

No. 24-1046

In The
Supreme Court of the United States

JASON WOLFORD, ET AL.,

Petitioners,

-v-

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAII,

Respondent.

**On Writ of Certiorari to the United States Court of
Appeals for the Ninth Circuit**

**BRIEF OF ASSOCIATION OF NEW JERSEY
RIFLE & PISTOL CLUBS, INC., NEW JERSEY
FIREARMS OWNERS SYNDICATE, NEW YORK
STATE RIFLE & PISTOL ASSOCIATION, INC.,
AND GUN OWNERS' ACTION LEAGUE, INC. AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Association of New Jersey Rifle & Pistol Clubs, Inc. (“ANJRPC”) is a not-for-profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members, including tens of thousands of members who reside in New Jersey. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people, and other law abiding firearms owners. Among ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. In contumacious violation of this Court’s ruling in *New York State Rifle & Pistol Association v. Bruen*, New Jersey imposes severe restrictions on the carry of handguns at least as restrictive and unconstitutional as the ones at issue in this case. Such unconstitutional restrictions are a direct affront to ANJRPC’s central mission.

New Jersey Firearms Owners Syndicate (“NJFOS”) is a nonprofit incorporated in the State of New Jersey with its principal place of business in Atlantic Highlands, New Jersey. NJFOS advocates on behalf of its thousands of members across the state in respect of their fundamental right to keep

¹ No counsel for a party authored this brief in whole or in part. No person or entity, other than amici or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

and bear arms. NJFOS's purpose is to educate both the public and lawmakers on legislative issues affecting or proposing to limit or negatively impact those fundamental civil liberties, and to take legal action when those rights are unconstitutionally restrained. NJFOS is interested in this case because Hawaii's restrictions on the right of its citizens to carry firearms for self-defense outside their homes violate the Second Amendment. New Jersey has placed virtually the same restrictions on our members and all peaceable people across the state seeking to protect themselves outside their home.

New York State Rifle & Pistol Association, Inc. ("NYSRPA") is a nonprofit member organization first organized in 1871 in New York City. NYSRPA is the oldest firearms advocacy organization in the United States, and it is the largest firearms organization in the state of New York. NYSRPA provides education and training in the safe and proper use of firearms, promotes the shooting sports, and supports the right to keep and bear arms through both legislative and legal action.

Gun Owners' Action League, Inc. ("GOAL") is a membership organization focused on promoting and defending the fundamental right of ordinary citizens to keep and bear arms for lawful purposes, including, but not limited to, competition, recreation, hunting, and self-defense. GOAL was established in November of 1974 and has a principal place of business in Westboro, Massachusetts.

SUMMARY OF THE ARGUMENT

During the fourteen years following this Court's ruling in *District of Columbia v. Heller*, 554 U.S. 570 (2008), lower courts developed and applied a methodology for implementing that ruling which allowed them to mostly uphold laws implicating the Second Amendment right to keep and bear arms. See *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 17-26 (2022). As the Court explained in *Bruen*, that methodology was not consistent with *Heller* and was roundly rejected. *Id.*

Nevertheless, the experience during this interval illustrated that the task of fashioning a ruling that will sufficiently guide lower courts can be challenging indeed. And so, the Second Amendment now faces a similar challenge that threatens to undermine the rigorous methodology laid out by this Court in *Bruen*, that is: Level of Analogical Generality.

Because the meaning of the Second Amendment was fixed at the time of its ratification, *see id.* at 28, the historical inquiry is a comparison of the modern, challenged law, with the historical understanding of the nature and scope of the right to keep and bear arms at time the Second Amendment was enshrined in the Constitution. But, as the Court explained, sometimes this analysis must be done by analogy.

This Court had its first post-*Bruen* opportunity

to apply the *Bruen* methodology in *United States v. Rahimi*, 602 U.S. 680 (2024).

Under the Court’s approach in *Rahimi*, multiple lines of law can be combined to illustrate a “principle” arising from a historical tradition. This poses a challenge for litigants and courts in that courts inclined to uphold a modern law may choose to stitch together historical laws in a way that renders the Second Amendment a nullity.

In her concurring opinion in *Rahimi*, Justice Barrett referred to this challenge in terms of “level of generality.” Lower courts have already begun to fail the level of generality challenge.

Numerous lower courts are already improperly upholding laws by abstracting historical analogs at an exceedingly high level of generality. *See, e.g., McCoy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 F.4th 568 (4th Cir. 2025); *National Rifle Association v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc); *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024); and *Koons v. Attorney General New Jersey*, 156 F.4th 210 (3d Cir. 2025). The decision below of the Ninth Circuit suffers from this error as well.

Unfortunately, “level of generality” is the new “interest balancing.” No longer able to engage in explicit interest balancing through the application of intermediate scrutiny, lower courts can now

embrace high levels of analogical generality to uphold nearly any law. In light of this, clear guidance from this Court now on level of generality would serve to avoid years of potential lower court error such as prevailed in the years prior to *Bruen*. As such, *Amici* urge the Court to adopt the following approach to level of generality.

1. Courts should use close firearm-specific analogs first instead of general law provisions.
2. Only if close analogues are lacking should courts abstract. But not to global doctrines (like general contract voidability) that merely had incidental spillover effects on all purchases. Abstraction should preserve *Bruen*'s "how and why" focus: comparable burdens for comparable reasons.
3. In pulling "principle" from historical tradition, courts should rely on only lines of historical law that are themselves *each* "well-established and representative," as the Court did in *Rahimi* with surety laws and going armed laws, rather than stitching together disparate outliers and calling the result a historical tradition, as the Ninth Circuit did below and the Third Circuit did in *Koons*.

These guardrails would suitably and effectively constrain lower courts and prevent years of lower court error.

ARGUMENT

The Court Should Reverse the Judgment Below and Provide Guidance to the Lower Courts on Applying a Proper Level of Generality in Analogical Analysis under *New York State Rifle & Pistol Association v. Bruen*.

During the fourteen years following this Court's ruling in *District of Columbia v. Heller*, 554 U.S. 570 (2008), lower courts developed and applied a methodology for implementing that ruling which allowed them to mostly uphold laws implicating the Second Amendment right to keep and bear arms. See *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 17-26 (2022). As the Court explained in *Bruen*, that methodology was not consistent with *Heller* and was roundly rejected. *Id.*

Nevertheless, the experience during this interval illustrated an important aspect of the business of appellate courts, generally, and this Court, in particular, in that the task of fashioning a ruling that will sufficiently guide lower courts can be challenging indeed. And so, the Second Amendment now faces a similar challenge that threatens to undermine the rigorous methodology laid out by this Court in *Bruen*, that is: Level of Analogical Generality.

A. The Analogical Method

In *Bruen*, the Court explained the correct methodology as follows:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 24 (citation omitted).

Because the meaning of the Second Amendment was fixed at the time of its ratification, *see id.* at 28, the historical inquiry is a comparison of the modern, challenged law, with the historical understanding of the nature and scope of the right to keep and bear arms at time the Second Amendment was enshrined in the Constitution. The Court went on to explain that:

The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. In some cases, that

inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.

Id. at 26-27.

The method is ultimately comparative—but comparative to what? One thing that both courts and litigants have learned since *Bruen* is that the selection of comparator(s) does an enormous amount (perhaps all) of the work.

The Court provided several instructions in this regard. Perhaps most importantly, the Court explained that “[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Id.* at 28.

Because of this, the “historical inquiry that courts must conduct will often involve reasoning by analogy—a commonplace task for any lawyer or

judge. Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are ‘relevantly similar.’” *Id.* at 28-29.

Importantly, to understand the essence of “relevantly similar,” the Court explained that:

... *Heller* and *McDonald* point toward at least two metrics: *how and why* [emphasis added] the regulations burden a law-abiding citizen's right to armed self-defense. As we stated in *Heller* and repeated in *McDonald*, “individual self-defense is ‘the *central component*’ of the Second Amendment right.” Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are “*central*” considerations when engaging in an analogical inquiry.

Id. at 29 (cleaned up).

The Court went on to highlight that selection of the correct comparator(s) necessarily falls between two extremes:

To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.

On the one hand, courts should not “uphold every modern law that remotely resembles a historical analogue,” because doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

Id. at 30 (emphasis in original).

Two additional analytical rules from *Bruen* bear discussion. First, the Court was clear that laws forming a historical tradition need to be numerically widespread:

In the colonial era, respondents point to only three restrictions on public carry. For starters, we doubt that three colonial regulations could suffice to show a tradition of public-carry regulation.

Id. at 46. And, certainly, reliance on outliers cannot demonstrate a historical tradition. *Id.* at 65-66.

Second, laws must be historically longstanding to form a tradition. *Id.* at 49 (“[a]t most eight years of history in half a Colony roughly a century before the

founding sheds little light on how to properly interpret the Second Amendment”). *See also Id.* at 69 (territorial laws are too transitory to form a tradition).

Both of these criteria help ensure that, to illustrate a historical tradition, analogically appropriate historical laws are “well-established and representative.” *Id.* at 30.

B. The Level of Generality Problem

This Court had its first post-*Bruen* opportunity to apply this methodology in *United States v. Rahimi*, 602 U.S. 680 (2024). In *Rahimi*, the Court considered a facial challenge under the Second Amendment to 18 U.S.C. §922(g)(8) which prohibits firearm possession by a person subject to a domestic violence restraining order. The Court rejected the facial challenge. In a narrow ruling, the Court held as follows:

An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.

602 U.S. at 702.

Notably, the six Justice majority from *Bruen* split in *Rahimi*, with five of the six *Bruen*-majority Justices joining the majority and Justice Thomas

dissenting. The key difference between the majority and the dissent was the manner in which two lines of historical laws served (or failed) as comparators under the *Bruen* analogical methodology. To find section 922(g)(8) facially constitutional, the majority relied on (1) surety laws and (2) what the Court referred to as “going armed” laws.

Historically, surety laws provided that a person found by a magistrate to be a risk of future violent conduct could be compelled to post a bond for a period of time to guarantee his future good behavior. If the individual failed to post a bond, he could be jailed. If he posted a bond and violated the bond, it would be forfeited. 602 U.S. at 695-97.

As to going armed laws, the Court explained:

Whether classified as an affray law or a distinct prohibition, the going armed laws prohibited “riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land.” Such conduct disrupted the “public order” and “le[d] almost necessarily to actual violence.” Therefore, the law punished these acts with “forfeiture of the arms . . . and imprisonment.”

Id. at 697-98.

In his dissent, Justice Thomas rejected the analogical validity of these laws. *Id.* at 753-59. Importantly, Justice Thomas observed that neither

surety laws nor going armed laws matched the *how* and *why* of section 922(g)(8). *Id.* Though not insisting on an “historical twin” (Justice Thomas did not expect the Government to produce historical restraining order laws), Justice Thomas did insist that any historical law be relevantly similar on its own accord. *Id.* Neither surety laws nor going armed laws was, *by itself*, a historical tradition sufficiently analogous to section 922(g)(8).

In departing from Justice Thomas’s view, rather than viewing each individual law as reflecting a separate historical tradition, the majority understood surety laws and going armed laws *together* as forming a single historical tradition that was relevantly similar, *jointly* supporting the *how* and *why* of section 922(g)(8). *Id.* at 698-701.

Notably, both approaches represent analogical reasoning. However, Justice Thomas’s approach demands individualized relevant similarity between one line of historical law and the challenged modern regulation. Under this view, a single line of law represents a historical tradition as it requires a one-to-one analogical relationship between the historical law and the modern law.

Under the majority’s approach, multiple lines of law can be combined to illustrate a “principle” arising from a historical tradition. This poses a challenge for litigants and courts in that courts inclined to uphold a modern law may choose to stitch

together historical laws in a way that renders the Second Amendment a nullity.

In her concurring opinion in *Rahimi*, Justice Barrett referred to this challenge in terms of “level of generality,” explaining:

To be sure, a court must be careful not to read a principle at such a high level of generality that it waters down the right. Pulling principle from precedent, whether case law or history, is a standard feature of legal reasoning, and reasonable minds sometimes disagree about how broad or narrow the controlling principle should be.

Here, though, the Court settles on just the right level of generality: “Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.” *Ante*, at 1896; see also *Kanter v. Barr*, 919 F.3d 437, 451, 464–465 (CA7 2019) (Barrett, J., dissenting) (“History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns”). Section 922(g)(8)(C)(i) fits well within that principle; therefore, *Rahimi*’s facial challenge fails. Harder level-of-generality problems can await another day.

Id. at 740.

“Another day” has arrived, as lower courts have already begun to fail the level of generality challenge. In a forthcoming paper, George A. Mocsary, Professor of Law at the University of Wyoming College of Law and Director of the University of Wyoming Firearms Research Center, illustrates the level of generality challenge in the context of firearm restrictions for 18- to 20-year old adults. See George A. Mocsary, *The Wrong Level of Generality: Misapplying Bruen to Young-Adult Firearm Rights*, 103 Wash. U. L. Rev. Online 100 (forthcoming Dec. 2025).

Professor Mocsary cites three recent decisions of the Courts of Appeals: *McCoy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 F.4th 568 (4th Cir. 2025); *National Rifle Association v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc); and *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), as examples of level of generality gone awry. He explains:

Rather than ask whether there is a tradition of restricting young adults’ arms rights, *McCoy* and *Bondi* reach for broad, non-firearm-specific infancy rules from contract law; *Polis* reframes the question as a generic regulation of commercial sales [describing the latter error as a “category mistake”].

Another significant level of generality error can

be found in the recent decision of the Third Circuit in a challenge to New Jersey’s very similar version of the law at issue in the Petition, *Koons v. Attorney General New Jersey*, 156 F.4th 210 (3d Cir. 2025).² While not resorting to non-firearms law analogies, the Third Circuit conducted its analysis at an extremely high level of generality. In searching for a principle to serve as a comparator historical tradition, the court stitched together a variety of disparate outliers to construct a supposed singular tradition of restricting public carry of arms nearly everywhere in public life. *Id.* at 228-42.³ In this way, the Third Circuit upheld nearly every aspect of New Jersey’s egregious so-called “sensitive place” law that effectively nullifies the fundamental constitutional right to carry arms in public recognized in *Bruen*.⁴ *Id.* at 249-71.

² The plaintiffs in *Koons*, and the consolidated case *Siegel v. Attorney General New Jersey*, have petitioned for rehearing *en banc*. As of the filing of this brief that petition remains pending.

³ There are many other problems with the historical analogs chosen by the panel in *Koons* (and the opinion overall), but the level of generality problem embodied in the court’s “sensitive place” analysis is highly illustrative of the issue and, thus, very instructive.

⁴ Although the Third Circuit in *Koons* correctly struck New Jersey’s version of the similar “Vampire Rule” that is challenged in this case, upholding the vast array of so-called “sensitive place” restrictions essentially accomplishes the same odious result.

And, notably, the Ninth Circuit in the within matter commits *two* level of generality errors when it relies on the 1771 New Jersey law and the 1865 Louisiana law to uphold Hawaii’s Vampire Rule. First, like the courts discussed by Professor Mocsary, the Ninth Circuit abstracts far away from the existing historical record in embracing two outlier laws instead of the myriad other laws that establish a tradition of regulating only poaching activities on private land. Second, like the Third Circuit in *Koons*, the Ninth Circuit abstracts out to a level of generality whereby it attempts to manufacture a tradition by stitching together historical outliers.⁵ *Wolford v. Lopez*, 116 F.4th 959, 994-95 (9th Cir. 2024).

These examples demonstrate that “level of generality” is the new “interest balancing.” No longer able to engage in explicit interest balancing through the application of intermediate scrutiny, lower courts can now embrace high levels of analogical generality to uphold nearly any law. In light of this, clear guidance from this Court now on level of generality would serve to avoid years of potential lower court error such as prevailed in the years prior to *Bruen*. As such, *Amici* urge the Court to adopt the following approach to level of generality.

⁵ As Petitioners and other *amici* point out, these two “analogies” suffer from numerous other *Bruen* deficiencies as well.

C. The Level of Generality Problem Solved

In his paper, Professor Mocsary sets forth two basic rules that help cabin level of generality. First, he urges courts to “*use close firearm-specific analogues first.*” All three of the examples discussed above fail this rule. In the 18-20 year old cases, those courts *start* already outside the field of arms, instead starting at general principles of law. In *Koons*, the Third Circuit starts at as high a level of generality as possible, using disparate outliers to synthesize a broad overarching principle. And of course the Ninth Circuit below disregards the existing regulatory tradition of addressing only firearm possession relating to poaching activities and, instead, reaches higher to embrace outliers in the manner of *Koons*.

Second, Professor Mocsary urges:

Only if close analogues are lacking should courts abstract. But not to global doctrines (like general contract voidability) that merely had incidental spillover effects on all purchases. Abstraction should preserve *Bruen’s* “how and why” focus: comparable burdens for comparable reasons.

Again, all three of the examples discussed also failed this test. The Ninth Circuit below plainly violated this rule by ignoring the pre-existing historical tradition regarding poaching and attempting to abstract upwards.

The one remaining question, then, is how high may courts abstract even if they remain within the specific space of historical arms regulation and where the space may not already be occupied by a more specific historical tradition. The answer can be found in *Rahimi* itself.

Although the difference in level of generality between the majority and the dissent was crucial to the outcome of *Rahimi*, the majority nevertheless hewed to a critical constraint ignored by both the Ninth Circuit below and the Third Circuit in *Koons*. In identifying a tradition formed by the two lines of historical laws, surety laws and going armed laws, this Court relied only on lines of historical law that were themselves each “well-established and representative.” 591 U.S. at 30. As the Court illustrated, both surety laws and going armed laws were long standing in both the common law and in state statutes and exhibited sufficient numerosity to each be widespread. 602 U.S. at 698-701.

Disregarding this constraint, both the Ninth Circuit below and the Third Circuit in *Koons* stitched together outliers none of which were themselves well established and representative and thereby freely abstracted to as high as a level of generality as was necessary to uphold the challenged laws. By disregarding this critical aspect of *Rahimi* in this way, those courts (and others) are abstracting highly generic *whys* and giving very short shrift to the *how* inquiry.

Requiring courts to adhere to Professor Mocsary's two basic rules of abstraction and also insisting that in pulling "principle" from historical tradition that courts rely on only lines of historical law that are themselves each "well-established and representative," as *Rahimi* did, would suitably and effectively constrain lower courts and prevent years of lower court error. Amici urge the Court to adopt this approach and reverse the judgment below.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below and provide the requested guidance to the lower courts.

Respectfully submitted,

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