018), *Zeleny v. Newsom*, 14-cv-02850 (N.D. Cal.), and *Miller, et al v. Smith, et al.*, 2018 cv 3085 (C.D. Ill.); *Jones v. Bonta United States Court of Appeals*, --- F.4th ----, 2022 WL 1485187 (9th Cir., May 11, 2022); *Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.); *Worth v. Harrington*, 21-cv-1348 (D. Minn.).

III. Retention and Compensation

I am being compensated for services performed in the above-entitled case at an hourly rate of \$500 for reviewing materials, participating in meetings, and preparing reports, \$750 for depositions and court appearances, and an additional \$100 per hour for travel time. My compensation is not contingent on the results of my analysis or the substance of any testimony.

IV. Basis for Opinion and Materials Considered

The opinion I provide in this report is based on my review of the amended complaint filed in this lawsuit; my review of the Illinois statutes at issue in this lawsuit; my education, expertise,

² For a full *curriculum vitae* listing relevant invited and scholarly presentations, see Exhibit 1.

³ *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. ___, 2022 U.S. Lexis 3055 (2022). For a full list of court citations, see Exhibit 2.

⁴ Saul Cornell, *The Right to Bear Arms*, in *THE OXFORD HANDBOOK OF THE U.S. CONSTITUTION* 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the Early Federal System*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 518–544 (Christopher Tomlins & Michael Grossberg eds., 2008).

and research in the field of legal history, and; my review and analysis of the primary sources, secondary sources, and other materials cited in the footnotes and text of this report and listed in the Exhibits.

V. Summary of Opinion

It is my opinion that the FOID Act is consistent with the original understanding of Second Amendment, and this Nation's historical tradition of firearm regulation. The original understanding of the Second Amendment and its state constitutional analogs, and our nation's historical tradition of firearm regulation, are and were inextricably linked to the goal of promoting a free state and preserving "the peace." It is impossible to make sense of the numerous laws enacted by the Founding generation and later generations without recognizing that the right to keep and bear arms was understood to further the goals of ordered liberty, not undermine them.

The amended complaint in this lawsuit alleges several claims that rest on demonstrably false historical premises. The complaint alleges the FOID Act is an unconstitutional infringement of the right to keep and bear arms because it "places an unconstitutional tax on the exercise" of a fundamental right. Furthermore, the amended complaint alleges that "licenses with attendant fees have no basis in the history and tradition of firearms regulation in this Nation, and, accordingly, there are no 'historical justifications' that support their validity."⁵ These claims are historically false: neither are supported by the evidence of the history of firearms regulation or the well established facts developed in the existing historical scholarship on arms regulation.⁶ The foundation for these assertions is ideological, not historical. Indeed, if the complaint's views of the right to keep and bear arms were in place during the American Revolution it would have undermined the ability of the states and the new nation to achieve independence and we would have no Second Amendment.

Gun rights and gun regulation were not antithetical concepts in the Founding era: the two were seen as two sides of the same coin. Without robust regulation of arms, it would have been impossible to implement the Second Amendment and its state analogues.⁷ The complaint's vision

⁵ See Am. Compl. ¶ 24.

⁶ Saul Cornell, *History, Text, Tradition, and the Future of Second Amendment Jurisprudence: Limits on Armed Travel under Anglo-American Law, 1688-1868*, 83 LAW AND CONTEMP. PROBS. 73 (2020); ROBERT J. SPITZER, GUNS ACROSS AMERICA: RECONCILING GUN RULES AND RIGHTS (2015).

⁷ H. RICHARD UVILLER & WILLIAM G. MERKEL, THE MILITIA AND THE RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT 150 (2002).

of the Second Amendment rests on a series of post-Founding era myths that have little connection to the historical realities and legal framework that effectuated the original understanding of the right to keep and bear arms.⁸ Rather, the ability to regulate firearms and gunpowder is of ancient vintage and was central to the conception of ordered liberty that defined American law from its earliest days.⁹ At the very core of the early American understanding of the scope of liberty was the right of self-government and the right of the people themselves to regulate their internal police.¹⁰ Regulations of gunpowder and firearms were at the very core of state police power.¹¹

As such, the modern FOID Act, which requires qualified individuals to obtain a permit and undergo a background check prior to possessing a firearm can be properly characterized as both a direct lineal descendent of early American gun laws and a clear constitutional analogue of several different types of longstanding and historically recognized forms of firearms regulation. Moreover, the FOID Act is completely consistent with the Founding generation's understanding (and that of the generation that ratified the Fourteenth Amendment) of the lawful use of the police power to regulate for the health, safety, and welfare of the people. Consequently, based on a comprehensive review of the historical evidence and scholarship, it is my opinion that the Illinois FOID Act is well within the category of presumptively lawful firearms regulations discussed in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and fits within the text, history, and tradition framework developed in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___, 2022 U.S. Lexis 3055 (2022).¹²

VI. The Historical Inquiry Required by *Bruen* and *Heller*

The United States Supreme Court's decisions in *Heller*, and most recently *Bruen*, directed courts to look to history for guideposts in evaluating the scope of permissible firearms regulation

⁸ See discussion *infra* at pp. 8–28.

⁹ Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL'Y 569 (2017).

¹⁰ On Founding era conceptions of liberty, see JOHN J. ZUBLY, THE LAW OF LIBERTY (1775). The modern terminology to describe this concept is “ordered liberty.” See *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent elaboration of the concept, see generally JAMES E. FLEMING & LINDA C. MCCLAIN, ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (2013).

¹¹ See discussion *infra* at pp. 10, 21–22.

¹² *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

under the Second Amendment. At the time *Heller* was decided there was relatively little scholarship on the history of gun regulation.¹³ A burgeoning body of scholarship has revealed the wide scope of arms regulation in the Anglo-American legal tradition and the Founding era.¹⁴ The creation of powerful searchable digital “archives” has transformed this sub-field and facilitated a more sophisticated understanding of the scope of gun regulation under Anglo-American law, and during the Founding era.¹⁵ My report draws on this new body of digital sources and the scholarship that it has generated.¹⁶

Looking to history for guidance when evaluating modern gun laws requires a deeply contextualized understanding of the fundamental legal and philosophical principles underpinning the Second Amendment, including the common law understanding of the limits on the uses of dangerous or unusual weapons. Two types of inquiry are therefore necessary. First, one must gain some familiarity with Founding era rights theory, particularly as it related to the scope of state legislative authority under the police power.¹⁷ Second, one must canvass the history of state and local regulations to establish the scope and types of laws that have been viewed as within the bounds of the lawful exercise of government power at different moments in American history. A properly contextualized historical inquiry must also recognize, as *Heller* and *Bruen* did, that the specific protections associated with the right to keep and bear arms lawfully evolved as firearms technology developed. In short, history illuminates the scope of the right and contours of regulation, but it

¹³ For a notable exception, see Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *FORDHAM L. REV.* 487 (2004).

¹⁴ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of Second Amendment Law & Policy*, 80 *LAW AND CONTEMP. PROBS.* 1 (2017).

¹⁵ Thus, the new history of firearms regulation complements the new methods of corpus linguistics. See Dennis Baron, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 *HASTINGS CONST. L.Q.* 509 (2019).

¹⁶ Compare Cornell & DeDino, *supra* note 13 (published before the advent of the new digital tools and databases) with Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 *LAW & CONTEMP. PROBS.* 55 (2017) (published after the creation of these databases). For an effort to synthesize the new scholarship and apply it using *Heller*’s framework, see JOSEPH BLOCHER & DARRELL A. H. MILLER, *THE POSITIVE SECOND AMENDMENT: RIGHTS, REGULATION, AND THE FUTURE OF HELLER* (2018).

¹⁷ See Jud Campbell, *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 *LAW & CONTEMP. PROBS.* 31 (2020).

does not create “a straight jacket” limiting the states to only those practices appropriate to a pre-industrial agrarian society with low population density.¹⁸

VII. Methodology

The analysis that I used in reaching my opinion draws on recent scholarship and employs the accepted historical and legal methodologies for interpreting such sources, including an analysis of the public meaning of the Second Amendment, various individual state constitutional provisions on the right to keep and bear arms, state statutes, local ordinances, court decisions, and popular and learned legal commentaries. The methods of legal history require a deep immersion in the primary source materials, conscious attention to the limits and strengths of various types of legal sources, and a broad knowledge of related historical fields outside of Anglo-American legal history.¹⁹

To avoid approaching history, text, and tradition with an “ahistorical literalism” it is vital to survey historical scholarship across a broad range of subfields.²⁰ Social history, cultural history, economic history, military history all shed important light on the original meaning of the Second Amendment. One must avoid the common tendency to treat sources in isolation, decontextualized, floating freely, detached from the web of historical meaning that made them comprehensible to Americans in 1791 and other relevant moments in American history that illuminate history and tradition as described in *Bruen*. The alternative, a decontextualized approach, embodies the worst

¹⁸ A corollary of this observation is that the form taken by permissible regulations would also change in response to technological developments. Laws prohibiting machine guns, a type of regulation *Heller* recognized as constitutional, emerged in the early twentieth century. Such laws could not have been enacted before the invention of the machine gun. Nor would there have been a need to enact such laws until the machine gun had achieved a level of market penetration sufficient to cause a public safety issue. The example of laws limiting or prohibiting machine guns illustrates that some regulations adopted in the twentieth century clearly are within *Heller*’s permissible category of regulations, and pose no problem under *Bruen*.

¹⁹ For a discussion of the minimum standard for undergraduate history majors, see MARY LYNN RAMPOLLA, A POCKET GUIDE TO WRITING IN HISTORY 18 (8th ed., 2015). For a primer written for graduate students, see MARTHA HOWELL & WALTER PREVENIER, FROM RELIABLE SOURCES: AN INTRODUCTION TO HISTORICAL METHODS 128 (2001). On the methods of professional legal history, see THE OXFORD HANDBOOK OF LEGAL HISTORY (Markus Dirk Dubber and Christopher L. Tomlins, eds., 2018). On the methods of originalism, see Keith E. Whittington, *Originalism: A Critical Introduction*, 82 FORDHAM L. REV. 375 (2013). On the proper role of history in constitutional law, see Richard H. Fallon Jr., *The Many and Varied Roles of History in Constitutional Adjudication*, 90 NOTRE DAME L. REV. 1753 (2015).

²⁰ *Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) (Thomas, J.) (criticizing “ahistorical literalism”).

form of the “antiquarian fallacy”²¹ and ignores the way specific pieces of evidence fit together to form a coherent whole.

Rather than follow the best available historical practices grounded in professional methodologies, the argument presented by Plaintiff employs a flawed and generally discredited “tunnel vision” approach to historical analysis. The distinguished Yale historian J.H. Hexter warned scholars about the dangers of “tunnel history” more than half a century ago. Understanding the past, he observed, required a broad-based inquiry across disparate subfields of scholarship. Hexter bemoaned the fact that all too often scholars carved out “a series of tunnels, each continuous from the remote past to the present, but practically self-contained at every point sealed off from contact with or contamination by anything that was going on in any of the tunnels.”²² The eminent English legal historian Frederic Maitland was one of the first modern scholars to recognize that true historical inquiry, particularly the history of the law, requires unraveling multiple webs of meaning. As Maitland sagely noted: “such is the unity of all history that anyone who endeavors to tell a piece of it must feel that his first sentence tears a seamless web.”²³

Modern legal history—the methodology I use in this report—approaches the past with a more holistic model of meaning. Legal texts, including those relevant to understanding the history of the Second Amendment—the various state constitutional arms-bearing provisions, and gun regulation—must be rigorously contextualized.²⁴ Any effort to understand the Second Amendment and the history of gun regulation must therefore canvass a variety of historical topics, including such diverse sub-fields as legal history, social history, cultural history, economic history, and military history.

²¹ The term “antiquarian fallacy” describes a flawed approach to historical analysis that ignores the larger context necessary for historical analysis.

²² J.H. HEXTER, REAPPRAISALS IN HISTORY 194–45 (1961).

²³ Frederic William Maitland, *A Prologue to a History of English Law*, 14 L. QUARTERLY REV. 13 (1898). This approach is consonant with the most influential philosophical work of the twentieth century, LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS § 43, at 20e (G. E. M. Anscombe trans., 1953). On the relevance of Wittgenstein and holism to originalist legal inquiries, see Jonathan Gienapp, *Historicism and Holism: Failures of Originalist Translation*, 84 FORDHAM L. REV. 935 (2015).

²⁴ The best illustration of the modern legal history method applied to the United States is the three volume *Cambridge History of Law in America*. See THE CAMBRIDGE HISTORY OF LAW IN AMERICA (Michael Grossberg & Christopher L. Tomlins eds., 2008).

Following *Heller* and *Bruen*, courts look to history for guideposts in evaluating the scope of permissible regulation under the Second Amendment.²⁵ Recent scholarship has uncovered a previously unexamined history of arms regulation in the Anglo-American legal tradition, at the Founding, and in the era in which the Fourteenth Amendment was ratified.²⁶ My report draws on this large body of new scholarship and the breadth of digital sources now available to scholars, in order to understand and contextualize the rights implicated in this case.

VIII. Summary of Historical Evidence

The historical evidence supporting my opinion includes the following categories of gun regulations beginning from the Revolutionary era and extending forward in time. As *Bruen* notes regarding the general contour of modern shall issue permit schemes, the aim of these regulations is to protect individual rights and public safety. Thus, laws that screen applicants so that only law abiding and responsible citizens are issued permits are constitutional. There is ample evidence from the Founding era that the right to self defense did not limit state's legitimate exercise of their police power to promote public safety, including laws aimed at preventing those who were not law abiding or responsible from obtaining and using firearms.

Several different categories of early American gun regulations are relevant to this inquiry, including:

Disarmament Statutes and Loyalty Oaths: Founding-era governments required loyalty oaths as pre-condition for owning firearms. Individuals refusing to sign these oaths were disarmed. These oaths were different than the oaths imposed on individuals who took up arms against the government in rebellions or insurrections. For example, the disarmament of Pennsylvania Quakers resulted from their refusal to pay fees and assessments to support public defense and safety. Refusal to comply with these laws was itself a justification for disarmament. It was widely recognized in the Founding era that disarmament of those refusing to comply with these sorts of regulatory statutes was constitutional, and consistent with the requirements of the Second Amendment or the relevant state analogues.

Tracking Of Potential Members Of State Militias (1776-1861): Early American militia statutes required a substantial subset of the adult white male population to acquire certain arms,

²⁵ *Supra* note 3.

²⁶ Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of Second Amendment Law & Policy*, 80 LAW & CONTEMP. PROBS. 1 (2017).

maintain them, and demonstrate competence with their use. To effectuate this goal, states enacted a broad range of laws to identify who was eligible for militia service, keep track of their level of armament, and punish those who failed to adhere to these requirements. In fact, states were free to gather any pertinent information they believed necessary to create a well regulated militia. Thus, to ascertain if groups were eligible for a religious exemption, states were recognized as having the power to collect information about religious beliefs and practices. Governments conducted periodic guns censuses to determine if the population had purchased the necessary firearms to comply with militia laws. The very idea of a presumption of privacy regarding arms would have defeated the goal of creating a well regulated militia.

Varied Legal Frameworks for Different Types of Arms: All guns were not created equal under the law. Most states treated militia guns differently than ordinary arms. Guns required for militia service were recognized to have greater need for legal protection than ordinary civilian arms. Militia arms were not subject to seizure in debt proceedings and could not be sold for tax arrears. States also exempted public carry of militia related weapons from the broad prohibitions that applied to concealed weapons and other restrictions on public carry.

Guns and Taxation: Militiamen in the Founding era were required to purchase their own weapons and ammunition without any compensation. Thus, the laws imposing these expenses were a form of taxation, transferring the cost of public defense to individual households. Firearms have also been taxed by states and localities outside of the context of the militia. It was widely accepted in the Founding era that states could impose these taxes without violating the Second Amendment or similar state constitutional provisions.

Regulation and the Police Power: *Heller's* category of presumptively lawful regulations acknowledged that as gun technology and use changes, so too would the nature of regulation. *Bruen's* elaboration of text, history, and tradition lends additional support to *Heller's* conclusion. The best illustration of this part of *Bruen* and *Heller's* core holdings is their extensive discussion of antebellum concealed carry laws. Easily concealed firearms were not common in the era of the Second Amendment and did not become readily available until the Market Revolution of the early nineteenth century made them cheaper, more reliable, and more common. The same forces that made wooden clocks, Currier and Ives prints fixtures in American homes also made it possible to manufacture and market easily concealable pistols. States responded to this change with a spate of

laws regulating these weapons.²⁷ Most courts recognized that the authority to enact such laws was an appropriate exercise of the police power. This regulation too was recognized as consistent with the Second Amendment and relevant state arms bearing provisions.

The Web of Early American Gun Regulation: When viewed together, these laws demonstrate that the individual states took a vigorous approach to firearms regulation to meet the needs of public safety and defense. Regulation of firearms and gun powder were rooted in state and local police power authority. The application of the police power to firearms and ammunition was singled out as the *locus classicus* of state police power by Chief Justice John Marshall in his discussion of laws regulating gunpowder in *Brown v. Maryland*.²⁸ Indeed, a state's ample police powers are at their apex in matters relating to firearms.

The nineteenth century witnessed an intensification of regulation in response to new and unprecedented problems created by firearms in an increasingly urban society, a factor generally recognized by the generation that ratified the Fourteenth Amendment. The decline of community-based forms of peacekeeping and law enforcement typical of pre-industrial and pre-modern societies was replaced by modern-style police forces. Another response to these changes was the use of permit and license schemes to limit access to firearms to those persons who did not pose a threat to public peace and safety. For example, the traditional tool of sureties, an effort to offer financial incentives to keep the peace, evolved into permit schemes during the era in which the 14th Amendment was adopted, after the Civil War. As the nation grew further away from the rural nation of yeoman farmers idealized by Jefferson and others the nature of law changed, with new approaches analogous to those used during the Founding era evolving in order accommodate these developments.²⁹ These administrative mechanisms and professional police forces that developed to address these changes in the second half of the nineteenth century, during the period of the adoption and ratification of the 14th Amendment, remain a central feature of American life.³⁰

²⁷ SAUL CORNELL, A WELL REGULATED MILITIA: THE FOUNDING FATHERS AND THE ORIGINS OF GUN CONTROL IN AMERICA 137-165 (2006).

²⁸ 25 U.S. (12 Wheat.) 419, 442-43 (1827) ("The power to direct the removal of gunpowder is a branch of the police power").

²⁹ Robert E. Shalhope, *Agriculture*, in THOMAS JEFFERSON: A REFERENCE BIOGRAPHY 385, 394 (Merrill D. Peterson ed., 1986).

³⁰ There has been a significant body of new historical scholarship on the history of the administrative state. See, e.g., Jed H. Shugerman, *The Legitimacy of Administrative Law*, 50 TULSA L. REV. 301 (2015).

IX. Analysis and Opinion

Guns have been regulated from the dawn of American history. Indeed, the common law Americans inherited from England balanced the right of self-defense against the need to preserve the peace. Unfortunately, a powerful mythology has sprung up around guns and the Second Amendment, and these myths continue to cloud legal discussions of this part of the American constitutional tradition.³¹ The Founding generation did not oppose government regulation and would have been astonished that any sensible individual would view regulation as antithetical to liberty. The Founders were supporters of the idea of well regulated liberty, what later jurists, most notably Justice Cardozo, called “ordered-liberty.”³²

For the generation that wrote and adopted the Second Amendment the preservation of well regulated liberty meant steering a course between arbitrary power and licentiousness. Without regulation liberty soon degenerated into what the Founding generation saw as “licentiousness,” a word that has largely disappeared from modern politics and law. Yet, for the Founding generation the threat of licentiousness posed as great a threat to freedom as despotic government. In a speech to the First Congress on North Carolina’s adoption of the Constitution, President George Washington reminded Congress that the preservation of America’s new experiment in republican government required that its citizens “to distinguish between oppression and the necessary exercise of lawful authority,” and “discriminate the spirit of liberty from that of licentiousness, cherishing the first, avoiding the last.”³³ Thomas Tudor Tucker, a prominent South Carolina political leader who sat in the First Congress that drafted the first ten amendments to the Constitution, including the Second Amendment, shared Washington’s view: “Licentiousness is a tyranny as inconsistent with freedom and as destructive of the common rights of mankind, as is the arbitrary sway of an enthroned

³¹ RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA* (1993); HARPERJOAN BURBICK, *GUN SHOW NATION: GUN CULTURE AND AMERICAN DEMOCRACY* (2006).

³² *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); John T. Noonan Jr., *Ordered Liberty: Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); James E. Fleming & Linda C. McClain, *Ordered Gun Liberty: Rights with Responsibilities and Regulation*, 94 B.U. L. REV. 849 (2014).

³³ From George Washington to the United States Senate and House of Representatives, 8 January 1790,” 4 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES, 543, 8 September 1789–15 January 1790, (ed. Dorothy Twohig, 1993), available at <https://founders.archives.gov/documents/Washington/05-04-02-0361>.

despot. And those, who wish to call themselves truly free, have to guard, with equal vigilance, against the one and the other.”³⁴ Liberty without regulation was anarchy, not freedom.

In modern legal theory, liberty and power have been cast as antithetical; accordingly, rights in contemporary law function as strong barriers against government interference.³⁵ For most jurists and lawyers in the Founding era, a properly structured legal system ensured that liberty and power were complementary concepts, not antagonistic ones. Rather than limit rights, regulation was the essential means of preserving rights.³⁶ The notion that liberty is enhanced by limitations may seem odd given the way rights are discussed in contemporary American law.³⁷ Yet, in the legal traditions familiar to the Founding generation, unrestrained license was a threat, not a guardian, of liberty.³⁸ Regulation was not antithetical to liberty; it was the necessary precondition for its exercise and survival.³⁹ In an oration commemorating American Independence delivered almost a decade after the adoption of the Constitution, a patriotic orator reminded his audience that: “True liberty consists, not in having *no government*, not in a *destitution of all law*, but in our having an equal voice in the formation and execution of the laws, according as they effect [sic] our persons and property.”⁴⁰ The most important form of liberty in the pantheon of rights was the freedom necessary to participate in politics and enact laws aimed at promoting the health, safety, and well-being of the people. The right of the people to regulate their internal police was therefore the foundation of all

³⁴ [Thomas Tudor Tucker] Philodemus, *Conciliatory Hints, Attempting, by a Fair State of Matters, to Remove Party Prejudice*, Charleston, 1784 reprinted in 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760-1805, 628 (Donald S. Lutz & Charles S. Hyneman eds., 1983).

³⁵ Sanford Levinson, *United States: Assessing Heller*, 7 INT’L J. CONST. L. 316, 319 (2009).

³⁶ For discussions of the radically different approach to liberty and rights in place in the Founding era, see Dan Edelstein, *Early-Modern Rights Regimes: A Genealogy of Revolutionary Rights*, 3 CRITICAL ANALYSIS L. 221 (2016).

³⁷ Jonathan Gienapp *Response: The Foreign Founding: Rights, Fixity, and the Original Constitution*, 97 TEXAS LAW REVIEW ONLINE 115 (2019).

³⁸ Jud Campbell, *Republicanism and Natural Rights at the Founding*, 32 CONST. COMMENT. 85, 87 (2017).

³⁹ *Id.*

⁴⁰ JOSEPH RUSSELL, AN ORATION; PRONOUNCED IN PRINCETON, MASSACHUSETTS, ON THE ANNIVERSARY OF AMERICAN INDEPENDENCE, JULY 4, 1799 at 7 available at <https://quod.lib.umich.edu/e/evans/N27201.0001.001/1:3?rgn=div1;view=fulltext>.

other forms of liberty.⁴¹ The preservation of this idea of liberty, “well regulated liberty,” meant steering a course between arbitrary power and licentiousness.⁴²

Founding Era lawyers and jurists approached rights with a different conceptual tool kit and set of assumptions.⁴³ Legal scholar Jud Campbell’s succinct summary of this vision of law is apt. “The point of retaining natural rights,” Campbell notes, “was not to make certain aspects of natural liberty immune from governmental regulation. Rather, retained natural rights were aspects of natural liberty that could be restricted only with just cause and only with consent of the body politic.”⁴⁴ Rather than limit rights, regulation was the essential means of preserving rights. Unrestrained liberty in this scheme was a threat, not a guardian of rights.⁴⁵ This basic perspective is reflected in numerous laws and policies enacted by the Founding generation and discussed below.

a. Disarmament Statutes: Disarming Dangerous Persons and Loyalty Oaths in Historical Context

The notion that all individuals in the Founding era had an absolute right to keep and bear arms is contradicted by the historical record from the era of the Second Amendment. Although all individuals did have a right to assemble, speak, and practice their religion, members of groups outside of the polity, such as slaves, Indians and mixed-race persons were typically prohibited from owning firearms in most cases. Even among those of white European extraction only a subset of the free white population fully enjoyed a right to keep and bear arms. For example, individuals who were unwilling to swear loyalty to their state and the new government of the United States,

⁴¹ Gerald Leonard and Saul Cornell, *THE PARTISAN REPUBLIC: DEMOCRACY, EXCLUSION, AND THE FALL OF THE FOUNDERS CONSTITUTION, 1780S-1830S* (2019) at 2.

⁴² On the idea of well regulated liberty and Founding Era conceptions of rights, *see generally* JOHN J. ZUBLY, *THE LAW OF LIBERTY* (1775), available at <https://quod.lib.umich.edu/e/evans/N11580.0001.001?cite1=zubly;cite1restrict=author;rgn=full+text;view=toc;q1=liberty>.

⁴³ *See generally* JOHN PHILLIP REID, *CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION: THE AUTHORITY OF RIGHTS* (1986); *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND* (Barry Alan Shain ed., 2007); QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (1998).

⁴⁴ Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L. REV. 517, 527 (2019). Campbell’s work builds on a broad scholarly consensus derived from the work of a generation of scholars, including the works of Gordon S. Wood, John Philip Reid, and Jack N. Rakove.

⁴⁵ John Phillip Red, *The Authority of Rights at the Founding* in *THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND* 67-115 (Barry Alan Shain ed., 2007).

persons who engaged in political violence and certain forms of protest, and individuals who refused to contribute to the cost of public defense and safety were among those disarmed. One of the most important examples of state regulation of the possession of firearms occurred when the State of Pennsylvania disarmed Quakers who were peaceful, but objected to taxes and fees imposed by the government to pay for the costs of a well regulated militia.

The use of loyalty oaths with provisions that disarmed significant portions of the population were common in the era of the Second Amendment.⁴⁶ Loyalists, those who refused to forswear allegiance to the British crown, were disarmed in most states. Even if these individuals committed no overt illegal act, the states nonetheless viewed them as potential threats to the peace and public safety simply because of their political views. Individuals who participated in riots and rebellions were also disarmed. Again, it was not necessary to engage in any overt violent act to trigger this punishment. The most notable examples of insurgents and protesters being disarmed were Shays' Rebellion (1786), the Whiskey Rebellion (1794), and Fries Rebellion (1798).⁴⁷ In all three of these early American rebellions, protest was driven by opposition to taxation. Although the American Revolution had been fought, in part, over the issue of taxation without representation these uprisings were examples of protests to taxation with representation. Although in some cases those disarmed had engaged in violent protests, such as tarring and feathering tax collectors, in other cases, even those who chose to participate peacefully in these protests were disarmed.⁴⁸

One other category of persons disarmed during the era of the Second Amendment merits closer scrutiny. The use of loyalty oaths to disarm members of the Society of Friends, *i.e.*, the

⁴⁶ Saul Cornell, *Commonplace or Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 CONST. COMMENT. 221, 227–35 (1999).

⁴⁷ Saul Cornell, *Mobs, Militias, and Magistrates: Popular Constitutionalism and the Whiskey Rebellion*, 81 CHI.-KENT L. REV. 883 (2006).

⁴⁸ Thus, exercising rights that today would likely be seen as an example of core First Amendment freedoms might have resulted in a loss of Second Amendment rights during the Founding era. This fact alone makes efforts to link the First and Second Amendment as analogous rights provisions highly problematic. For a discussion of the limits of freedom of assembly and speech during the Whiskey Rebellion, Saul Cornell, “*To Assemble Together for Their Common Good*”: *History, Ethnography, and the Original Meanings of the Rights of Assembly and Speech*, 84 FORDHAM L. REV. 915 (2015); *see also* disc. *infra* at p. 28–30.

Quakers, merits closer analysis because it sheds light on the understanding of the meaning and scope of the right to keep and bear arms in the era of the Second Amendment.⁴⁹

Pennsylvania was founded by Quaker William Penn as refuge for his co-religionists from persecution in England. In contrast to many other colonies, Pennsylvania embraced broad religious toleration from its earliest settlement. Quakers were also pacifists who opposed war-like activities of any kind. Opposition to war did not mean, however, that Quakers were anti-gun. Guns had many uses in agrarian society that had nothing to do with militia service. Quakers used firearms to rid their field of pests, and were permitted to hunt for sustenance, but not for sport. Quakers not only owned firearms and used them for a variety of lawful purposes, but Quaker merchants sold guns, Quaker gunsmiths repaired them for their neighbors, and English Quakers played a prominent role in gun manufacturing and the international arms trade.⁵⁰ In short, the Quakers were pacifists, not vegetarians.

By the time of the American Revolution, Quakers in Pennsylvania had won a religious exemption from bearing arms but were still required to pay a fine in lieu of service and pay taxes to support public defense and safety.⁵¹ Quakers opposed contributing in any way to public defense or safety and therefore refused to take the required loyalty oaths imposed by the Pennsylvania legislature, even in a modified form designed to accommodate Quaker religious beliefs. (Quakers, also known as Friends, were permitted to “affirm,” rather than “swear” the oath.) Thus, the disarmament of the Quakers in Pennsylvania was not motivated by a concern that the Quakers posed any physical danger to their neighbors. Prior to the middle of the eighteenth century and wars of empire (The French and Indian War (1756-1763) and American war for independence (1776-1783)) Friends in Pennsylvania had created a “peaceable kingdom.” Rates of violence and crime were remarkably low among Quakers. The Quaker community not only opposed inter-personal violence

⁴⁹ Nathan R. Kozuskanich, *Pennsylvania, the Militia, and the Second Amendment* 133 THE PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY 119 (2009); Francis S. Fox, *Pennsylvania's Revolutionary Militia Law: The Statute that Transformed the State* 80 PENNSYLVANIA HISTORY 204 (2013); Philip Hamburger, *Religious Freedom in Philadelphia*, 54 EMORY L.J. 1603 (2005).

⁵⁰ PRIYA SATIA, EMPIRE OF GUNS: THE VIOLENT MAKING OF THE INDUSTRIAL REVOLUTION (2020).

⁵¹ Jack D. Marietta, *Conscience, the Quaker Community, and the French and Indian War*, 95 PA. MAG. HIST. & BIOG. 3 (1971); Hermann Wellenreuther, *The Quest for Harmony in a Turbulent World: The Principle of “Love and Unity” in Colonial Pennsylvania Politics*, 107 PA. MAG. HIST. & BIOG. 537 (1983); Karen Guenther, *A Crisis of Allegiance: Berks County, Pennsylvania Quakers and the War for Independence*, 90 QUAKER HIST. 15 (2001).

of any kind, but Quakers could be disciplined for swearing, gossiping, and a host of other aggressive verbal behaviors that violated their “peace testimony.” Thus, in nearly every respect Pennsylvania Quakers were among the most law abiding and least dangerous persons in America. Yet, despite these facts, the Quakers were disarmed.⁵²

To make sense of why the Quakers were disarmed one must understand this episode in terms of the contractarian tradition of Founding era rights, including the right to keep and bear arms. It is impossible to understand Founding era ideas about the right to keep and bear arms without making sense of Quaker disarmament. What the disarmament of the Quakers plainly shows is that at the Founding it was widely accepted that States had broad authority to regulate firearms, and to require those who wished to possess firearms to comply with what is, in modern terms, a form of licensing scheme. The loyalty oath required by the State of Pennsylvania, the Test Act, required Quakers to affirm their allegiance to the new state Constitution, its Revolutionary government, and Congress, or be disarmed. Compliance also required paying fees or providing service to the state. Quakers refused both as a violation of the religious beliefs. In short, owning a gun in Pennsylvania required one to both register with the government and forswear any intention to oppose the actions of the government by force, and pay appropriate fees.⁵³ The FOIA Act is therefore entirely consistent with the understanding of the right to bear arms as it was understood at the Founding, as illustrated by policies that led to the disarmament of the Quakers.

b. Militia Regulations and Gun Censuses: Keeping Track of Who Had Arms

Gun ownership in early America was far more widespread than in England, but despite this fact government policy in the Founding sought to encourage ownership of particular weapons, *i.e.*, those necessary to further the goals of a well regulated militia. Other guns, including those that were most useful for life in an agrarian society, such as light hunting muskets or fowling pieces

⁵² The Test Act was passed 1777. *See* James T. Mitchell and Henry Flanders, eds., 9 THE STATUTES AT LARGE OF PENNSYLVANIA 110-14 (Wm. Stanley Ray, 1903). The act was amended and the provisions for disarming “persons disaffected to the liberty and independence of this state” strengthened in 1778. *Id.* at 346-48. The law also barred these individuals from holding office, serving on juries, and limited access to the courts. For similar laws, *see* Act of May 5, 1777, ch. 3, in 9 HENING’S STATUTES AT LARGE 281, 281-82 (1821). On Quaker communities and crime, *see* JACK D. MARIETTA & G.S. ROWE, TROUBLED EXPERIMENT: CRIME AND JUSTICE IN PENNSYLVANIA, 1682–1800 (2006).

⁵³ Saul Cornell, *Commonplace or Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 CONST. COMMENT. 221, 227–35 (1999).

(guns akin to modern shot guns), were treated as ordinary private property and were regulated as such.

This regulation of weapons was often accomplished through militia statutes.⁵⁴ Indeed, militia statutes in the Revolutionary era and early Republic were among the most detailed and lengthy pieces of legislation drafted during the period.⁵⁵ These laws defined who was in the militia, what sort of weapons members of the militia had to purchase to meet their legal obligation, provided elaborate mechanisms for assuring compliance (including in some cases in-home inspection of arms), and detailed muster roles tracking who was in the militia and their attendance at required militia training (called “musters”).

Early American governments took an active role in regulating firearms and keeping track of who had arms was indispensable to this oversight. If it was deemed necessary to further the goals of public defense the individual states and federal government conducted gun censuses to identify who had guns and what types of firearms were owned.⁵⁶

Governments inspected weapons at musters and conducted periodic gun censuses to determine compliance with the law.⁵⁷ A 1799 Connecticut statute was typical of the fines levied on militia members for failing to report to muster properly armed:

That the Fines and Penalties incurred for Non-appearance and deficiencies of Arms, Ammunition and Accoutrements shall in future be as follows. Each non-commissioned Officer, Drummer, Fifer or Trumpeter who shall neglect to appear at the Time and Place appointed for regimental or battalion exercise or review being legally warned thereto shall forfeit and pay a fine of three dollars for each days neglect and for each days neglect to appear at the time and place appointed for company Exercise or Inspection, being legally warned thereto, shall forfeit and pay a Fine of One Dollar and Fifty Cents, and each Private belonging to any Company of Militia, shall for Non-appearance on days of Regimental or Battalion Exercise or Review, being thereto legally warned, forfeit and pay a Fine of Two Dollars for each Day's neglect and for Non-appearance at Time and Place for company Exercise or Inspection he shall forfeit and pay a Fine of One Dollar for each Day's neglect; and for

⁵⁴ A table listing militia statutes is attached as Exhibit 4.

⁵⁵ Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 FORDHAM L. REV. 487 (2004); ROBERT J. SPITZER, GUNS ACROSS AMERICA: RECONCILING GUN RULES AND RIGHTS 32–39 (2015).

⁵⁶ See “Account of the People in the Colony of Rhode Island, whites and blacks, together with the quantity of arms and ammunition, in the hands of private persons” (attached as Exhibit 5).

⁵⁷ Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth and Eighteenth Century England and America*, in *A RIGHT TO BEAR ARMS?: THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT* (Jennifer Tucker et al. eds., 2019).

deficiencies of Arms, Ammunition and Accoutrements required by Law, each non-commissioned Officer and Private shall forfeit and pay for each Day of Review or Exercise the he shall be deficient, the following Fines, viz. For a Gun or pair of Pistols, each Seventy-five cents; for Sword, Bayonet or Cartridge Box, each Fifty Cents; and for each of the other Articles required by law, Twenty-five Cents.⁵⁸

The idea of a well regulated militia was premised on the ability of the states, and later the federal government, to keep track of who had weapons, ascertain the condition of those weapons, and force individuals to submit to government inspection of those arms. If Americans in the Founding generation followed the legal logic used by Plaintiff to challenge the constitutionality of the FOID Act the entire militia system as envisioned by the Founding generation would have collapsed. In short, the argument used in this challenge to the FOID Act would have undermined American Independence and made the adoption of the Second Amendment historically impossible. Such an interpretation is not consistent with *Heller's* originalism or *Bruen's* history, text, and tradition model.

c. Guns and Taxation

It is important to recognize that the various militia laws were an effort to transfer part of the cost of public defense to individual households. In essence, militia laws were a form of taxation.⁵⁹ During the vigorous debate over the militia act in the First Congress, Pennsylvania's Thomas Fitzsimmons, a Federalist, expressed his concern that the existing system of militia service imposed a burdensome tax on Americans, and that it would prove to be a hardship for most families who desperately needed the labor of young men to support the model of household production that dominated the agricultural economy and the mode of artisanal production.⁶⁰ Despite these concerns, American governments at both the state and national level continued to view militia service and requirements that militiamen purchased their own weapons and fire their own ammunition as

⁵⁸ 1799 Conn Acts 511, An Act for the Militia, § 4. For other examples of similar laws, see 1794 R.I. Pub. Laws 21, An Act To Organize The Militia Of This State, § 10; 1821 Tenn. Pub. Acts 63, An Act to Amend the Militia Laws of This State, ch. 55, §§ 2-3.

⁵⁹ As one modern scholar has noted, "this supply system theoretically provided a fairly equitable substitute for defense taxation." Robert L. Kerby, *The Militia System and the State Militias in the War of 1812*, 73 INDIANA MAGAZINE OF HISTORY 102, 119 (1977).

⁶⁰ 1 ANNALS OF CONG. 3 (1789-91).

a legitimate tax on the people to facilitate the goal of public defense.⁶¹ By commandeering a primary source of labor, requiring participants to purchase specific military quality firearms, and shoot their own ammunition the militia laws amounted to a triple form of taxation on households. These statutes allowed the individual state governments and the fledgling Federal government to transfer part of the cost of public defense to individual households who would provide soldiers and weapons for the militia.⁶² The entire focus of American firearms policy in the Founding era was to compel American households to acquire the military quality arms necessary to outfit the militia. In contrast to other fundamental rights protected by Founding era declarations of rights, the right to keep and bear arms did not immunize individuals against government taxation. The logic of Plaintiff's challenge to the constitutionality of the FOID Act undermines the very idea of the militia and hence would have been antithetical to the Founding generation's vision of ordered liberty.

d. All Guns Were Not Created Equal in the Eyes of the Law

Although most civilian-owned guns enjoyed constitutional protections, not all guns were created equal in the eyes of the law. Guns owned for militia related purposes enjoyed greater constitutional protections in most states. Thus, guns owned for militia service were not subject to seizure in a debt proceeding and were exempt from sale in cases involving tax arrears.⁶³ This Founding era policy persisted well into the next century. This early nineteenth century Mississippi statute was typical:

By virtue of this act, each private shall proceed to provide himself with a good rifle, musket or shot gun with four flints, twenty rounds of powder, ball, or buckshot, best suited to his gun, together with the most convenient accoutrements. The commissioned officers shall be armed with swords; and the arms and accoutrements of all such volunteers shall be exempted from executions in payment of debts and their persons, when on service, free from arrest in civil cases.⁶⁴

Some states chose to tax weapons that were not deemed relevant to the goal of maintaining a well regulated militia as a revenue generating measure and to further the public policy goal of reducing

⁶¹ The General Court of Massachusetts, January Session 1784, Laws and Resolves 1784, chap. 55, pp. 140, 142.

⁶² A table listing state gun taxation and permitting laws is attached as Exhibit 6.

⁶³ 1792, An Act for Regulating the Militia, Ch. IV § 38, in WILLIAM WALLER HENING, STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE 332 (1792).

⁶⁴ 1814 Miss. Laws 16, An Act to Authorize The Governor Of Mississippi Territory, To Accept Of The Services Of Citizens Exempted From Militia Duty, § 2.

the number of dangerous weapons in circulation that had little utility for militia preparedness. A North Carolina law passed in the decade before the Civil War imposed a special tax on these weapons: “Every dirk, bowie-knife, pistol, sword-cane, dirk-cane and rife cane, used or worn about the person of any one at any time during the year, one dollar and twenty-five cents. Arms used for mustering shall be exempt from taxation.”⁶⁵ Tennessee’s Act to Prevent the Sale of Pistols (1883) was sweeping in its coverage: “[I]t shall be unlawful for any person or persons to buy or sell or give away any pistol cartridges in this state.” The act did, however, make an explicit exception for sales of army or navy pistols and their ammunition because of the necessity of these weapons to the goal of a well regulated militia.⁶⁶ Although firearms generally enjoyed legal protection, the history of firearms regulations demonstrates that government did not treat all guns equally.⁶⁷ Those weapons that furthered important public goals, such as public defense or legitimate self defense were accorded greater protection than other types of weapons. Moreover, in the case of weapons that were considered to have little value to promoting such goals, or were viewed as dangerous or unusual, the state was free to tax or prohibit them entirely.

e. The Police Power at the Founding and in the Antebellum Era

The 1776 Pennsylvania Constitution, the first revolutionary constitution to assert a right to bear arms, preceded the assertion of this right by affirming a more basic rights claim: “That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.”⁶⁸ References to the right of the people to regulate their internal police were also included in many of the early state constitutions drafted after the American Revolution.⁶⁹ The phrase “internal police” had already become common, particularly in state laws establishing

⁶⁵ 1858-1859 N.C. Sess. Laws 34-36, An Act Entitled Revenue, chap. 25, § 27, pt. 15.

⁶⁶ 1883 Tenn. Pub. Acts 17, A Bill to Be Entitled An Act to Prevent the Sale, Loan or Gift of Pistol Cartridges in This State, ch. 13. The law was judged to be an appropriate exercise of the police power in *State v. Burgoyne*, 75 Tenn. 173 (1881).

⁶⁷ On the active role taken by government in shaping the market for firearms, see Lindsay Schakenbach Regele, *A Different Constitutionality for Gun Regulation*, 46 Hastings Const. L.Q. 523 (2019); MERRITTROE SMITH, *HARPERS FERRY ARMORY AND THE NEW TECHNOLOGY: THE CHALLENGE OF CHANGE* (1977).

⁶⁸ PA. CONST. OF 1776, Ch. I, art iii.

⁶⁹ MD. CONST. OF 1776, DECLARATION OF RIGHTS, art. II; N.C. CONST. OF 1776, DECLARATION OF RIGHTS, art. XVII; VT. CONST. OF 1777, DECLARATION OF RIGHTS, art. IV.

towns and defining the scope of their legislative authority.⁷⁰ By the early nineteenth century the term was a fixture in American law.⁷¹ Thus, an 1832 American encyclopedia confidently asserted that police, “in the common acceptation of the word, in the U. States and England, is applied to the municipal rules, institutions and officers provided for maintaining order, cleanliness &c.”⁷² The Founding era’s police right and the Marshall Court’s doctrine of the police power would become fixtures in American law.

At the Founding it was recognized that state police power authority was at its pinnacle in matters relating to guns or gun powder. Thus, Massachusetts enacted a law that prohibited storing a loaded weapon in a home, a firearms safety law that recognized that the unintended discharge of firearms posed a serious threat to life and limb.⁷³ New York City even granted broad power to the government to search for gun powder and transfer powder to the public magazine for safe storage:

it shall and may be lawful for the mayor or recorder, or any two Alderman of the said city, upon application made by any inhabitant or inhabitants of the said city, and upon his or their making oath of reasonable cause of suspicion (of the sufficiency of which the said mayor or recorder, or Aldermen, is and are to be the judge or judges) to issue his or their warrant or warrants, under his or their hand and seal, or hands and seals for searching for such gun powder, in the day time, in any building or place whatsoever.⁷⁴

The power to regulate firearms and gunpowder was therefore at the very core of the police power and inheres in both states and local municipalities. A slow process of judicializing this concept of police, transforming the Founding era’s idea of a police right into a judicially enforceable concept

⁷⁰ For examples of this usage, *see* An Act Incorporating the residents residing within limits therein mentioned, *in* 2 NEW YORK LAWS 158 (1785) (establishing the town of Hudson, NY); An Act to incorporate the Town of Marietta, *in* LAWS PASSED IN THE TERRITORY NORTHWEST OF THE RIVER OHIO 29 (1791). For later examples, *see* 1 STATUTES OF THE STATE OF NEW JERSEY 561 (rev. ed. 1847); 1 SUPPLEMENTS TO THE REVISED STATUTES. LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, PASSED SUBSEQUENTLY TO THE REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S. Cushing, eds. 1849).

⁷¹ ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS 2, n.2 (1904).

⁷² 10 ENCYCLOPÆDIA AMERICANA 214 new edition (Francis Lieber ed.).

⁷³ Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Town of Boston, § 2.

⁷⁴ An Act to Prevent the Storing of Gun Powder, within in Certain Parts of New York City, LAWS OF THE STATE OF NEW-YORK, COMPRISING THE CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION, FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE 191-2 (Thomas Greenleaf, ed., 1792).

of the “police power” occurred beginning with the Marshall and continuing with the Taney Court.⁷⁵ The application of the police power to firearms and ammunition was singled out as the *locus classicus* of state police power by Chief Justice John Marshall in his 1827 discussion of laws regulating gunpowder in *Brown v. Maryland*.⁷⁶

Nor was Marshall unique in highlighting the centrality of this idea to American law. This police power framework for evaluating the constitutionality of legislation was also embraced by early state court judges.⁷⁷ Massachusetts Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*, a decision that became a foundational text for lawyers, judges, and legislators looking for guidance on the meaning and scope of the police power. Shaw described the police power in the following manner:

[T]he power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power, than to mark its boundaries, or prescribe limits to its exercise. There are many cases in which such a power is exercised by all well-ordered governments, and where its fitness is so obvious, that all well regulated minds will regard it as reasonable. Such are the laws to prohibit the use of warehouses for the storage of gunpowder.⁷⁸

Indeed, the scope of government power to regulate, prohibit, and inspect gunpowder has been among the most far reaching of any exercise of the police power throughout American history.⁷⁹ A Maine law enacted in 1821 authorized town officials to enter any building in town to search for gun powder:

⁷⁵ Eras of Supreme Court history are typically defined by the tenure of the Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief overview, *see* <https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/>. The Taney Court period covered the years 1836-1864, <https://supremecourthistory.org/history-of-the-court-history-of-the-courts/history-of-the-courts-history-of-the-courts-the-taney-court-1836-1864/>. Tomlins, *supra* note 24.

⁷⁶ 25 U.S. (12 Wheat.) 419, 442-43 (1827) (“The power to direct the removal of gunpowder is a branch of the police power”).

⁷⁷ MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT* (2005).

⁷⁸ *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53 (1851). For another good discussion of how state jurisprudence treated the concept, *see Thorpe v. Rutland*, 27 Vt. 140, 149 (1855).

⁷⁹ SPITZER, *GUNS ACROSS AMERICA* *supra* note 6 at 39-64.

Be it further enacted, That it shall, and may be lawful for any one or more of the selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefore according to law.⁸⁰

No jurisdiction enumerated the full contours of the police power they possessed in a single text or in a single statute or ordinance. Rather, it was well understood that the exercise of this power would need to adapt to changing circumstances and new challenges as they emerged.⁸¹ This conception of law was familiar to most early American lawyers and judges who had been schooled in common law modes of thinking and analysis.⁸² Throughout the long sweep of Anglo-American legal history, government applications of the police power were marked by flexibility, allowing local communities to adapt to changing circumstances and craft appropriate legislation to deal with the shifting challenges they faced.⁸³ This vision of the police power was articulated forcefully by the Supreme Court in the License Cases when Justice McClean wrote this about the scope of state police power:

It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. In the progress of population, of wealth, and of civilization, new and vicious indulgences spring up, which require restraints that can only be imposed by new legislative power. When this power shall be exerted, how far it shall be carried, and where it shall cease, must mainly depend upon the evil to be remedied.⁸⁴

This venerable tradition of using police power authority to craft specific laws to meet shifting challenges has continued to the present day. Illinois and its various localities were no exception to this tradition. Cities and towns in Illinois did, and have continued to, craft a wide range of

⁸⁰ 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 5.

⁸¹ In the extensive notes he added as editor of the 12th edition of James Kent's classic *Commentaries on American Law*, Oliver Wendell Holmes, Jr., wrote that regulation of firearms was the *locus classicus* of the police power. See 2 JAMES KENT COMMENTARIES ON AMERICAN LAW 340 n.2 (Oliver Wendell Holmes, Jr., ed. 12 ed. 1873).

⁸² KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN AMERICA, 190-1900: LEGAL THOUGHT BEFORE MODERNISM (2013).

⁸³ William J. Novak, *A State of Legislatures*, 40 POLITY 340 (2008).

⁸⁴ *License Cases (Thurlow v. Massachusetts; Fletcher v. Rhode Island; Peirce v. New Hampshire)*, 5 How. (46 U.S.) 504, 592 (1847).

regulations responsive to local needs as they arose.⁸⁵ The adaptability of state and local police power provided the flexibility governments needed to deal with the problems created by changes in firearms technology and gun culture.

Heller and *Bruen* devoted considerable attention to pre-Civil War southern case law on the scope of the right to keep and bear arms. This body of jurisprudence was itself deeply influenced by police power jurisprudence. One of those cases, *State v. Reid*, frames the issue of firearms regulation almost entirely within the legal model provided by police power jurisprudence.⁸⁶ The key issue for the *Reid* Court was connection between restrictions on firearms and state police power. If the challenged law fell within the ambit of the state's legitimate police power authority it was indisputably constitutional. The provision easily passed this test and the court noted that legislatures had the "authority to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals."⁸⁷

f. The Police Power in the Era of the Fourteenth Amendment and Beyond

Reconstruction (1863-1877) ushered in profound changes in American law, but it did not fundamentally alter the antebellum legal view that a states' police powers were rooted in the people's right to make laws to protect the peace and promote public safety. Nor did Reconstruction challenge the notion that these powers were at their zenith when dealing with guns and gun powder. In fact, the Republicans who wrote the Fourteenth Amendment were among the most ardent champions of an expansive view of state police power. As heirs to the antebellum Whig vision of a well regulated society, Reconstruction-era Republicans used government power aggressively to protect the rights of recently freed slaves and promote their vision of ordered liberty.⁸⁸

The language of the right to bear arms provisions in state constitutions enacted during Reconstruction and after began to recognize that the police power of the state could be used to

⁸⁵ GARY GERSTLE, *LIBERTY AND COERCION: THE PARADOX OF AMERICAN GOVERNMENT FROM THE FOUNDING TO THE PRESENT* (2017).

⁸⁶ See generally *State v. Reid*, 1 Ala. 612 (1840).

⁸⁷ *Id.* at 616.

⁸⁸ Robert J. Kaczorowski, *Congress's Power to Enforce Fourteenth Amendment Rights: Lessons from Federal Remedies the Framers Enacted*, 42 HARV. J. ON LEGIS. 187 (2005); Christopher Tomlins, *To Improve the State and Condition of Man: The Power to Police and the History of American Governance* 53 BUFFALO L. REV. 1215 (2005-2006).

regulate firearms. For example, the 1868 Texas Constitution included new language that underscored the indissoluble connection that Anglo-American law had long recognized between the right to keep and bear arms and regulation of guns. “Every person shall have the right to keep and bear arms, in the lawful defence of himself or the government, under such regulations as the Legislature may prescribe.”⁸⁹ Nor was Texas an outlier in this regard. Sixteen state constitutions adopted during this period employed similarly expansive language. Thus, millions of Americans were living under constitutional regimes that acknowledged that the individual states’ police power authority over firearms was at its apogee when regulating the use of guns in public.⁹⁰

Henry Campbell Black, the author of *Black’s Law Dictionary*, described the police power as “inalienable” and echoed the view of a long line of jurists who noted that the scope of the power was not easily defined and the determination of its limits was best left to courts on a case-by-case basis.⁹¹ Indeed, even the most ardent critics of the police power, such as conservative legal scholar Christopher G. Tiedeman, acknowledged that “police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State.”⁹²

In keeping with the larger goals of Reconstruction, this period witnessed an intensification of firearms regulation. Republicans sought to protect the rights of African Americans to bear arms but were equally insistent on enacting strong racially neutral regulations aimed at public safety. The violence of the Reconstruction period led to the enactment of a range of more robust firearms regulations. Reconstruction era Republicans were eager to protect the rights of newly freed persons, including the right to keep and bear arms.⁹³ Support for protecting the rights of freed persons

⁸⁹ TEX. CONST. OF 1868, Art. I, § 13; for similarly expansive constitutional provision enacted after the Civil War, see IDAHO CONST. OF 1889, art. I, § 11 (“The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.”); UTAH CONST OF 1896, art. I, § 6 (“[T]he people have the right to bear arms for their security and defense, but the legislature may regulate the exercise of this right by law.”).

⁹⁰ Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. DAVIS L. REV. ONLINE 65 (2021).

⁹¹ HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344 (2d ed., 1897).

⁹² CHRISTOPHER G. TIEDEMAN, A TREATISE ON THE LIMITATIONS OF THE POLICE POWER IN THE UNITED STATES 4–5 (1886), citing *Thorpe v. Rutland R.R.*, 27 Vt. 140, 149–50 (1854).

⁹³ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 113–17 (2016); Brennan G. Rivas, *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in Texas, 1836–1900*, 121 SOUTHWESTERN QUARTERLY 284 (2020).

did not mean that Republicans were opposed to racially neutral firearms regulations aimed at promoting public safety.

The laws enacted during Reconstruction underscore the fact that robust regulation of firearms during Reconstruction was not a novel application of the police power, but simply an example of the flexibility inherent in this generally accepted legal concept. Moreover, the incorporation of the Second Amendment by the Fourteenth Amendment did not reduce the power of states to regulate firearms. The author of Section One of the Fourteenth Amendment, John Bingham, expressly affirmed this point during the public campaign to ratify the amendment, assuring Ohioans in Cincinnati that the states would continue to be responsible for all issues of “local administration and personal security.”⁹⁴ As long as laws were racially neutral and favored no person over any other, the states were free to enact whatever reasonable measures were necessary to promote public safety and promote the common good.⁹⁵

In addition to vigorous state level regulation, many localities also enacted robust laws addressing the potential problem firearms posed to public safety. The use of taxes, permits, and licenses took advantage of the expansion of the size of state and local governments during the post-Civil War era. States and localities used these new administrative tools to address a variety of different problems created by firearms. Among the issues dealt with by this approach were:

Public carry:

It shall be unlawful for any person within the limits of the city of Evanston to carry or wear under his clothes or concealed about his person, any pistol, colt or slung shot, cross knuckles, or knuckles of lead, brass or other metal, or bowie knife, dirk, dagger, or any other dangerous or deadly weapon. . . § 537. The Mayor may grant to so many and such persons as he may think proper, licenses to carry concealed weapons, and may revoke any and all such licenses at his pleasure. § 538. Applications for such licenses shall be made to the city clerk, and when granted, the applicant therefor shall pay to the said clerk, for the use of the city, the sum of two dollars. § 539. Every such license shall state the name, age and occupation and residence of the person to whom it is granted.⁹⁶

Dangerous and Unusual Weapons:

⁹⁴ Saul Cornell and Justin Florence, *The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 SANTA CLARA L. REV. 1043, 1058 (2010).

⁹⁵ For a more detailed discussion, see Laura F. Edwards, *The Reconstruction of Rights: The Fourteenth Amendment and Popular Conceptions of Governance*, 41 JOURNAL OF SUPREME COURT HISTORY 310 (2016). For a discussion of how the courts wrestled with the meaning of the Amendment, see WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* (1998).

⁹⁶ Concealed Weapons, §531131-132, GEORGE W. HESS, REVISED ORDINANCES OF THE CITY OF EVANSTON: ALSO SPECIAL LAWS AND ORDINANCES OF GENERAL INTEREST (1893).

In each and every county of this State, it shall be unlawful to carry or own a Winchester or other repeating rifle or without taking out a license from the county commissioner of the respective counties, before such persons shall be at liberty to carry around with him on his person and in his manual possession such Winchester rifle or other repeating rifle. § 2. The County Commissioners of the respective counties in this State may grant such licenses at any regular or special meeting. § 3. The person taking out such license shall give a bond running to the Governor of the State in the sum of one hundred dollars, conditioned on the proper and legitimate use of the gun with sureties to be approved by the county commissioners, and at the same time there shall be kept by the County Commissioners granting the same a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same.⁹⁷

Possession of guns by minors:

No person shall sell, loan, or furnish, to any minor, any gun, fowling-piece, or other firearm, within the limits of the city, under penalty of a fine of fifty dollars for each offense. § 5. It shall be unlawful for any parent, guardians, or other person having the care and custody of any minor, to purchase for or give to any such minor or knowingly to permit any minor to have any toy pistol, toy guns, or other toy arms or arms or sling shot, out of which any leaden or other dangerous missiles may be discharged. . .⁹⁸

Taxing Weapons:

[A] tax of not less than five dollars or more than fifteen dollars shall be levied and assessed annually by the board of Police of Washington county upon every gun and pistol which may be in the possession of any person in said county, which tax shall be payable at any time on demand, by the Sheriff, and if not so paid, it shall be the duty of the Sheriff to forthwith distrain and seize such gun or pistol.⁹⁹

The scope of police power regulation after the adoption of the Fourteenth Amendment did not contract from the pre-war years. Instead, states made expanded use of the authority they had held since the Founding to regulate firearms. States and localities adopted new administrative mechanisms, including permitting and licensing schemes, to address the continuing problems posed by firearms. These new administrative methods simply carried forward the ideas that had defined firearms regulation since the colonial era. Regulation and rights continued to be seen as inextricably linked with one another. Indeed, in 1881 the state of Illinois enacted a comprehensive set

⁹⁷ 1893 Fla. Laws 71-72, An Act to Regulate the Carrying of Firearms, ch. 4147, §§ 1-4.

⁹⁸ 1895 Neb. Laws 237, Laws of Nebraska Relating to the City of Lincoln, An Ordinance Regulating and Prohibiting the Use of Fire-arms, Fire-works and Cannon in the City of Lincoln . . . Prescribing Penalties for Violation of the Provisions of This Ordinance, and Repealing Ordinances in Conflict Herewith, Art. XXVI, §§ 1, 3.

⁹⁹ 1867 Miss. Laws 327-28, An Act To Tax Guns And Pistols in The County Of Washington, ch. 249, § 1.

of rules aimed at regulating the sale of firearms, including a provision for extensive record keeping by those involved in firearms commerce.¹⁰⁰ As figure one shows, the state required detailed information about the number of weapons, the type of weapons and the purpose for acquiring weapons.

Figure One

No. of weapon.	To whom sold or given.	Age of purchaser.	Kind and description of weapon.	For what pur- pose purchased or obtained.	Price of weapon.
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X. Historical Analogies and Founding Era Firearms Regulation: Guns and Words

In addition, the constitutional case for the opposition to the FOID Act rests in part on the misuse of an analogy between the Second Amendment and the First. *Bruen* discussed the complexity of analogizing historical regulations with modern laws. In support of an assertion that the FOID Act imposes an unconstitutional “tax,” the amended complaint presents the following proposition derived from modern First Amendment law: “Law-abiding citizens generally may not ‘be required to pay a tax for the exercise of . . . a high constitutional privilege.’” *Follett v. Town of McCormick, S.C.*, 321 U.S. 573, 578 (1944).¹⁰¹ Permit schemes and fees have historically been viewed as permissible for parades, protests, and other forms of assembly, so the analogy appears to cut against Plaintiffs’ argument.¹⁰² In contrast to core First Amendment freedoms, government has never been neutral regarding guns. The goal of early militia statutes was to force citizens to purchase a sub-class of arms deemed necessary for a well regulated militia. An individual required by law to purchase a Brown-Bess musket, the standard weapon of the Founding era militia, could not show up to muster with a dueling pistol, and claim a Second Amendment right to determine

¹⁰⁰ An Act to regulate the traffic in deadly weapons, and to prevent the sale of them to minors, Laws of the State Of Illinois Enacted by the Thirty-Second General Assembly 78 (H.W. Rokker, State Printer and Binder 1881).

¹⁰¹ Amended Complaint ¶ 23. For a good discussion of limits on assembly, see Tabatha Abu El-Haj, *The Neglected Right of Assembly*, 56 UCLA L. REV. 543, 551–52 (2009).

¹⁰² Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683 (2007); Adam Winkler, *Fundamentally Wrong About Fundamental Rights*, 23 CONST. COMMENT. 227, 227–28 (2006) (fundamental rights vary in the scrutiny they receive). Different aspects of the First Amendment have generated different models of judicial enforcement. Indeed, even speech is not treated with a single standard, see R. Randall Kelso, *The Structure of Modern Free Speech Doctrine: Strict Scrutiny, Intermediate Review, and Reasonableness Balancing*, 8 ELON. L. REV. 291 (2016); see also Timothy Zick, *Framing the Second Amendment: Gun Rights, Civil Rights and Civil Liberties*, 106 IOWA L. REV. 229 (2020).

the type of weapon they deemed best suited to the needs of public defense. If this had been the case, America would have lost the battle for Independence and there would be no Second Amendment today.¹⁰³

The historical foundation for this analogy also fails, because it rests on the false assumption that the Founders treated guns as if they were exactly the same as words in all respects.¹⁰⁴ The misuse of this analogy has been subjected to withering criticism in a growing body of legal scholarship that has exposed many of the problems that flow inevitably from this approach.¹⁰⁵ The Founding generation recognized that guns and words were different, and this distinction is revealed in the Bill of Rights itself. The language of the two amendments and their different structures reveals distinctions in the original understandings afforded to each by at the Founding. The First Amendment prohibits “abridging” the rights it protects. In standard American English in the Founding era, to “abridge” meant to “reduce.” Thus, the First Amendment prohibits a diminishment of the rights it protects. The Second Amendment’s language employs a very different term, requiring that the right to bear arms not be “infringed.” In Founding era American English the word “infringement” meant to “violate” or “destroy.” Richard Burns, in his influential eighteenth-century legal dictionary, illustrated the concept of infringement in the context of violations of the common law. Liberty, according to Burns, was not identical to that “wild and savage liberty” of the state of nature. True liberty, by contrast, only existed when individuals created civil society and enacted laws and regulations that promoted *ordered* liberty.¹⁰⁶ Regulation was therefore not understood to be an “infringement” of the right to bear arms, but rather the necessary foundation for the exercise of that right as required by the concept of ordered liberty.¹⁰⁷ In short, when read with the Founding era’s interpretive assumptions and definitions in mind, the text of the two

¹⁰³ *Supra* note 57.

¹⁰⁴ Timothy Zick, *Framing the Second Amendment: Gun Rights, Civil Rights and Civil Liberties*, 106 IOWA L. REV. 229 (2020).

¹⁰⁵ Gregory P. Magarian, *Speaking Truth to Firepower: How the First Amendment Destabilizes the Second*, 91 TEXAS L. REV. 49, 99 (2012); Joseph Blocher, *Second Things First: What Free Speech Can and Can't Say about Gun*, 91 TEX. L. REV. ONLINE SEE ALSO 37 (2012).

¹⁰⁶ *Infringe*, SAMUEL JOHNSON, 1 A DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 1773); *Liberty*, RICHARD BURN AND JOHN BURN, NEW LAW DICTIONARY 436 (1792).

¹⁰⁷ See Jud Campbell, *Natural Rights, Positive Rights, and the Right to Keep and Bear Arms*, 83 LAW AND CONTEMP. PROBS. 31 (2020).

Amendments was seen to set up very different frameworks for thinking about the rights they protect. Members of the Founding generation would have understood that Congress could regulate the *conduct* protected by the Second Amendment provided it did not destroy the underlying *right*. This pattern can be seen not only in the text of the Bill of Rights, but also in the conduct of the Founding generation. As described above, guns were subject to a variety of prior restraints and other limitations that would not have been acceptable for religious practice or political speech. Neither Loyalists nor Quakers, two groups that were disarmed, were denied their right to free exercise of religion, or their right to assemble, or even their right to publish their sentiments. And yet, both were subject to specific regulation of the right to bear arms. Likewise, the over-arching policy of both the states and the federal government for most of the period between the American Revolution and Civil War was to actively encourage the acquisition of specific types of weapons and discourage through the police power the ownership of other arms deemed dangerous to public safety. Given the long history of government regulation of arms, including the use of tax policy and penalties for failing to acquire arms necessary for the militia, the First Amendment analogy does not suggest that the FOID Act is unconstitutional. In contrast, the Illinois FOID Act is entirely consistent with this long regulatory tradition.

XI. Conclusion

Political scientist Robert Spitzer’s overview of the history of firearms regulation underscores a point about American law: “The lesson of gun regulation history here is that new technologies bred new laws when circumstances warranted.”¹⁰⁸ Given this history, the language of the Illinois Constitution of 1970 linking the right to keep and bear arms and the police power is apposite: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”¹⁰⁹ States and localities, including Illinois and its towns and cities, have regulated gunpowder and arms, since the earliest days of the American Republic. The statutes at issue in this case are consistent with this historical tradition and would not have violated the Second Amendment or the right to bear arms as understood at the Founding, in the antebellum era, or at the time of ratification of the Fourteenth Amendment.

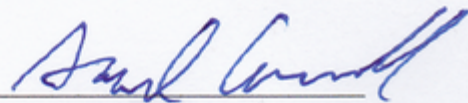
¹⁰⁸ Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 LAW & CONTEMP. PROBS. 55 (2017).

¹⁰⁹ ILL. CONST. art. I, § 22 (1970).

After a comprehensive review of the relevant history and scholarship, and the materials filed in this case, it is my expert opinion that the FOID Act serves the goals of ordered liberty, the core value animating the Second Amendment and all of Founding era constitutional thought and belief. The argument presented by Plaintiff rests on a perfect storm of bad legal analogies, historical anachronisms, and an ignorance of well-established historical facts about American legal history. In short, the basis for the challenge to the FOID Act is ideological, not historical. Indeed, it is no exaggeration to claim that if the legal views espoused in the amended complaint had prevailed in the era of the American Revolution, America would have lost the struggle for Independence and there would be no Second Amendment.

Illinois' FOID Act and its requirements that qualified individuals obtain a permit and undergo a background check prior to possessing a firearm promotes the core value of public safety that has been central to the police power over the long arc of American history. Moreover, the FOID Act is best understood as a direct lineal descendent of early American militia laws and is properly analogized to several different types of longstanding and historically recognized forms of firearms regulation, including taxes on arms and permit schemes. When considered in light of all of these considerations it is my opinion that the Illinois FOID Act is well within *Bruen* and *Heller*'s category of presumptively lawful firearms regulations. There is no doubt that the FOID Act is consistent with the Nation's historical tradition of firearm regulation.

July 25, 2022

A handwritten signature in blue ink, appearing to read "Saul Cornell", written over a horizontal line.

Saul Cornell

Exhibit 1

Saul Cornell

Paul and Diane Guenther Chair in American History

Department of History

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Education

1989	University of Pennsylvania	Ph.D.	Dissertation: "The Political Thought and Culture of the Anti-Federalists"
1985	University of Pennsylvania	MA	History
1982	Amherst College	BA	History - Magna Cum Laude
1980-81	University of Sussex, Brighton, England		

Teaching Experience

2009-2020	Guenther Chair in American History	Fordham University
2011-2022	Adjunct Professor of Law	Fordham Law School
2005-2008	Professor of History	The Ohio State University
1997-2005	Associate Professor, History	The Ohio State University
1995	Thomas Jefferson Chair	University of Leiden, The Netherlands
1991-1997	Assistant Professor, History	The Ohio State University
1989-1991	Assistant Professor, History	College of William and Mary

Fellowships and Grants

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

Prizes and Awards

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

Publications, Presentations and Media Appearances

Books:

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution
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- “Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists,” in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- “Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology,” Journal of American History (1990): 1148-1172
- “The Changing Historical Fortunes of the Anti-Federalists,” Northwestern University Law Review (1989): 39-73
- “Reflections on the ‘Late Remarkable Revolution in Government,’ Aedanus Burke and Samuel Bryan’s Unpublished History of the Ratification of the Federal Constitution,” The Pennsylvania Magazine of History and Biography (1988): 103-130

Invited Lectures:

- “Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment,” Haber/Edelman Lecture: University of Vermont, Fall 2021
- “Second Amendment Myths and Realities,” University of Tampa, Honors College Symposium, November 30, 2018.
- “The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate,” Guns in Law, Amherst College, Law Justice and Society (2016)
- “The New Movement to End Gun Violence.” UCLA Hammer Museum (2016)
- “No Person May Go Armed”: A Forgotten Chapter in the History of Gun Regulation” The Elizabeth Battelle Clark Legal History Series, Boston University College of Law, 2016
- Legacy Speaker Series: “Guns in the United States,” University of Connecticut (2016) “How does the Second Amendment Apply to Today?”
- American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)
- “The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History,” Constitution Day Lecture, Goucher College, (2015)
- Keynote Lecture: “The Second Amendment and American Cultural Anxieties: From Standing Armies to the Zombie Apocalypse” Firearms and Freedom: The Relevance of the Second Amendment in the Twenty First Century, Eccles Center, British Library (Spring 2015)

“Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment,”
Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)

“History and Mythology in the Second Amendment Debate,” Kollman Memorial Lecture, Cornell
College, Iowa (Spring, 2013)

“Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists”
Constitution Day Lecture, Lehman College, Fall 2011

“Lawyers, Guns, and Historians: The Second Amendment Goes to Court,” SHEAR/HSP Public Lecture,
Philadelphia, July, 2008

The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, “The Early
American Origins of Gun Control” (2006)

“Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era,” Bill of
Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)

“A New Paradigm for the Second Amendment,” Finlay Memorial Lecture, George Mason University,
(2001)

“Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate,” Cadenhead
Memorial Lecture, University of Tulsa, (2000)

“Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years,” Thomas Jefferson
Inaugural Lecture, University of Leiden, Netherlands, (1995)

Presentations:

“From Ideology to Empiricism: Second Amendment Scholarship After Heller, “Hastings Constitutional
Law Quarterly Symposium, Heller at Ten, January 18, 2019

“Firearms and the Common Law Tradition,” Aspen Institute, Washington, DC (2016)

“The Original Debate over Original Meaning Revisited,” British Group in Early American History,
Annual Meeting, Cambridge, England (2016)

“Second Amendment Historicism and Philosophy” The Second Generation of Second Amendment
Scholarship” Brennan Center, NYU 2016

“The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of
Common Law Constitutionalism” OIEAHC and the USC/Huntington Library Early Modern Studies
Institute May 29–30, 2015

“The Right to Travel Armed in Early America: From English Restrictions to Southern Rights,” British
Group in Early American History, Annual Conference Edinburgh, Scotland (2014)

“Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring
Legacy of Charles Beard,” Charles Beard, Economic Interpretation and History, Rothmere Center,
Oxford University (2012)

CUNY Early American Seminar, “The People’s Constitution v. the Lawyer’s Constitution,” 2011

Roundtable : “The Work of J.R. Pole,” SHEAR , Philadelphia, Pennsylvania 2011)

- “The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?” Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)
- “Re-envisioning Early American History,” American Historical Association Annual Meeting, San Diego (2010)
- “The Ironic Second Amendment” Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School (2007)
- “*District of Columbia v. Heller* and the Problem of Originalism,” University of Pennsylvania Constitutional Law Workshop, Philadelphia (2007)
- “Progressives and the Gun Control Debate,” American Constitution Society, Harvard Law School, (2006)
- “The Problem of Popular Constitutionalism in Early American Constitutional Theory,” American Association of Law Schools, Annual Conference (2006)
- “Popular Constitutionalism and the Whiskey Rebellion,” Symposium on Larry Kramer’s The People Themselves, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student’s For the Second Amendment Symposium (2005)
- “The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History,” Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- “Original Rules for Originalists?” University of Minnesota Law School (2005)
- “The Fourteenth Amendment and the Origins of the Modern Gun Debate,” UCLA, Legal History Workshop (2004)
- “Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate,” American Society of Legal History, Austin, TX (2004)
- “Armed in the Holy Cause of Liberty: Guns and the American Constitution,” NYU Legal History Colloquium (2004)
- “Digital Searches and Early American History,” SHEAR Brown University (2004)
- “Well Regulated: The Early American Origins of Gun Control,” The Second Amendment and the Future of Gun Regulation,” Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- “Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment,” Department of History, University of California Berkeley (2003)
- “History vs. Originalism in the Second Amendment Debate,” Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- “Self-defense, Public Defense, and the Politics of Honor in the Early Republic,” Lake Champlain Early American Seminar, Montreal (2003)
- “The Ironic Second Amendment” “Gun Control: Controversy, Social Values, and Policy,” University of Delaware Legal Studies Conference, Newark, Delaware (2003)

- “Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns,” Institute for Legal Studies, University of Wisconsin School of Law (2004)
- “Guns in the British Atlantic World: New Research, New Directions” Society for the Historians of the Early American Republic, Ohio State University (2003)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” American Bar Foundation, Chicago (2003)
- “The Changing Meaning of the Armed Citizen in American History,” “Americanism Conference,” Georgetown University (2003)
- “A New Paradigm for the Second Amendment?” Supreme Court Historical Society, Washington, D.C. (2002)
- “Constitutional History as Cultural History: The Case of the Second Amendment” European American Studies Association, Bordeaux, France (2002)
- “Don’t Know Much About History: The Current Crises in Second Amendment Scholarship,” Salmon P. Chase College of Law, Symposium, “The Second Amendment Today,” (2002)
- “History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision,” Sanford Institute of Public Policy, Duke University (2002)
- “Constitutional History After the New Cultural History: The Curious Case of the Second Amendment,” Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, “The State of Second Amendment Scholarship,” American Historical Association (2001)
- “Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate,” Vanderbilt University Law School (2001)
- “Neither Individual nor Collective: A New Paradigm for the Second Amendment,” Boston University Law School, (2000)
- “The Current State of Second Amendment Scholarship,” National Press Club Washington, D.C. American Bar Association, (2000)
- “Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Be Doing for us on the Web,” OAH St. Louis, Missouri (1999)
- “The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory,” European American Studies Association, Lisbon, Portugal (1998)
- “Deconstructing the Canon of American Constitutional History” American Society of Legal History, Seattle, Washington (1998)
- “Beyond Meta-narrative: The Promise of Hypertext,” American Studies Association, Seattle, Washington (1998)
- “Text, Context, Hypertext,” American Historical Association, Washington D.C. (1998)
- “Jefferson and Enlightenment,” International Center for Jefferson Studies, Charlottesville, VA, (1998)
- “Copley’s Watson and the Shark: Interpreting Visual Texts with Multi-media Technology,” American Studies Association, Washington, D.C. (1997)

- “Multi-Media and Post-Modernism,” H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove’s Original Meanings, Society of the Historians of the Early Republic, State College, PA (1997)
- “Teaching with Multi-Media Technology,” Indiana University, spring 1997 “Constitutional History from the Bottom Up: The Second Amendment as a Test Case,” McGill University, Montreal, Canada (1996)
- “Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania,” University of Pennsylvania (1995)
- “Multi-Media and Post-Modernism: The Future of American Studies?” Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- “Post-Modern American History? Ratification as a Test Case,” St. Cross College, Oxford University, Oxford, England (1994)
- “The Other Founders,” NYU Legal History Seminar,” NYU Law School (1994)
- “Reading the Rhetoric of Ratification,” paper presented at “Possible Pasts: Critical Encounters in Early America,” Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- “American Historiography and Post-Modernism,” Organization of American Historians, Atlanta, GA (1994)
- “The Anti-Federalist Origins of Jeffersonianism,” Columbia Seminar on Early American History (1994)
- “American History in a Post-Modern Age?” American Historical Association, San Francisco, CA (1994)
- “Post-Modern Constitutional History?” Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, “New Approaches to Early American History,” Williamsburg, VA (1992)
- “Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness,” American Studies Association, Baltimore, MD (1991)
- “James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz,” Organization of American Historians and Center for the Study of the Presidency Conference, “America’s Bill of Rights at 200 Years,” Richmond, VA, (1991)
- Symposium participant, “Algernon Sidney and John Locke: Brothers in Liberty?” Liberty Fund Conference, Houston, TX (1991)
- “Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness,” Capitol Historical Society, Washington, D.C. (1991)
- “Anti-Federalism and the American Political Tradition,” Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)

Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
Editorial Board, American Quarterly (2004-2007)
Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002- 2007
Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001-2004
Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
Co-Founder Ohio Early American Studies Seminar
NEH Fellowship Evaluator, New Media Projects, Television Projects
Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

Book Reviews:

Journal of American History
William and Mary Quarterly
American Studies Journal of the Early Republic
Pennsylvania Magazine of History and Biography
American Quarterly
American Journal of Legal History
Law and History Review

Journal and Book Referee:

Journal of American History
William and Mary Quarterly
Diplomatic History
Pennsylvania Magazine of History and Biography
Law and History Review
Harvard Law Review
Stanford Law Review
Yale Law Journal
University Press of Virginia
University of North Carolina Press
Stanford University Press
University of Massachusetts Press
Oxford University Press
Cambridge University Press
University of Michigan Press
Harvard University Press

Exhibit 2

Saul Cornell
Court Citations

Supreme Court

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 50 2022 U.S. Lexis 3055 (2022)

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 26, 28, 45, 47 2022 U.S. Lexis 3055 (2022)
(Breyer, J. dissenting)

McDonald v. City of Chicago, Ill., 561 U.S. 742, 900, 901 n.44 (2010) (Stevens, J., dissenting).

McDonald v. City of Chicago, Ill., 561 U.S. 742, 914, 933 (2010) (Breyer, J., dissenting).

D.C. v. Heller, 554 U.S. 570, 666 n.32, 671, 685 (2008) (Stevens, J., dissenting).

Federal Courts

Jones v. Bonta, 34 F.4th 704 (9th Cir. 2022)

Duncan v. Bonta, 19 F.4th (2021).

Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives, 5 F.4th 407 (4th Cir.), as amended (July 15, 2021), vacated as moot, 14 F.4th 322 (4th Cir. 2021), cert. denied sub nom. Marshall v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 142 S. Ct. 1447 (2022).

Nat'l Rifle Ass'n of Am., Inc. v. Swearingen, 545 F. Supp. 3d 1247 (N.D. Fla. 2021).

Young v. Hawaii, 992 F.3d 765, 785-86 (9th Cir. 2021) (en banc).

Kanter v. Barr, 919 F.3d 437, 446 n.6, 457, 462, 464 (7th Cir. 2019) (Barrett, J., dissenting).

Medina v. Whitaker, 913 F.3d 152, 159 (D.C. Cir.), cert. denied sub nom. Medina v. Barr, 140 S. Ct. 645 (2019).

Young v. Hawaii, 896 F.3d 1044, 1066 (9th Cir. 2018), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Young v. Hawaii, 896 F.3d 1044, 1077 (9th Cir. 2018) (Clifton, J., dissenting), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Teixeira v. Cty. of Alameda, 873 F.3d 670, 684–85 (9th Cir. 2017).

Kolbe v. Hogan, 813 F.3d 160, 175 (4th Cir. 2016), on reh'g en banc, 849 F.3d 114 (4th Cir. 2017).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 348 (3d Cir. 2016).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 370–71, 371 n.17, 372 n.19 (3d Cir. 2016) (Hardiman, J., concurring).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 389 n.85, 405 n.187 (3d Cir. 2016) (Fuentes, J., concurring).

Peruta v. Cty. of San Diego, 824 F.3d 919, 935 (9th Cir. 2016).

Peruta v. Cty. of San Diego, 742 F.3d 1144, 1185, 1188 (9th Cir. 2014) (Thomas, J., dissenting).

Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 714 F.3d 334, 342 n.19, 343 n.23 (5th Cir. 2013) (Jones, J., dissenting).

Kachalsky v. Cty. of Westchester, 701 F.3d 81, 95 & n.21 (2d Cir. 2012).

Moore v. Madigan, 702 F.3d 933, 935 (7th Cir. 2012).

Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 200, 202–03 (5th Cir. 2012).

United States v. Carpio-Leon, 701 F.3d 974, 980 (4th Cir. 2012).

United States v. Greeno, 679 F.3d 510, 519 (6th Cir. 2012).

United States v. Yancey, 621 F.3d 681, 684 (7th Cir. 2010).

United States v. Rene E., 583 F.3d 8, 12, 15–16 (1st Cir. 2009).

Miller v. Sessions, 356 F. Supp. 3d 472, 481 (E.D. Pa. 2019).

Grace v. D.C., 187 F. Supp. 3d 124, 138 n.11 (D.D.C. 2016).

Powell v. Tompkins, 926 F. Supp. 2d 367, 386 (D. Mass. 2013), aff'd, 783 F.3d 332 (1st Cir. 2015).

United States v. Tooley, 717 F. Supp. 2d 580, 589–591 (S.D.W. Va. 2010), aff'd, 468 F. App'x 357 (4th Cir. 2012).

United States v. Boffil-Rivera, No. 08-20437-CR, 2008 WL 8853354, 6 (S.D. Fla. Aug. 12, 2008), report and recommendation adopted sub nom. United States v. Gonzales-Rodriguez, No. 08-20437-CR, 2008 WL 11409410 (S.D. Fla. Sept. 22, 2008), aff'd sub nom. United States v. Boffil-Rivera, 607 F.3d 736 (11th Cir. 2010).

State Courts

State v. Christen, 2021 WI 39, 396 Wis. 2d 705, 958 N.W.2d 746, cert. denied, 142 S. Ct. 1131, 212 L. Ed. 2d 20 (2022).

Norman v. State, 215 So. 3d 18, 30 & nn.11–12 (Fla. 2017).

Posey v. Com., 185 S.W.3d 170, 179–180 (Ky. 2006).

Posey v. Com., 185 S.W.3d 170, 185 n.3 (Ky. 2006) (Scott, J., concurring).

State v. Craig, 826 N.W.2d 789, 796 (Minn. 2013).

People v. Handsome, 846 N.Y.S.2d 852, 858 (N.Y. Crim. Ct. 2007).

Zaatari v. City of Austin, No. 03-17-00812-CV, 2019 WL 6336186, 22 (Tex. App. Nov. 27, 2019) (Kelly, J., dissenting).

State v. Roundtree, 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765

State v. Christen, 2021 WI 39, 958 N.W.2d 746

Exhibit 3

Exhibit—Documents And Scholarship Cited Or Relied Upon

Chronological List of Historical Materials Cited or Relied Upon

1631 Va. Acts 173, Acts Of February 24th, 1631, Act XLVII, *available at* <https://firearmslaw.duke.edu/laws/1631-va-acts-173-acts-of-february-24th-1631-acts-xlvii-xlviii-li-available-at-https-archive-org-details-statutesatlargeb01virg/>.

1693 Mass. Acts 128, chap. 3, §§ 1, 5, An Act for Regulating the Militia, *available at* <https://firearmslaw.duke.edu/years/1693/#1670>.

An Act for better Regulation of the Militia (November 1738) Virginia.

1742 Mass. Acts 44, Chap. XXVI, § 1. An Act For Enlisting The Inhabitants Of Dorchester Into His Majesty's Service For The Defense Of Castle William, As Occasion shall Require.

Account of the People in the Colony of Rhode Island, whites and blacks, together with the quantity of arms and ammunition, in the hands of private persons (1755).

1757 Mass. Acts 51, chap. 18, § 1, An Act in Addition to the Several Act Of This Province for Regulating the Militia, *available at* <https://firearmslaw.duke.edu/laws/1757-mass-acts-51-an-act-in-addition-to-the-several-acts-of-this-province-for-regulating-the-militia-ch-12/>.

SAMUEL JOHNSON, 1 A DICTIONARY OF THE ENGLISH LANGUAGE (1773).

1775 Conn. Acts 413 (Reg. Sess.), An Act For Supplying The Troops Ordered to be raised For the Special Defense and Safety of this Colony with Necessary Fire Arms, *available at* <https://firearmslaw.duke.edu/laws/1775-conn-acts-413-an-act-for-supplying-the-troops-ordered-to-be-raised-for-the-special-defense-and-safety-of-this-colony-with-necessary-fire-arms/>.

JOHN J. ZUBLY, THE LAW OF LIBERTY (1775).

N.C. CONST. OF 1776, *available at* https://avalon.law.yale.edu/18th_century/nc07.asp.

PA. CONST. OF 1776, *available at* https://avalon.law.yale.edu/18th_century/pa08.asp.

MD. CONST. OF 1776, *available at* https://avalon.law.yale.edu/17th_century/ma02.asp.

VT. CONST. OF 1777, *available at* https://avalon.law.yale.edu/18th_century/vt01.asp.

Act of May 5, 1777, ch. 3, in 9 HENING'S STATUTES AT LARGE 281, 281-82 (1821).

James T. Mitchell and Henry Flanders, eds., 9 THE STATUTES AT LARGE OF PENNSYLVANIA (Wm. Stanley Ray, 1903), *available at* <http://www.palrb.us/stlarge/browse/getcontents.php>.

1779 Vt. Acts & Resolves 59, An Act For Forming And Regulating The Militia; And For Encouragement Of Military Skill, For The Better Defense Of This State, *available at* <https://firearmslaw.duke.edu/laws/1779-vt-acts-and-for-encouragement-of-military-skill-for-the-better-defense-of-this-state/>.

1782 Del. Acts 3, An Act for Establishing a Militia Within this State, *available at* <https://firearmslaw.duke.edu/laws/1782-del-acts-3-an-act-for-establishing-a-militia-within-this-state-%c2%a7-6/>.

Act of Mar. 1, 1783, 1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Town of Boston, § 2, *available at* <https://firearmslaw.duke.edu/laws/1783-mass-acts-37-an-act-in-addition-to-the-several-acts-already-made-for-the-prudent-storage-of-gun-powder-within-the-town-of-boston-%c2%a7-2/>.

[Thomas Tudor Tucker] Philodemus, *Conciliatory Hints, Attempting, by a Fair State of Matters, to Remove Party Prejudice, Charleston, 1784* reprinted in 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760-1805, 628 (Donald S. Lutz & Charles S. Hyneman eds., 1983).

The General Court of Massachusetts, January Session 1784 (Laws and Resolves 1784, chap. 55, pp. 140, 142).

An Act Incorporating the residents residing within limits therein mentioned, in 2 NEW YORK LAWS 158 (1785) (establishing the town of Hudson, NY).

12 Henning's Statutes c. 1, p. 9 *et seq.* (October, 1785).

2 Laws of New York 190, chap. LXXX, *An Act for the better extinguishing of fires in the Town of Brooklyn in King's County, passed 15th March, 1788.*

1 ANNALS OF CONG. 3 (1789–91), *available at* <https://memory.loc.gov/ammem/amlaw/lwaclink.html#anchor1>.

From George Washington to the United States Senate and House of Representatives, 8 January 1790,” 4 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES, 543, 8 September 1789–15 January 1790, (ed. Dorothy Twohig, 1993), *available at* <https://founders.archives.gov/documents/Washington/05-04-02-0361>.

1791 S.C. Acts 16, An Act To Amend And More Effectually Put In Force For The Time Therein Limited, The Act Entitled An Act For The Regulation Of The Militia Of This State, *available at* <https://firearmslaw.duke.edu/laws/1791-s-c-acts-16-an-act-to-amend-and-more-effectually-put-in-force-for-the-time-therein-limited-the-act-entitled-an-act-for-the-regulation-of-the-militia-of-this-state/>.

An Act to incorporate the Town of Marietta, in LAWS PASSED IN THE TERRITORY NORTHWEST OF THE RIVER OHIO 29 (1791).

RICHARD BURN AND JOHN BURN, NEW LAW DICTIONARY 436 (1792).

1792, An Act for Regulating the Militia, Ch. IV § 38 William Waller Henning. Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature (1792).

An Act to Prevent the Storing of Gun Powder, within in Certain Parts of New York City, LAWS OF THE STATE OF NEW-YORK, COMPRISING THE CONSTITUTION, AND THE ACTS OF THE LEGISLATURE, SINCE THE REVOLUTION, FROM THE FIRST TO THE FIFTEENTH SESSION, INCLUSIVE 191-2 (Thomas Greenleaf, ed., 1792).

1794 R.I. Pub. Laws 21, An Act To Organize The Militia Of This State, § 10, *available at* <https://firearmslaw.duke.edu/laws/1794-r-i-pub-laws-21-an-act-to-organize-the-militia-of-this-state-%c2%a7-10/>.

A Supplement to the Act Entitled, An Act to Regulate and Discipline the Militia of this State, § 30 (Md. 1798).

1799 Conn Acts 511 (Reg. Sess.) An Act For The Militia, § 4, *available at* <https://firearmslaw.duke.edu/laws/1799-conn-acts-511-an-act-for-the-militia-%C2%A7-4/>.

1799 Ky. Acts 7, An Act to Amend an Act Entitled “An Act Concerning the Militia”, §§ 1-3, *available at* <https://firearmslaw.duke.edu/laws/1799-ky-acts-7-an-act-to-amend-an-act-entitled-an-act-concerning-the-militia-ch-1-%c2%a7%c2%a7-1-3/>.

JOSEPH RUSSELL, AN ORATION; PRONOUNCED IN PRINCETON, MASSACHUSETTS, ON THE ANNIVERSARY OF AMERICAN INDEPENDENCE, JULY 4, 1799 at 7 *available at* <https://quod.lib.umich.edu/e/evans/N27201.0001.001/1:3?rgn=div1;view=fulltext>.

1814 Miss. Laws 16, An Act To Authorize The Governor Of Mississippi Territory, To Accept Of The Services Of Citizens Exempted From Militia Duty, § 2, *available at* <https://firearmslaw.duke.edu/laws/1814-miss-laws-16-an-act-to-authorize-the-governor-of-mississippi-territory-to-accept-of-the-services-of-citizens-exempted-from-militia-duty-%c2%a7-2/>.

1814 Mass. Acts 464, An Act In Addition To An Act, Entitled “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth,” ch. 192, §§ 1-2, *available at* <https://firearmslaw.duke.edu/laws/1814-mass-acts-464-an-act-in-addition-to-an-act-entitled-an-act-to-provide-for-the-proof-of-fire-arms-manufactured-within-this-commonwealth-ch-192-%C2%A7-1/>.

1821 Laws of the State of Maine; to Which are Prefixed the Constitution of the U. States and of Said State, in Two Volumes, with an Appendix at 685-686; (Vol. 2, 1821).

1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 5, *available at* <https://firearmslaw.duke.edu/laws/1821-me-laws-98-99-an-act-for-the-prevention-of-damage-by-fire-and-the-safe-keeping-of-gun-powder-ch-25-%c2%a7-5/>.

1821 Tenn. Pub. Acts 63, An Act To Amend The Militia Laws Of This State, chap. 55, §§ 2-3, *available at* <https://firearmslaw.duke.edu/laws/1821-tenn-pub-acts-63-an-act-to-amend-the-militia-laws-of-this-state-ch-55-%c2%a7%c2%a7-2-3/>.

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Exhibit 4

Selected Militia Law Provisions, 1607-1877

Colonial Era (1607-1775)

Year	State	Text of Statute/Ordinance
1631	Virginia	<p>1631 Va. Acts 173, Acts Of February 24th, 1631, Act XLVII.</p> <p>No Man shall go or send abroad without a sufficient party well armed. <i>Act XLVIII</i>: No man shall go to work in the grounds without their arms, and a sentinel upon them. <i>Act LI</i>: All men that are fitting to bear arms, shall bring their pieces to the church upon pain of every offence yf the mayster allow not thereof to pay 2 lb. of tobacco, to be disposed by the church wardens who shall levy it by distress, and the servants be punished. (The Statutes at large: being a collection of all the laws of Virginia, from the first session of the legislature in the year 1619).</p>
1693	Massachusetts	<p>1693 Mass. Acts 128, And Act for Regulating the Militia, chap. 3, §§ 1, 5.</p> <p>That all male persons from sixteen years of age to sixty, (othere than such as are hereinafter excepted), shall bear arms and duely attend all musters and military exercises of the respective troops and companies where they are listed . . . § 5 That every listed solider and other householder shall be always provided with a well fixed firelock of musket or bastard musket bore . . .</p>
1738	Virginia	<p>An Act for better Regulation of the Militia (November 1738).</p> <p>II. . . . chief officer of the militia, in every county, shall list all free male persons, above the age of one and twenty years. . . VII. ...every captain shall, once in three months, or oftener, if required, muster, train, and exercise his troop or company: And the county lieutenant, colonel, or chief commanding officer, in every county, shall cause a general muster and exercise of all the troops and companies within his county to be made in the month of September, every year.... X. ...And every person listed in the foot, shall pay [a fine of] five shillings, or fifty pounds of tobacco, at their election [choice], for not appearing at muster, completely armed and accoutered . . .).</p>

Year	State	Text of Statute/Ordinance
1742	Massachusetts	<p>1742 Mass. Acts 44, An Act For Enlisting The Inhabitants Of Dorchester Into His Majesty's Service For The Defense Of Castle William, As Occasion shall Require. Chap. XXVI, § 1.</p> <p>That the inhabitants of the town of Dorchester, who are by law subject to common musters and military exercises there, not exceeding fifty years of age, Shall be enlisted . . . § 2. That if any of the men in the town of Dorchester enlisted as aforesaid shall neglect, absent, or refuse to attend at time and place for the exercise of the greate artillery as aforesaid . . . such soldier shall pay to the clerk . . . 5 shillings.</p>
1757	Massachusetts	<p>1757 Mass. Acts 51, An Act in Addition to the Several Act Of This Province for Regulating the Militia, chap. 18, § 1.</p> <p>That the captain or chief officer of each military foot company shall instruct and employ his company in military exercises six days in a year . . . and on each of said days he shall make a strict enquiry into the state of the arms and ammunition of his company . . . that every person from the age of sixteen to sixty, not exempted by law, shall appear with arms and ammunition according to law, and attend his duty each of the aforesaid days. . .</p>
1775	Connecticut	<p>1775 Conn. Acts 413 (Reg. Sess.) An Act For Supplying The Troops Ordered to be raised For the Special Defense and Safety of this Colony with Necessary Fire Arms.</p> <p>. . . And if it shall so happen that a sufficient supply of arms cannot be procured in the several methods before directed, then sufficient arms to make good the deficiency, shall be impressed, completely to arm and equip said inhabitants that shall so enlist as aforesaid; the said impress to be limited only to the arms belonging to House-holders and other persons not on the militia roll; and that every person from whom any gun shall be impressed as aforesaid, shall be paid for the use of such Gun the sum of four shillings, and in case of loss, shall be paid the just values of said gun deducing the sum of four shillings aforesaid.</p>

Founding Era (1776-1800)

Year	State	Text of Statute/Ordinance
1779	Vermont	<p>1779 Vt. Acts & Resolves 59, An Act For Forming And Regulating The Militia; And For Encouragement Of Military Skill, For The Better Defense Of This State.</p> <p>That every listed soldier and other householder, shall always be provided with, and have in constant readiness, a well fixed firelock, the barrel not less than three feet and a half long, or other good firearms, to the satisfaction of the commissioned officers of the company to which he doth belong, or in the limits of which he dwells; a good sword, cutlass, tomahawk or bayonet; a worm, and priming wire, fit for each gun; a cartouch box or powder and bullet pouch; one pound of good powder, four pounds of bullets for his gun, and six good flints; on penalty for eighteen shillings, for want of such arms and ammunition as is hereby required.</p>
1782	Delaware	<p>An Act for Establishing a Militia Within this State, § 6 (Del. 1782).</p> <p>(Imposed a 20 shilling fine for failing to “keep the [same] arms by him at all times, ready and fit for Service”).</p>

Year	State	Text of Statute/Ordinance
1785	Virginia	<p>The General Assembly of Virginia, (October, 1785) (12 Hening's Statutes c. 1, p. 9 et seq.).</p> <p>The defense and safety of the commonwealth depend upon having its citizens properly armed and taught the knowledge of military duty. . . All free male persons between the ages of eighteen and fifty years . . . shall be inrolled or formed into companies.' 'There shall be a private muster of every company once in two months. . . Every officer and soldier shall appear at his respective muster-field on the day appointed, by eleven o'clock in the forenoon, armed, equipped, and accoutred, as follows: every non-commissioned officer and private with a good, clean musket carrying an ounce ball, and three feet eight inches long in the barrel, with a good bayonet and iron ramrod well fitted thereto, a cartridge box properly made, to contain and secure twenty cartridges fitted to his musket, a good knapsack and canteen, and moreover, each non-commissioned officer and private shall have at every muster one pound of good powder, and four pounds of lead, including twenty blind cartridges; and each serjeant shall have a pair of moulds fit to cast balls for their respective companies, to be purchased by the commanding officer out of the monies arising on delinquencies. Provided, That the militia of the counties westward of the Blue Ridge, and the counties below adjoining thereto, shall not be obliged to be armed with muskets, but may have good rifles with proper accoutrements, in lieu thereof. And every of the said officers, non-commissioned officers, and privates, shall constantly keep the aforesaid arms, accoutrements, and ammunition, ready to be produced whenever called for by his commanding officer. If any private shall make it appear to the satisfaction of the court hereafter to be appointed for trying delinquencies under this act that he is so poor that he cannot purchase the arms herein required, such court shall cause them to be purchased out of the money arising from delinquents").</p>

Year	State	Text of Statute/Ordinance
1788	New York	<p>2 Laws of New York 190, chap. LXXX, An Act for the better extinguishing of fires in the Town of Brooklym in King’s County, passed 15th March, 1788.</p> <p>‘That it shall and may be lawful for the mayor or recorder, or any two aldermen of the said city, upon application made by any inhabitant or inhabitants of the said city, and upon his or their making oath of reasonable cause of suspicion . . . to issue his or their warrant or warrants . . . for searching for such gun-powder, in the day time, in any building or place whatsoever, within the limits aforesaid, or in any ship or other vessel . . . And that upon any such search it shall be lawful for the persons finding such gun-powder, immediately to seize, and at any time within twelve hours of such seizure, to convey the same to one of the magazines aforesaid.</p>
1791	South Carolina	<p>1791 S.C. Acts 16, An Act To Amend And More Effectually Put In Force For The Time Therein Limited, The Act Entitled An Act For The Regulation Of The Militia Of This State . . .</p> <p>And be it further enacted by the authority aforesaid, That every free man of this state, liable to bear arms in any of the regiment, battalions or companies of foot in this state and who shall appear at any such regiment or battalion muster or at any muster or review ordered by his Excellency the governor, or at any company muster ordered in pursuance of this act, or by virtue of the said act of the twenty-sixth day of March 1784, not provided with a good musket and bayonet, and cartouch box capable of containing at least twelve rounds of cartridges or other sufficient fun and a good and sufficient small sword, broad sword, cutlass or hatchet, and a powder horn or flask capable of holding at least 12 rounds of powder . . . shall forfeit and pay for each and every such default, the sum of two dollars, or the sum of half a dollar for each article of arms or accoutrements herein before directed, to be affected and levied on such defaulter, in the manner in and by the said act directed and appointed.</p>
1794	Rhode Island	<p>1794 R.I. Pub. Laws 21, An Act To Organize The Militia Of This State, § 10.</p> <p>And if he shall not be armed and equipped according other said Act of congress, when so appearing, without sufficient excuse, she shall, for appearing without a gun, forfeit one shilling and sixpence; without bayonet and belt six pence . . .</p>

Year	State	Text of Statute/Ordinance
1798	Maryland	<p>A Supplement to the Act Entitled, An Act to Regulate and Discipline the Militia of this State, § 30 (Md. 1799).</p> <p>Any private or non commissioned officer, to whom a musket is delivered, shall use the same in hunting, gunning or fowling or shall not keep his arms ... in neat and clean order ... shall [pay a fine].</p>
1799	Connecticut	<p>1799 Conn Acts 511 (Reg. Sess.) An Act For The Militia, § 4.</p> <p>That the fines and penalties incurred for non-appearance and deficiencies of arms, ammunition and accoutrements shall in future be as follows. Each non-commissioned officer, drummer, fifer or trumpeter who shall neglect to appear at the time and place appointed for regimental or battalion exercise or review being legally warned thereto shall forfeit and pay a fine of three dollars for each days neglect and for each days neglect to appear at the time and place appointed for company exercise or inspection, being legally warned thereto, shall forfeit and pay a fine of one dollar and fifty cents, and each private belonging to any company of militia shall for non-appearance on days of Regimental or Battalion exercise or review, being thereto legally warned, forfeit and pay a fine of two dollars for each days neglect and for non-appearance at time and place fore company exercise or inspection he shall forfeit and pay a fine of one dollar for each days neglect; and for deficiencies of arms, ammunition and accoutrements required by law, and each non-commissioned officer and private shall forfeit and pay for each day of review or exercise the he shall be deficient the following fines viz. for a gun or pair of pistols, each seventy-five cents; for sword, bayonet or cartridge box, each fifty cents; and for each of the other articles required by law, twenty-five cents.</p>
1799	Kentucky	<p>1799 Ky. Acts 7, An Act to Amend an Act Entitled “An Act Concerning the Militia”, §§ 1-3.</p> <p>The brigadier generals shall attend each regimental muster within their brigades to view the same; it shall be the duty of the brigade major, attended by the commandant of the regent to inspect the same at every muster. § 2. All fines arising within the bounds of any regiment on account of delinquencies of officers, privates, or otherwise, shall be appropriated to the use of such regiment only. § 3. Each non-commissioned officer shall have ten days notice of each muster; and each non-commissioned officer and private; appearing on parade without a gun after being duly notified, shall be fined any sum not exceeding fifty cents, at the discretion of a court martial.</p>

19th Century (1800-1868)

Year	State	Text of Statute/Ordinance
1814	Mississippi	<p>1814 Miss. Laws 16, An Act To Authorize The Governor Of Mississippi Territory, To Accept Of The Services Of Citizens Exempted From Militia Duty, § 2.</p> <p>Immediately on the governor's acceptance of any number of volunteers, by virtue of this act, each private shall proceed to provide himself with a good rifle, musket or shot-gun with four flints, twenty rounds of powder ball, or buckshot, best suited to his gun, together with the most convenient accoutrements. The commissioned officers shall be armed with swords; and the arms and accoutrements of all such volunteers shall be exempted from executions in payment of debts and their persons when on service, free from arrest in civil cases.</p>
1821	Tennessee	<p>1821 Tenn. Pub. Acts 63, An Act To Amend The Militia Laws Of This State, chap. 55, §§ 2-3.</p> <p>The commissioned and staff officers of the infantry are hereby required to meet at the place holding their battalion musters at eleven o'clock on the day preceding said muster armed with a rifle, musket, or shot gun and dressed in the uniform prescribed by law, for the purpose of being trained at regimental drills and the commanding or senior officer, present shall call, or cause the roll to be called, and make a return of all delinquents to the next regimental or battalion court martial. § 3. The regimental courts martial shall have power to fine delinquents, field or staff officers, and it shall be the duty of the commanding or senior officer present at any regimental or battalion or drill muster to make a return of all such delinquents . . .</p>

Year	State	Text of Statute/Ordinance
1835	Missouri	<p>1835 Mo. Laws 537, An Act To Organize Govern and discipline the militia, art. XII, Pt. 5.</p> <p>Every non-commissioned officer and private, appearing without being armed and equipped as the law directs, at any parade or rendezvous, shall be sentenced to pay the following fines, namely : For want of a sufficient sword and belt, if belonging to the artillery or light artillery, and for want of a sufficient musket with a steel rod, or rifle, if belonging to a company of light infantry, grenadiers, riflemen or infantry, one dollar; for want of a sufficient bayonet and belt, fifty cents; for want of a pouch with a box therein, sufficient to contain twenty four cartridges suited to the bore of his musket, twenty-five cents; and whenever ordered by the commander in chief or the commandant of the division, brigade, regiment or extra battalion so equipped as on parade, for want of two spare flints and a knapsack, twenty four cartridges, shot pouch, powder horn, twenty balls, and a quarter of a pound of powder, twenty-five cents each, but the whole number of spare flints, cartridges and balls, shall be considered each as only one deficiency, provided that no person be fined for not appearing on parade with a gun, who does not own one. . .</p>
1837	Vermont	<p>1837 Vt. Acts & Resolves 38, An Act For Regulating And Governing The Militia Of This State, chap. 9, art. 20.</p> <p>Every non commissioned officer and private who shall neglect to keep himself armed and equipped as provided by this act, or who shall, at any time of examination, or any company training, in the month of June, be destitute, or appear unprovided with the arms and equipments herein directed, excepting as before excepted, shall pay a fine not exceeding seventy-five cents for a gun, and twenty-five cents for each and every other article, in which he shall be delinquent; or if he shall appear with his arms in an unfit condition, he shall be fined not exceeding seventy-five cents, at the discretion of his commanding officer.</p>

Year	State	Text of Statute/Ordinance
1844	Rhode Island	<p>1844 R.I. Pub. Laws 501, An Act To Regulate The Militia, §§1, 45.</p> <p>Every able bodied white male citizen in this state, who is or shall be of the age of eighteen years, and not exceeding the age of forty-five years, excepting persons absolutely exempted by the provisions of this act, and idiots, lunatics, common drunkards, paupers, vagabonds, an persons convicted of any infamous crime shall be enrolled in the militia . . . § 45. No officer, non-commissioned officer, or private, shall unnecessarily or without orders from his superior officer, come to any place of parade with his musket, rifle or pistol loaded with balls, slugs, shot or other dangerous substance, or shall so load the same while on parade.</p>
1859		<p>THE PUBLIC STATUTES OF THE STATE OF MINNESOTA 798 (1859), CHAP. 120 § 1, 8.</p> <p>Be it enacted by the legislature of the state of Minnesota: That all able-bodied, white male citizens resident of this state, being eighteen years of age, and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia, and perform military duty in such manner—not incompatible with the constitution and laws of the United States—as hereinafter prescribed. § 8. That it shall be the duty of the township assessors of the several townships, and the assessors of the several wards of the several cities, to prepare a list of all persons liable to be enrolled as aforesaid, in their respective wards, townships or districts, save and except members of uniform volunteer companies. Township, ward or district assessors aforesaid, shall annually, at the time of assessing taxable property, make out a roll or list of all names of persons enrolled as aforesaid, and place it in the auditor's office of the proper county; and it shall be the duty of such auditor annually on or before the first day of November, to return an accurate copy of such records of enrollment to the adjutant-general of the state.</p>

Post 14th Amendment Statutes (1868-1900)

Year	State	Text of Statute/Ordinance
1877	Missouri	<p>1877 Mo. Laws 306, An Act To Repeal Sections One And Two Of An Act Entitled “An Act To Provide For The Appropriation Of A Contingent Fund, The Employment Of Clerks And The Auditing Of Claims Against The State On File In The Office Of The Adjutant General, art. IV, § 3.</p> <p>A soldier who, unnecessarily or without orders from a superior officer, comes to any parade with his firearms loaded with ball, slug or shot, or shall so load the same while on duty, or unnecessarily or without orders from a superior officer, discharge the same, when going to or returning from or upon parade, shall forfeit not less than one nor more than five dollars.</p>

Exhibit 5

Dec 24 1755.

Account of the people in the Colony of Rhode-Island, whites and blacks, together with the quantity of arms and ammunition, in the hands of private persons.

Towns names.	WHITES.						Arms and ammunition in the hands of private persons.					BLACKS.			
	Men.	Men able to bear arms.	Enlisted soldiers.	Women.	Boys.	Girls.	Small arms.	Swords.	Pistols.	Powder.	Balls.	Men.	Women.	Boys.	Girls.
Newport,	1696	534	969	1633	1099	1091	778	710	266	873	15554	400	341	248	245
Providence,	747	275	406	741	655	754	349	181	56	762	3871	72	75	51	64
Portsmouth,	243	88	120	228	261	440	143	80	29	44	1755	51	60	50	30
Warwick,	426	189	199	422	413	423	219	118	21	61	2182	48	62	61	56
Westerly,	523	128	361	551	541	562	276	98	8	206 3-4	4904	34	28	24	28
New-Shoreham,	83	17	66	77	52	52	66	20	6	66	1730	29	41	22	22
North-Kingston,	544	135	244	465	408	403	245	82	16	67	1739	70	87	72	60
South-Kingston,	366	132	186	321	342	368	215	80	16	85	2251	137	109	145	125
East-Greenwich,	319	140	165	238	212	271	137	54	9	71 3-4	1119	33	33	38	23
Jamestown,	86	20	58	100	103	72	63	48	14	32	1434	42	41	36	37
Smithfield,	448	139	263	454	456	486	294	67	11	146 1-2	3828	16	17	21	13
Scituate,	392	77	273	403	540	460	261	56	6	32 3-4	1466	4	4	7	3
Gloucester,	332	75	257	327	437	408	221	28	6	32 3-4	1466	4	0	1	2
Charleston,	171	71	90	187	195	159	110	40	2	50	1300	100	112	101	105
West-Greenwich,	275	78	174	292	316	321	138	38	5	31	639	12	10	8	12
Coventry,	298	82	190	232	309	323	206	40	4	38 1-2	824	4	2	4	6
Exeter,	347	122	178	236	367	371	130	32	4	20	196	16	20	23	24
Middleton,	153	55	82	206	157	165	120	88	22	81 1-4	2902	29	26	19	23
Bristol,	210	98	97	252	251	253	133	119	20	31	1758	44	35	34	21
Tiverton,	277	109	159	217	278	323	134	39	15	76 1-2	2786	44	67	58	61
Little-Compton,	244	110	134	342	261	295	197	118	61	130	3146	28	43	29	30
Warren,	193	81	112	217	214	203	130	104	7	67	2994	26	23	25	24
Cumberland,	230	55	156	254	267	319	158	73	3	101 1-2	3277	4	2	4	3
Richmond,	199	57	123	195	202	207	93	23	3	57	371	9	5	2	10
Cranston,	375	130	103	354	337	306	216	52	14	22 1-2	1177	21	22	27	18
	9177	2997	5265	8944	8783	9035	5052	2418	624	3286 3-4	64689	1277	1265	1110	1045

Whole Colony, whites and blacks, 40,636.

Town of Newport, 6754.

In obedience to your Lordship's commands, I have caused the within account to be taken by officers under oath. By it there appears to be in this Colony at this time, 35,939 white persons, and 4,697 blacks, chiefly negroes.

In the year 1730, by order of the then Lords Commissioners for Trade and Plantations, an account was taken of the number of people in this Colony, and then there appeared to be 15,302 white persons, and 2,633 blacks.

Again in the year 1748, by like order, an account was taken of the number of people then in this Colony, by which it appears there were at that time 29,755 white persons and 4373 blacks.

STEPHEN HOPKINS.

Colony of Rhode-Island, December 24th 1755.

N. B. One eighth part of the inhabitants Quakers.

In the Fort 18 eighteen pounders, 6 twenty-four do. 2 nine do. Total 26.

Belonging to the Country sloop, 12 four-pounders; to Merchants, 60 old small cannon, four and three pounders.

In the Fort 46 barrels of Gunpowder, 20 rounds of Shot, 300 old Small Arms.

The above and foregoing contains a true copy of what his Honor the Governor transmitted unto the Right Honorable and Honorable the Lords Commissioners for trade and plantations.

Copy—Witness, THO. WARD, Sec'y.

Exhibit 6

Selected State and Local Firearm Tax and Permit Laws, 1814-1916

Year	State	Text of Statute/Ordinance
1814	Massachusetts	<p>1814 Mass. Acts 464, An Act In Addition To An Act, Entitled “An Act To Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth,” ch. 192, § 1-2.</p> <p>All musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the same shall be stocked, be proved by the person appointed according to the provisions of an act . . . with a charge of powder equal in weight to the ball which fits the bore of the barrel to be proved . . . § 2. That if any person or persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act to which this is an addition . . .</p>
1821	Maine	<p>1821 Laws of the State of Maine; to Which are Prefixed the Constitution of the U. States and of Said State, in Two Volumes, with an Appendix at 685-686; (Vol. 2, 1821)</p> <p>An Act to Provide for the Proof of Firearms, § 1. Be it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor, by and with the consent of the Council, be, and he hereby is empowered to appoint suitable persons, to be provers of barrels of all new, or unused fire arms; and it shall be the duty of each person so appointed, to prove and try the strength of the barrels of all fire arms which shall be offered him for that purpose, and in such manner as to satisfy himself of the strength of the same; and shall in a permanent manner, mark and number every barrel by him so proved, and make and deliver to the person applying to have the same proved, a certificate for each barrel proved and found good in the form following: addition to the expense of the powder necessary for that purpose for each barrel so proved; whether the same shall stand the proof and be marked or not. § 3. Be it further enacted, That if any person shall sell or offer for sale within this State, any new, or unused musket, rifle, or pistol barrel, without having the same first proved, marked, and certified according to the provisions of this Act, he shall forfeit for each barrel so sold the sum of ten dollars, to be recovered by an action of debt before any Court proper to try the same; to the use of any person who shall sue for and recover the same, or by indictment to the use of the state.</p>

Year	State	Text of Statute/Ordinance
1836	Connecticut	<p>1836 Conn. Acts 105, An Act Incorporating The Cities of Hartford, New Haven, New London, Norwich and Middletown, chap. 1, § 20.</p> <p>. . . relative to prohibiting and regulating the bringing in, and conveying out, or storing of gunpowder in said cities</p>
1837	Alabama	<p>John W.A. Sanford, The Code of the City of Montgomery, Prepared in Pursuance of an Order of the City Council of Montgomery Page 7-9</p> <p>[An Act to Incorporate the City of Montgomery, Approved December 23d, 1837] § 6. And be it further enacted, That the said Mayor and Aldermen, shall have power and authority for the ordinary current expenses of said city, to assess, levy and collect annually, a tax on. . . pistol galleries, fifty dollars...</p>
1845	Iowa	<p>1845 Iowa Laws 119, An Act to Incorporate and Establish the City of Dubuque, chap 123, § 12</p> <p>That the said city council shall have power, and it is hereby made their duty to make and publish from time to time, all such ordinances as shall be necessary to secure said city and the inhabitants thereof . . . to impose fines, forfeitures and penalties on all persons offending against the laws and ordinances of said city, and provide for the prosecution, recovery and collection thereof, and shall have power to regulate by ordinance the keeping and sale of gun-powder within the city.</p>
1847	Indiana	<p>1847 Ind. Acts 93, An Act to Reduce the Law Incorporating the City of Madison, and the Several Acts Amendatory Thereto Into One Act, and to Amend the Same, chap 61, § 8, pt. 4.</p> <p>To regulate and license, or provide by ordinance for regulating and licensing . . . the keepers of gunpowder and other explosive compounds</p>
1849	Ohio	<p>1849 Ohio Laws 407-08, Local Acts vol. 48, An Act to Incorporate the Town of Ripley in the County of Brown, § 4.</p> <p>That the said town council of Ripley shall have power to ordain and establish laws and ordinances . . . to regulate the sale of gunpowder therein[.]</p>

Year	State	Text of Statute/Ordinance
1851	Illinois	<p>George Manierre, The Revised Charter and Ordinances of the City of Chicago: To Which are Added the Constitutions of the United States and State of Illinois Page 123-125, (1851)</p> <p>Ordinances of the City of Chicago: Regulating the Keeping and Conveying Gun Powder and Gun Cotton; § I. (Be it ordained by the Common Council of the city of Chicago) That no person shall keep, sell, or give away gun powder or gun cotton in any quantity without permission of the common council or mayor in writing, signed by the mayor and clerk and sealed with the corporate seal, under a penalty of twenty-five dollars for every offence. § II. All applications for permits shall be addressed to the common council or mayor in writing, signed by the applicant. Not exceeding four permits shall be granted in any block.</p>
1856-1857	North Carolina	<p>1856-1857 N.C. Sess. Laws 34, Pub. Laws, An Act Entitled “Revenue,” ch. 34, § 23, pt. 4.</p> <p>On every pistol, except such as are used exclusively for mustering, and on every bowie-knife, one dollar and twenty five cents; on dirks and swordcanes, sixty five cents: Provided, however, That of said arms, only such shall be taxable, as at some time within the year have been used, worn or carried about the person of the owner, or of some other, by his consent.</p>
1858-1859	North Carolina	<p>1858-1859 N.C. Sess. Laws 34-36, Pub. Laws, An Act Entitled Revenue, chap. 25, § 27, pt. 15.</p> <p>The following subjects shall be annually listed, and be taxed the amounts specified: . . . Every dirk, bowie-knife, pistol, sword-cane, dirk-cane and rifle cane, used or worn about the person of any one at any time during the year, one dollar and twenty-five cents. Arms used for mustering shall be exempt from taxation.</p>
1866	Georgia	<p>1866 Ga. Law 27, An Act to authorize the Justices of the Inferior Courts of Camden, Glynn and Effingham counties to levy a special tax for county purposes, and to regulate the same, § 3, 4:</p> <p>collect a tax of two dollars per head on each and every dog over the number of three, and one dollar a piece on every gun or pistol, musket or rifle over the number of three kept or owned on any plantation in the counties aforesaid; the said tax to be applied to such county purposes as the said courts shall direct. § 4. . That the owner of every plantation in said counties shall be required to render, upon oath, a full return of every dog, gun, pistol, musket, or rifle so held or kept as aforesaid, and shall be held responsible for the tax imposed upon them, which tax the said Inferior Courts are hereby authorized and empowered to enforce, as in other cases.</p>

Year	State	Text of Statute/Ordinance
1867	Mississippi	<p>1867 Miss. Laws 327, An Act To Tax Guns And Pistols in The County Of Washington, § 1:</p> <p>A tax of not less than five dollars or more than fifteen dollars shall be levied and assessed annually by the board of Police of Washington county upon every gun and pistol which may be in the possession of any person in said county, which tax shall be payable at any time on demand by the sheriff, and if not so paid, it shall be the duty of the sheriff to forthwith distrain and seize such gun or pistol, and sell the same for cash at the door of the Court House, after giving ten days notice by advertisement, posted in front of said Court House . . .</p>
1867	Alabama	<p>The Revised Code of Alabama Page 169, (1867)</p> <p>Taxation, § 10. On All pistols or revolvers in the possession of private persons not regular dealers holding them for sale, a tax of two dollars each; and on all bowie knives, or knives of the like description, held by persons not regular dealers, as aforesaid, a tax of three dollars each; and such tax must be collected by the assessor when assessing the same, on which a special receipt shall be given to the tax payer therefor, showing that such tax has been paid for the year, and in default of such payment when demanded by the assessor, such pistols, revolvers, bowie knives, or knives of like description, must be seized by him, and unless redeemed by payment in ten days thereafter, with such tax, with an additional penalty of fifty per cent., the same must be sold at public outcry before the court house door, after five days notice; and the overplus remaining, if any, after deducting the tax and penalty aforesaid, must be paid over to the person from whom the said pistol, revolver, bowie knife, or knife of like description, was taken, and the net amount collected by him must be paid over to the collector every month, from which, for each such assessment and collection, the assessor shall be entitled to fifty cents, and when the additional penalty is collected, he shall receive fifty per cent. additional thereto.</p>
1879	Tennessee	<p>1879 Tenn. Pub. Acts 135-36, An Act to Prevent the Sale of Pistols, chap. 96, § 1.</p> <p>It shall be a misdemeanor for any person to sell, or offer to sell, or to bring into the State for the purpose of selling, giving away, or otherwise disposing of belt or pocket pistols, or revolvers, or any other kind of pistols, except army or navy pistol; Provided that this act shall not be enforced against any persons now having license to sell such articles until the expiration of such present license.</p>

Year	State	Text of Statute/Ordinance
1881	New York	<p>Elliott Fitch Shepard, Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in Force January 1, 1881; Adopted by the Common Council and Published by Their Authority Page 214-215 (1881)</p> <p>Carrying of Pistols, § 264. Every person except judges of the federal, state and city courts, and officers of the general, state and municipal governments authorized by law to make arrests, and persons to whom permits shall have been issued, as hereinafter provided, who shall have in his possession within the city of New York a pistol of any description concealed on his person, or not carried openly, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction by a fine not exceeding ten dollars, or, in default of payment of such fine by imprisonment not exceeding ten days. § 265. Any person, except as provided in this article, who has occasion to carry a pistol for his protection, may apply to the officer in command at the station-house of the precinct where he resided, and such officer, if satisfied that the applicant is a proper and law abiding person, shall give said person a recommendation to the superintendent of police, or the inspector in command at the central office in the absence of the superintendent, who shall issue a permit to the said person allowing him to carry a pistol of any description of any description. Any non-resident who does business in the city of New York, and has occasion to carry a pistol while in said city, must make application for permission to do so to the officer in command of the station-house of the police precinct in which his so does business, in the same manner as is required by residents of said city, and shall be subject to the same conditions and restrictions.</p>
1883	Tennessee	<p>1883 Tenn. Pub. Acts 17, A Bill to Be Entitled An Act to Prevent the Sale, Loan or Gift of Pistol Cartridges in This State, ch. 13.</p> <p>[I]t shall be unlawful for any person or persons to buy or sell or give away any pistol cartridges in this state. . . [A]ny person or persons violating this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five or more than one hundred dollars. . . [P]rovided, however, that nothing in this act shall be construed to interfere with the sale of cartridges for rifle guns or shot guns, or cartridges for army or navy pistols.</p>

Year	State	Text of Statute/Ordinance
1891	New York	<p>1891 N.Y. Laws 129, 177, An Act to Revise the Charter of the City of Buffalo, ch. 105, tit. 7, ch. 2, § 209.</p> <p>No person other than members of the police force, regularly elected constables, the sheriff of Erie county, and his duly appointed deputies, shall, in the city, carry concealed upon or about his person, any pistol or revolver, or other dangerous weapon or weapons, without first obtaining a permit, as hereinbefore provided; and such permit shall be produced and exhibited by any person holding the same, upon the request of a member of the police force. A violation of any of the provisions of this section shall be a misdemeanor and punishable as such; and all fines imposed and collected for such violations shall be deposited to the credit of said pension fund by the clerk of the court imposing the same.</p>
1893	South Carolina	<p>1893 S.C. Acts 426, An Act To Amend An Act Entitled “An Act To Provide For A License For The Sale Of Pistols Or Pistol Cartridges Within The Limits Of This State”, § 2</p> <p>. . . That the County Commissioners of the Several Counties of the State be, and they are hereby, authorized to issue licenses in their respective Counties for the sale of pistols and pistol cartridges upon the payment to County Treasurer by the person or corporation so applying for said licenses of the sum of twenty-five dollars annually.</p>
1894	South Carolina	<p>John E. Breazeale, The Revised Statutes of South Carolina, Containing the Code of Civil Procedure, and the Criminal Statutes. Also The Constitutions of the United States and of the State, and the Rules of the Supreme and of the Circuit Courts of the State Page 431, (Vol. 2, 1894)</p> <p>Chapter XXVIII Violations of the License Laws by Insurance and Other Companies, Emigrant Agents, owners or shows, etc., Persons Selling Pistols, etc. §490. No person or corporation within the limits of this State shall sell or offer for sale any pistol, rifle, cartridge or pistol cartridge less than .45 caliber, or metal knuckles, without first obtaining a license from the county in which such person or corporation is doing business so to do. The County Board of Commissioners of the several Counties of this State are authorized to issue licenses in their respective Counties for the sale of pistols and pistol and rifle cartridges of less than .45 caliber, and metal knuckles, upon the payment to the County Treasurer by the person or corporation so applying for said license of the sum of twenty-five dollars annually; and any person who shall sell or offer for sale any pistol, or pistol or rifle cartridge of less than .45 caliber, or metal knuckles, without having obtained the license provided in this Section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.</p>

Year	State	Text of Statute/Ordinance
1897	Alabama	<p>William Logan Martin, Commissioner, The Code of Alabama, Adopted by Act of the General Assembly of the State of Alabama, Approved February 16, 1897, Entitled “An Act to Adopt a Code of Laws for the State Alabama ” with Such Statutes Passed at the Session of 1896-97, as are Required to be Incorporated Therein by Act Approved February 17, 1897; and with Citations to the Decisions of the Supreme Court of the State Construing or Mentioning the Statutes Page 1137 (Vol. 1, 1897).</p> <p>[License Taxes; From Whom and For What Business Required; Prices; County Levy,] Taxation, § 27. For dealers in pistols, or pistol cartridges, or bowie-knives, or dirk-knives, whether principal stock in trade or not, three hundred dollars. Any cartridges, whether called rifle or pistol cartridges, or by any other name, that can be used in a pistol, shall be deemed pistol cartridges within the meaning of this subdivision. Any person or firm who orders for another, or delivers any cartridges within this state, shall be deemed a dealer under this provision.</p>
1911	New York	<p>1911 N.Y. Laws 444-45, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons. ch. 195, § 2.</p> <p>Such chapter is hereby amended . . . § 1914. Sale of pistols, revolvers and other firearms. Every person selling a pistol, revolver or other firearm of a size which may be concealed upon the person whether such seller is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered at the time of sale, the date of sale, name, age, occupation and residence of every purchaser of such a pistol, revolver or other firearm, together with the calibre [sic], make, model, manufacturer’s number or other mark of identification on such pistol, revolver or other firearm. Such person shall also, before delivering the same to the purchaser, require such purchaser to produce a permit for possessing or carrying the same as required by law, and shall also enter in such register the date of such permit, the number thereon, if any, and the name of the magistrate or other officer by whom the same was issued. Every person who shall fail to kep a register and enter therein the facts required by this section, or who shall fail to exact the production of a permit to possess or carry such pistol, revolver or other firearm, if such permit is required by law, shall be guilty of a misdemeanor. Such register shall be open at all reasonable hours for the inspection of any peace officer. Every person becoming the lawful possessor of such pistol, revolver or other firearm, who shall sell, give or transfer the same to another person without first notifying the police authorities, shall be guilty of a misdemeanor. This section shall not apply to wholesale dealers.</p>

Year	State	Text of Statute/Ordinance
1916	Illinois	<p>Samuel A. Ettelson, Opinions of the Corporation Counsel and Assistants from May 1, 1915, to June 30, 1916 Page 458-459 (Vol. 7, 1916)</p> <p>Ordinance of May 25, 1914, § 4a. It shall be unlawful for any person, firm or corporation to sell, barter or give away to any person within the City of Chicago, any pistol, revolver, derringer, bowie knife, dirk or other weapon of like character which can be concealed on the person, except to licensed dealers and to persons who have secured a permit for the purchase of such articles from the general superintendent of police as hereinafter required; provided, this section shall not apply to sales made of such articles which are delivered or furnished outside the City of Chicago. § 5. It shall be unlawful for any person to purchase any pistol, revolver, derringer, bowie knife, dirk or other weapon of like character, which can be concealed on the person, without first securing from the General Superintendent of Police a permit so to do. Before any such permit is granted, an application in writing shall be made therefor, setting forth in such application the name, address, age, height, weight, complexion, nationality and other elements of identification, of the person desiring such permit, and the applicant shall present such evidence of good character as the General Superintendent of Police in his discretion may require.</p>