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SUPREME COURT OF THE STATE OF WASHINGTON

GEOFFREY G. MCLELLAN AND JACKSON W.
HOLLOWAY,

Petitioners–Respondents,

v.

NICHOLAS W. BROWN, in His Official Capacity,

Respondent–Petitioner.

OPENING BRIEF OF NICHOLAS W. BROWN

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I. INTRODUCTION

Under *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), firearm laws are constitutional where they are consistent with the principles underpinning our nation's regulatory tradition. One of these principles is that legislatures may disarm categories of people whom the legislature determines would pose a heightened risk of danger if armed. The U.S. Supreme Court held as much just last year. *United States v. Rahimi*, 602 U.S. 680 (2024). Courts have also recognized, in applying *Bruen*, the related traditions of disarming those convicted of serious crimes and those who are likely to abuse alcohol. These traditions arose alongside—not in opposition to—the right to bear arms and have justified centuries of regulation.

This precedent resolves this case because the challenged law fits squarely within each of these historical principles. House Bill (H.B.) 1562 temporarily prohibits firearm possession for those with at least two drunk driving convictions within seven

years. Drunk driving—particularly recidivist drunk driving—is a dangerous and often deadly crime and is a statistically significant predictive factor for gun violence. H.B. 1562 was passed to reduce gun violence based on this body of evidence. Many states have joined Washington in enacting similar laws, reflecting a national consensus.

H.B. 1562 is therefore constitutional as applied to Petitioner–Respondents McLellan and Holloway (Petitioners), who were convicted of drunk driving three times and twice, respectively, during the last seven years. And while the State could constitutionally disarm Petitioners permanently, H.B. 1562 does not do so. Petitioners must simply go five years without being convicted of any crime prohibiting the possession of a firearm. If they can do that, they will have their firearm rights restored. Both in its justification and in the time-limited burden it imposes, H.B. 1562 is entirely in line with laws upheld by the Supreme Court, the Ninth Circuit, and other courts post-*Bruen*.

In denying the Attorney General's Motion for Judgment on the Pleadings, the superior court nonetheless held that facts about Petitioners' *individual* propensity to violence are necessary to decide whether their as-applied challenge should succeed. This ruling goes against the vast weight of authority holding that legislatures may disarm *groups* of people found to pose a heightened risk of dangerousness, without an individualized assessment of each person's dangerousness. This Court should therefore reverse the superior court's ruling and remand with instructions that judgment be entered for the State.

II. ASSIGNMENT OF ERROR

The superior court erred by denying the Attorney General's motion for judgment on the pleadings.

III. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

Does the Second Amendment permit the Washington Legislature to constitutionally disarm persons convicted of two driving under the influence offenses in seven years, without the need for a further individualized showing of dangerousness?

IV. STATEMENT OF THE CASE

A. H.B. 1562 is an Evidence-Backed Law Aimed at Reducing Gun Violence

Washington's Legislature passed Substitute House Bill 1562 to reduce gun violence. Laws of 2023, ch. 295, § 1(1). As the Legislature found, "data indicates that in 2021, approximately 20,996 Americans died by firearm homicide and that 81 percent of all homicides are committed with a firearm." *Id.* The Legislature found that gun violence disproportionately harmed black men, women of color, and victims of intimate partner violence. *Id.* § (1), (2).

In an effort to meaningfully reduce gun violence, the Legislature reviewed "[a]n extensive body of research" to "identif[y] specific risk factors that increase the likelihood of individuals engaging in future violence, including gun violence, and presenting further risk to public safety." *Id.* § 1(4). Among other things, the Legislature noted that one "particularly strong risk factor[] for future violence include[s] . . . frequent risky alcohol use[.]" *Id.* Thus, to ensure that "the laws regarding

firearm possession and the restoration of firearm rights are grounded in risk assessment data to help protect public health and safety while upholding individual liberty,” *id.*, the Legislature amended RCW 9.41.040 to make it unlawful for anyone to possess a firearm who has twice been convicted of driving while intoxicated within a seven-year period. *Id.* § 3 (codified at RCW 9.41.040(2)(a)(i)(D)).¹

H.B. 1562 does not permanently disarm recidivist drunk drivers, however. Rather, an individual subject to the two-in-seven restriction who has been out of custody for five years without committing any serious offenses can have their

¹ H.B. 1562 added convictions for a “prior offense” as defined in RCW 46.61.5055(14) if committed within seven years of a conviction for any other prior offense” to the list of convictions resulting in a prohibition on firearm possession. Laws of 2023, ch. 295 § 3. A “prior offense” includes driving under the influence (RCW 46.61.502), physical control of a vehicle under the influence (RCW 46.61.504), driving with alcohol or THC in system (RCW 46.25.110), and other crimes related to driving under the influence. *See* RCW 46.61.5055(14). For the purposes of this brief, this collection of convictions that trigger the two-in-seven provision of H.B. 1562 will be referred to as “drunk driving” or “DUI offenses”.

firearm rights restored. *Id.* § 4(2)(a)(i)(I) (codified at RCW 9.41.041(2)(a)(i)(I)). The Legislature found that “it is important to recognize and remove barriers for individuals who have demonstrated that they have safely reintegrated into their communities.” *Id.* § 1(7).

The Legislature’s finding that recidivist drunk driving convictions indicate a heightened risk of gun violence is amply supported by public health research. During hearings on the bill, the Legislature heard testimony about “study after study” demonstrating a “correlation between alcohol abuse and future gun violence.” *See* Hr’g on H.B. 1562 Before the S. Law & Justice Comm. (March 21, 2023), at 45:20–30, *video recording by TVW*, <https://tvw.org/video/senate-law-justice-2023031425/?eventID=2023031425>. Among other things, the Legislature heard about a recent study in which “researchers found that firearm-specific homicide [death] rates among women were nineteen percent lower in states where firearm access was restricted after one or two DUI offenses, eighteen percent lower

in states with restrictions after three or more offenses.” *Id.* at 45:33–45:53. Another study “found that disqualifying persons with a history of alcohol misdemeanors . . . led to a reduction in firearm homicide and . . . suicide.” *Id.* at 46:00–46:12; *see also* Hr’g on H.B. 1469 Before the S. Law & Justice Comm. (March 22, 2023), at 18:33–18:45, *video recording by TVW*, <https://tvw.org/video/senate-law-justice-2023031427/?eventID=2023031427> (statement of Sen. Keith Wagoner, an opponent of the bill, acknowledging “a plethora of studies” identifying a correlation between DUIs and gun violence).

Corroborating this testimony, numerous peer-reviewed studies in the past decade have concluded “that there is an association between alcohol misuse and increased risk of firearm injuries and deaths.” Andrew G. Bowen, et al., *Relation of Driving Under the Influence Laws to Access to Firearms Across US States*, 111 *Am. J. of Pub. Health*, 253–258 (2021), <https://doi.org/10.2105/AJPH.2020.305995> (citing studies). For example, one study of more than 78,000 gun purchasers in

California found that those with prior DUI convictions were subsequently arrested for violent crimes at a rate almost *five times* higher than those without criminal records. Rose M.C. Kagawa, et al., *Association of Prior Convictions for Driving Under the Influence With Risk of Subsequent Arrest for Violent Crimes Among Handgun Purchasers*, 180 JAMA Intern Med., 35-43 (2020), <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2751947>: see also Garen Wintemute, et al., *Firearms, alcohol and crime: convictions for driving under the influence (DUI) and other alcohol-related crimes and risk for future criminal activity among authorized purchasers of handguns*, 24 Inj. Prev., 68–72 (2018), https://injuryprevention.bmj.com/content/24/1/68?mod=article_online (finding that 32.8% of handgun purchasers with prior DUIs or other alcohol-related convictions were subsequently arrested for a violent or firearm-related crime, as opposed to 5.7% of those with no prior criminal history, and finding that handgun purchasers with alcohol-related convictions were 5.9 times more

likely to be arrested for murder, rape, robbery, or aggravated assault).

In particular, researchers have identified a link between prior DUI convictions and intimate partner violence, with one study finding that gun purchasers with prior DUI convictions and no other criminal history had close to three times the risk of subsequent arrest for an intimate partner violence offense than those with no criminal history. *See* Hannah Laqueur, et al., *Alcohol-related crimes and risk of arrest for intimate partner violence among California handgun purchasers*, 38 Health Aff (Millwood), 1719-26 (2019), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2019.00608>; *see also* Marlene C. Lira, et al., *Alcohol Policies and Alcohol Involvement in Intimate Partner Homicide in the U.S.*, 57 Am. J. of Prevent. Med., 172-79 (2019), <https://doi.org/10.1016/j.amepre.2019.02.027>; Laws of 2023, ch. 295, § 1(1) –(4) (discussing the risks and harms of intimate partner violence). Thus, public health researchers have recommended restricting firearm access by individuals with

multiple prior DUI convictions. *See, e.g.*, Emma E. McGinty and Daniel W. Webster, *The Roles of Alcohol and Drugs in Firearm Violence*, 177 *JAMA Internal Med.*, 325 (2017), (“[R]estricting access to firearms among individuals who misuse alcohol or sell illegal drugs could help.”); Charles C. Branas, et al., *Alcohol Use and Firearm Violence*, 38 *Epidemiologic Reviews*, 32-45 (2016), <https://doi.org/10.1093/epirev/mxv010>; Laqueur, et al., *supra*.

States are nearly unanimous in treating recurrent alcohol abuse, including recidivist drunk driving, as a condition warranting firearm restrictions. At least three other states and Washington, D.C., specifically restrict firearm possession by individuals with multiple DUI convictions in a set span of time. *See Md. Public Safety Code* § 5-133(b)(4); 18 Pa. Cons. Stat. § 6105(c)(3); Mass. Gen. Laws ch. 140, § 129B(1)(i); Mass. Gen. Laws ch. 90, § 24(1)(a)(1); D.C. Code § 7-2502.03. At least 11 more states restrict firearm access for those suffering alcohol dependence. *See Ala. Code* § 13A-11-72; Haw. Rev. Stat.

§ 134–7(c)(1); Ind. Code § 35–47–4–1; Kan. Stat. § 21-6301(9),(13); Mo. Rev. Stat. § 571.070; N.J. Stat. § 2C:58-3; Ohio Rev. Code § 2923.13(A)(4); S.C. Code § 16-23--30; Tenn. Code Ann. § 39–17–1316; Tex. Gov’t Code § 411.172; W. Va. Code § 61–7–7(a)(2). The federal restriction on firearm possession for felons, 18 U.S.C. § 922(d)(1), sweeps in 47 states (including Washington) that treat recidivist drunk driving as a felony or felony-equivalent offense.² *See* Bowen, et al., *supra*, at 253–58 (collecting state laws).³ Moreover, 39 states have their own felon-in-possession laws, many of which independently bar recidivist drunk drivers from possessing

² 18 U.S.C. § 922(d)(1) restricts firearm possession by anyone who “has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year[,]” except “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” 18 U.S.C. § 921(a)(20). Thus, the count of 47 states includes those states who treat recidivist drunk driving as a felony, as well as those who treat it as a misdemeanor punishable by more than two years.

³ In Washington, a fourth DUI conviction within ten years triggers the federal prohibition of 18 U.S.C. § 922(d)(1). RCW 46.61.502(6)(a).

firearms. See Everytown Research & Policy, *Which states prohibit people with felony convictions from having firearms?*, <https://everytownresearch.org/rankings/law/felony-prohibitor/> (last visited Aug. 12, 2025) (citing state laws).

In short, the states and the federal government are virtually unanimous in treating recidivist drunk driving as a dangerous offense and grounds for disarmament.

B. Petitioners Are Denied Concealed Pistol Licenses Based on Their History of DUI Convictions

Petitioners are two individuals who allege that they were denied concealed pistol licenses under H.B. 1562's two-in-seven restriction. Geoffrey McLellan alleges that he was convicted of DUI offenses three times—twice in 2018 and again in 2024. CP 2. Jackson Holloway alleges that he was convicted of a DUI in 2022, and then another less than 18 months later in 2024. CP 4. Both allege that they applied for concealed pistol licenses in 2024 and that they were denied based on their multiple drunk driving convictions. CP 2, 4.

Petitioners challenged those denials, asking the superior

court to “enter a declaratory judgment, ruling that RCW 9.41.040(2)(a)(i)(D), its derivative regulations, and all related laws, policies, and procedures, as applied to Petitioners, violate their right to keep and bear arms as secured by the Second Amendment.” CP 6.⁴

C. The Superior Court Denies the Attorney General’s Motion for Judgment on the Pleadings

Within weeks of filing suit, Petitioners moved for summary judgment. CP 71. The Attorney General opposed the motion and cross-moved for judgment on the pleadings, arguing that individuals with two or more DUI convictions in seven years may be constitutionally prohibited from possessing firearms without the need for an individualized determination of their

⁴ Petitioners initially filed suit against the Spokane Police Department (SPD), seeking, in addition to the declaratory judgment and a permanent injunction, a writ of mandamus compelling SPD to issue their concealed pistol licenses. CP 1–7. The Attorney General intervened under RCW 7.24.110 because Petitioners challenged the constitutionality of a state statute. CP 8–24. The superior court dismissed SPD from the case, finding no basis for mandamus. CP 144–45. This left Petitioners and the Attorney General as the remaining parties. CP 145.

propensity for gun violence. *See* CP 81–109. The Attorney General further maintained that legislative findings and social science research (*see supra* at 6–10) of which the court could take judicial notice established a link between recidivist DUI convictions and firearm violence. CP 84–88, 95

The superior court denied both the Petitioners’ Motion for Summary Judgment and the Attorney General’s Motion for Judgment on the Pleadings, holding that “there are issues of material fact regarding whether the Petitioners’ possession of firearms poses a credible threat to public safety” that precluded granting either motion. CP 145–46 (citing *Rahimi*, 602 U.S. at 702). In other words, the superior court concluded that an individualized determination of Petitioners’ dangerousness was necessary to restrict their firearm rights.

The parties jointly moved to certify the superior court’s ruling for interlocutory review as involving a controlling question of law under RAP 2.3(b)(4). Petr. App’x 108–24. In denying that motion, the superior court reiterated that it needed

to review further facts relating to Petitioners' individual histories before making a final ruling. Petr. App'x 137. This included details about Petitioners' convictions, such as:

[A] probable cause statement about what happened, what allegedly happened with respect to the incidents that led to their convictions for drunk driving offenses. So probable cause statement, possibly an initial charging document, and then an amended charging document, a plea agreement, and then a judgment and sentence. At the judgment and sentence, often there will be a transcript – not always, but often – where the judge makes comments indicating why they're choosing the sentence that they are imposing.

Petr. Appx. 128–129.

In this Court, the parties stipulated that direct interlocutory review is appropriate under RAP 2.3(b)(4) because the superior court's order involves a controlling question of law for which there is a substantial ground for a difference of opinion and immediate appellate review of the superior court's order may materially advance the ultimate termination of the litigation. This Court granted direct review.

V. STANDARD OF REVIEW

This Court reviews *de novo* a superior court's ruling on a motion for judgment on the pleadings. See *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014).

VI. ARGUMENT

H.B. 1562 is constitutional as applied to McLellan and Holloway as a matter of law. They can be prohibited from firearm possession for five years based on their own allegations that they were convicted of two or more DUI offenses within seven years. The superior court's ruling that it needed to examine Petitioners' individual tendencies towards violence was error. Instead, the Legislature may, consistent with the Second Amendment and the *Bruen* test, disarm categories of people posing a heightened risk of dangerousness—as well as those convicted of serious crimes and those likely to abuse alcohol.

The right secured by the Second Amendment is neither unlimited nor absolute. *District of Columbia v. Heller*,

554 U.S. 570, 626 (2008). The Amendment provides that “[a] well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” U.S. Const. amend. II. From before the Founding, legislatures, imposed restrictions on firearms, and the Supreme Court recently clarified that current restrictions are constitutional where they are consistent with “the principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692.⁵ Under that test, where historical laws “regulated firearm use to address particular

⁵ This analysis only applies when a plaintiff has first shown that their conduct falls within the Second Amendment’s scope. In *Heller*, the Court made clear that the Second Amendment protects only “those weapons . . . typically possessed by *law-abiding citizens* for lawful purposes.” *Heller*, 554 U.S. at 625 (emphasis added). Because Petitioners are not “law-abiding citizens,” it is not clear that they are among “the people” whose right to bear arms is protected in the first place. See *United States v. Price*, 111 F.4th 392, 402 n.4 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 1891, 221 L. Ed. 2d 583 (2025); *but see United States v. Duarte*, 137 F.4th 743, 753 (9th Cir. 2025) (*en banc*) (upholding constitutionality of felon-in-possession restriction despite concluding that felons are part of “the people” covered by the Second Amendment). Nonetheless, for the sake of this appeal only, the Attorney General assumes that Petitioners are part of “the people” protected by the Second Amendment.

problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons” are constitutional. *Id.* The Supreme Court has recognized that longstanding bans on firearm possession by, for example, “felons and the mentally ill” are “presumptively lawful” because they address “categories of persons thought by a legislature to present a special danger of misuse.” *Rahimi*, 602 U.S. at 699–700 (quoting *D.C. v. Heller*, 554 U.S. 570, 626).

H.B. 1562 addresses precisely this problem: “the disarmament of individuals who pose a credible threat to the physical safety of others.” *Id.* at 693. The law fits well within at least three enduring historical principles: (1) restricting firearm possession for categories of people with a heightened risk of violence; (2) restricting firearm possession for people convicted of serious crimes; and (3) restricting firearm possession for those likely to abuse alcohol. These principles have justified restrictions on firearm possession since America’s founding that are similar to, or more burdensome than, the second-in-seven

provision challenged here. Each principle provides an independent basis for upholding Washington’s law, and none requires further individualized assessment of dangerousness.

A. The Legislature May Constitutionally Restrict Firearm Possession for Categories of Dangerous Persons, including Recidivist Drunk Drivers

1. Legislatures can categorically disarm groups of people who pose a heightened risk of danger

As the Legislature found, recidivist drunk drivers are dangerous—and restrictions on the possession of firearms by dangerous individuals, who pose a heightened threat to the safety of themselves or others, are consistent with the history and tradition of the United States. Further, although this historical justification is sufficient to bar a person for life from having guns, H.B. 1562 allows for the restoration of gun rights if the person abides by the law for five years. H.B. 1562 is thus constitutional as applied to Petitioners. *See United States v. Goins*, 118 F.4th 794, 801 (6th Cir. 2024) (holding that where a person “engaged in conduct that endangered the . . . public when he [repeatedly] drove under the

influence[, i]t is within this nation’s historical tradition . . . to temporarily limit his firearm possession as a result of the dangerousness his conduct exhibited”).

Courts have repeatedly recognized that our nation’s historical tradition establishes that legislatures may restrict firearm possession from categories of persons found to pose a heightened danger of misuse. The Supreme Court held in *Rahimi* that “the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others.” *Rahimi*, 602 U.S. at 693; *see also id.* at 1902–03; *see also New York State Rifle & Pistol Ass’n v. City of New York*, 590 U.S. 336, 364 (2020) (noting that the Court in *Heller* “recognized that history supported the constitutionality of . . . laws . . . prohibiting possession by felons *and other dangerous individuals*”) (Alito, J., joined by Thomas and Gorsuch, J.J., dissenting) (emphasis added).

More recently, the *en banc* Ninth Circuit has made clear that “legislatures may categorically disarm those they deem

dangerous, without an individualized determination of dangerousness[.]” *Duarte*, 137 F.4th at 755; *see also United States v. Perez-Garcia*, 96 F.4th 1166, 1186 (9th Cir. 2024) (“[T]he historical record reflects that legislatures have long disarmed groups [and] individuals whose possession of firearms would pose an unusual danger, beyond the ordinary citizen, to themselves or others.”). As now-Justice Amy Coney Barrett explained: “History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns.” *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting). Thus, the core principle underlying H.B. 1562 is deeply rooted in America’s history and tradition. *See* Laws of 2023, ch. 295, § 1(4) (justifying restriction because “frequent risky alcohol use” is a “particularly strong risk factor[] for future violence”).

The Supreme Court in *Rahimi* explained the historical traditions underlying this principle in upholding against a facial and as-applied attack a statute prohibiting firearm possession

while a person is subject to a protection order. *Rahimi*, 602 U.S. at 699 (discussing 18 U.S.C. § 922(g)(8)). The Court relied on two distinct legal traditions, both of which date to well before the drafting of the U.S. Constitution. First, surety laws, which “authorized magistrates to require individuals suspected of future misbehavior to post a bond.” *Id.* at 695. Second, affray statutes, which generally prohibited “riding or going armed, with dangerous or unusual weapons, to terrify the good people of the land.” *Id.* at 697 (quoting 4 Blackstone 149) (internal quotation marks omitted). Based on these two distinct but complementary traditions, the Court held: “When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at 698.

The Ninth Circuit has twice reached a similar conclusion via post-*Bruen* analyses of history from 17th-century England through ratification of the Constitution and beyond. In *Perez-Garcia*, the court concluded that “the Anglo-American right to keep and bear arms for self-defense has always coexisted

with legislative authority to disarm groups or individuals whose possession of firearms would pose an unusual danger, beyond the ordinary citizen, to themselves or others.” *Perez-Garcia*, 96 F.4th at 1186–89. Along with surety laws and affray statutes, the Ninth Circuit considered the Militia Act of 1662, authorizing local officials to disarm persons they “judged ‘dangerous to the peace of the kingdom’”; laws disarming specific groups thought to represent a potential danger due to disloyalty; and evidence demonstrating the ratification and post-ratification consensus that the right to bear arms applied to “peaceable” persons and not to those who posed a “real danger of public injury[.]” *Id.*

And in *Duarte*, the *en banc* Ninth Circuit relied on similar laws to conclude that “[t]he historical record reveals a host of regulations that disarmed those whom the legislature deemed dangerous on a categorical basis.” *Duarte*, 137 F.4th at 759; *see also id.* at 759–60 (relying on English and early American laws banning firearm possession by, *inter alia*, non-members of the Church of England, Catholics, Native Americans, slaves, free

Blacks, minors, “those of unsound mind,” intoxicated people, and “tramps”). “To be clear,” the court hastened to add, “these laws reflect overgeneralized and abhorrent prejudices that would not survive legal challenges today,” and “many of these laws would likely be unconstitutional today under *other* parts of the Constitution.” *Id.* at 760. “But these laws are reflective of American history and tradition” in which “legislatures were permitted to categorically disarm those they deemed dangerous without having to perform an individualized determination of dangerousness as to each person in a class of prohibited persons.” *Id.* (quotation omitted); *see also United States v. Hunt*, 123 F.4th 697, 707 (4th Cir. 2024), *cert. denied*, No. 24-6818, 2025 WL 1549804 (U.S. June 2, 2025) (relying on the same historical laws to conclude that federal felon-in-possession restriction was consistent with history of categorically disarming individuals thought to be dangerous).

Duarte’s explicit holding that legislatures may disarm *categories* of persons who pose a heightened danger of misuse is

consistent with the vast weight of precedent. The U.S. Supreme Court has repeatedly reaffirmed that categorical bans for groups such as felons and the mentally ill are presumptively constitutional. *Rahimi*, 602 U.S. at 699; *N.Y. State Rifle & Pistol Ass’n*, 590 U.S. at 364; *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Heller*, 554 U.S. at 626, 627 n.26; *see also Bruen*, 597 U.S. at 21 (Kavanaugh, J., concurring). Following *Bruen*, courts of appeal have likewise recognized that “there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.” *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024), *cert. denied*, No. 24-6517, 2025 WL 1426707 (U.S. May 19, 2025); *see Perez-Garcia*, 96 F.4th at 1186 (“legislatures have long disarmed groups . . . whose possession of firearms would pose an unusual danger[.]”) (emphasis added); *Hunt*, 123 F.4th at 707 (“[H]istory demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons.”) (quotation omitted);

United States v. Dubois, 94 F.4th 1284, 1293 (11th Cir. 2024) (“[F]elons are categorically ‘disqualified’ from exercising their Second Amendment right[.]”)⁶; *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025) (“uph[o]ld[ing] the constitutionality of” federal felon-in-possession restriction “without drawing constitutional distinctions based on the type of felony involved”); *Zherka v. Bondi*, 140 F.4th 68, 85 (2d Cir. 2025) (“The historical inquiry for us . . . is whether our tradition encompasses not only laws permitting disarmament of particular individuals on a case-by-case basis, but also laws disarming broad classes of people. The answer is unequivocally yes.”); *see also Rahimi*, 602 U.S. at 698 (“[W]e do not suggest that the Second Amendment prohibits the enactment of laws

⁶ Although this decision was vacated and remanded by the U.S. Supreme Court in light of *Rahimi*, the Eleventh Circuit concluded that *Rahimi* did not abrogate its holding and reinstated its previous *Dubois* opinion. *United States v. Dubois*, 139 F.4th 887, 888–89 (11th Cir. 2025).

banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse[.]”).

These cases point the way here. It is unnecessary to develop facts specific to Petitioners, such as their personal or criminal histories: the only question is whether recidivist drunk drivers, as a class, may constitutionally be disarmed consistent with the history and tradition of the United States of disarming dangerous groups. The answer is yes.

2. Recidivist drunk drivers pose a heightened risk of danger

H.B. 1562’s disarmament of recidivist drunk drivers is a clear exercise of the Legislature’s historical power to disarm “categories of people . . . when they judged that doing so was necessary to protect the public safety[.]” *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting); *see also id.* (“History . . . does support the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous.”). Indeed, in denying a challenge just like this one, the Sixth Circuit explained that an offender had “engaged in conduct that endangered the

Kentucky public when he drove under the influence” and had no difficulty finding that “[i]t is within this nation’s historical tradition for Kentucky to temporarily limit his firearm possession as a result of the dangerousness his conduct exhibited.” *Goins*, 118 F.4th at 801. This is because there is no doubt that “[d]runk driving is an extremely dangerous crime[.]” *Begay v. United States*, 553 U.S. 137, 141 (2008), abrogated on other grounds by *Johnson v. United States*, 576 U.S. 591 (2015), and a “potentially deadly” one, *Virginia v. Harris*, 558 U.S. 978, 979–80 (2009) (mem.) (Roberts, C.J., dissenting from denial of writ of certiorari). “The imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases.” *Id.* “Drunk drivers take a grisly toll on the Nation’s roads, claiming thousands of lives[and] injuring many more victims[.]” *Birchfield v. N. Dakota*, 579 U.S. 438, 443 (2016). In 2023, at least 400 Washingtonians were killed in crashes involving intoxicated drivers. Washington Traffic Safety Commission, *Washington Traffic Deaths Reach 33-Year High* (May 13, 2024),

<https://wtsc.wa.gov/wtsc-2023-traffic-fatalities/>. And, as the U.S. Supreme Court has recognized, “recidivist[]” drunk drivers are among “the most dangerous offenders[.]” *Birchfield*, 579 U.S. at 465.

Unsurprisingly, having multiple convictions for operating a potentially deadly piece of machinery while intoxicated is also a significant risk factor for firearm misuse. The Legislature enacted H.B. 1562’s restrictions, including the two-in-seven restriction, based on “[a]n extensive body of research” that “identified specific risk factors that increase the likelihood of individuals engaging in future violence, including gun violence, and presenting further risk to public safety.” *Id.* § 1(4). These findings are owed “great deference.” *Wash. Off Highway Vehicle All. v. State*, 176 Wn.2d 225, 236, 290 P.3d 954 (2012) (“Legislatures must necessarily make inquiries and factual determinations as an incident to the process of making law, and courts ordinarily will not controvert or even question legislative findings of facts.”) (citation and internal quotation marks

omitted); *see also State v. Jorgenson*, 179 Wn.2d 145, 149, 312 P.3d 960 (2013) (“We defer to the legislature’s conclusion that when a trial judge finds probable cause to believe a defendant committed a serious offense, public safety justifies temporarily limiting that person’s right to possess arms.”).

Bruen does not demand a contrary conclusion simply because drunk driving an automobile is a *modern* danger. As the U.S. Supreme Court cautioned, “some courts have misunderstood the methodology of our recent Second Amendment cases[,]” which were “not meant to suggest a law trapped in amber.” *Rahimi*, 602 U.S. at 691. The Court’s task is not to determine whether historically regulated conduct itself is analogous to the specific conduct underlying the challenger’s offense—which would make no sense in cases implicating “unprecedented societal concerns or dramatic technological changes[.]” *Bruen*, 597 U.S. at 27, 30. Recidivist drunk driving was not a problem presenting itself to the Founders. Legislatures instead must make judgments of dangerousness “based on

present-day judgments about categories of people whose possession of guns would endanger the public safety.” *Kanter*, 919 F.3d at 464 (quoting *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010)) (Barrett, J., dissenting). The Supreme Court has definitively held that modern firearm regulations need not be “identical to ones that could be found in 1791. Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.” *Rahimi*, 602 U.S. at 692. The Court’s task is instead to discern whether a law is “consistent with the principles that underpin our regulatory tradition.” *Id.* (emphasis added). H.B. 1562 plainly does.

To be clear, *Bruen*’s originalist framework does not prohibit courts from scrutinizing firearm restrictions under other constitutional provisions, such as the First Amendment or the Equal Protection Clause. And Washington’s constitution independently protects the right of armed self-defense and requires that such regulations be “reasonably necessary to protect public safety or welfare, and substantially related to legitimate

ends sought.” *Jorgenson*, 179 Wn.2d at 156 (quoting *City of Seattle v. Montana*, 129 Wn.2d 583, 594, 919 P.2d 1218 (1996)) (internal quotation marks omitted). Petitioners brought this challenge solely under the Second Amendment, however, the scope of which under *Bruen* is defined by the history and tradition of the United States. And in early American history, legislatures were given wide latitude and modern protections for individual rights did not emerge until the twentieth century. *See, e.g.*, Jud Campbell, Natural Rights and the First Amendment, 127 Yale L.J. 246, 259 (2017) (“Founder Era constitutionalism allowed for restrictions of natural liberty to promote the public good—generally defined as the good of the society as a whole.”); *Zherka*, 140 F.4th at 85 (at the Founding, “legislatures could disarm classes of people that they perceived as dangerous, without any judicial scrutiny of the empirical basis for that perception”).

Not only does H.B. 1562’s rationale fit within the historical tradition discussed in *Rahimi* and other cases, but the

burden it imposes does as well. Just like the law in *Rahimi*—and the surety and going-armed laws on which *Rahimi* relied—H.B. 1562 restricts gun possession by those with a demonstrably elevated risk of gun violence. *Rahimi*, 602 U.S. at 697–98. And unlike the federal felon-in-possession ban upheld in *Duarte*, *Jackson*, *Dubois*, *Vincent*, and *Zherka*, H.B. 1562 does not impose a blanket, lifetime disarmament. Rather, “like surety bonds of limited duration,” the two-in-seven restriction is “temporary as applied to” Petitioners. *See Rahimi*, 602 U.S. at 699. Washington law provides recidivist drunk drivers with a clear path to seek reinstatement of their firearm rights if they can demonstrate that they no longer present an elevated risk of gun violence. To do so, they must simply go five years “without being convicted or found not guilty by reason of insanity of any crime that prohibits the possession of a firearm[.]” RCW 9A.041(2)(a)(i)(I). If they can do that, they may petition in the superior court to have their firearm rights restored. *Id.* And so long as the court finds that a petitioner has not committed

additional serious crimes, “[t]he court *shall* grant the petition[.]” RCW 9A.041(3)(f) (emphasis added). In sum, Petitioners can have their firearm rights restored by doing nothing more than obeying the law and filing a petition. *See* RCW 9A.041; *see Perez-Garcia*, 96 F.4th at 1190 (“Temporary disarmaments are well-precedented.”). While Petitioners have not yet met the statutory criteria for restoring their firearm rights, it is entirely within their power to do so within the next few years (perhaps before this case concludes if it proceeds to trial).

“[T]he penalty—another relevant aspect of the burden—also fits within the regulatory tradition”: “[t]he going armed laws” underpinning *Rahimi*’s holding “provided for imprisonment, . . . and if imprisonment was permissible to respond to the use of guns to threaten the physical safety of others, then the lesser restriction of temporary disarmament . . . is also permissible.” *Rahimi*, 602 U.S. at 699. McClellan and Holloway, therefore, may be prohibited from

possessing weapons based solely on the fact that they have been convicted twice in seven years of DUI-related offenses.

In reaching a different conclusion, the superior court erred by requiring evidence beyond the concession that H.B. 1562 applied to McClellan and Holloway in order to determine whether they could be constitutionally disarmed. CP 145--46 (“There are material issues of fact regarding whether the Petitioners’ possession of firearms poses a credible threat to public safety.”). As detailed above, however, the history and tradition of the United States demonstrates ample support for the *categorical* disarmament of certain groups.

In rejecting the weight of precedent, the superior court purported to rely on *Rahimi*. *Id.* But *Rahimi* suggests the opposite: that this sort of individualized determination is not required. While the statute at issue in *Rahimi* certainly involved individualized determinations of dangerousness, *Rahimi*, 602 U.S. at 684, the Court did not hold that these are necessary for a firearm prohibition to be constitutional, or that categorical

determinations are unconstitutional. To the contrary, the Court emphasized it was “*not* suggest[ing] that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse[.]” *Id.* at 698 (emphasis added). And the Court reiterated that “many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are presumptively lawful.” *Id.* at 699.

As detailed above, federal courts of appeal since *Bruen* have routinely reached the same conclusion. *Supra* at 24–27. Indeed, the only federal appellate decisions upholding as-applied challenges to possession bans have been for crimes that are not “closely associated with physical danger.” *See Range v. Attorney General*, 124 F.4th 218, 230 (3rd Cir. 2024) (upholding as-applied challenge to felon-in-possession law for person convicted of food stamp fraud). Similarly, the Fifth Circuit has held that federal prohibitions on firearm possession are unconstitutional as applied to non-violent and non-dangerous

drug possession crimes. *See United States v. Connelly*, 117 F.4th 269, 272, 276–77 (5th Cir. 2024) (plaintiff was “non-violent” woman who “would at times smoke marijuana as a sleep aid and for anxiety[.]”); *see also United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *vacated and remanded by United States v. Daniels*, 144 S. Ct. 2707 (2024) (similar facts).

The logic of these decisions does not apply to convictions for crimes “closely associated with physical danger,” *Range*, 124 F.4th at 230, that regularly result in death and dismemberment—like drunk driving. To the contrary, the one appellate court that has ruled on this specific issue held that that DUI convictions are sufficient to prohibit a person from possessing firearms under the Second Amendment without any need to show the challenger posed a particular individualized threat of firearm violence. *Goins*, 118 F.4th at 801.

Finally, requiring individualized findings in Second Amendment as-applied challenges would pose significant practical difficulties with respect to H.B. 1562. In 2023, there

were 12,713 sentences for DUI, and negligent and reckless driving that had been amended down from DUI, in Washington, all of which count as DUI offenses under H.B. 1562.⁷ See RCW 46.61.5055(14). And for individuals with a DUI conviction, recidivism is unfortunately common. Nationwide, thirty percent of people convicted of DUI offenses have been convicted of such offenses before. National Highway Traffic Safety Administration, *Countermeasures That Work*, 1–3 11th ed. (2023).⁸ The superior court’s ruling would require the State to not only prove beyond a reasonable doubt that a given individual had in fact committed two predicate drunk driving

⁷ Washington Courts, *Caseloads of the Courts in Washington: Courts of limited Jurisdiction Sentencing Report for DUI Charges Disposed - 2024 Annual Report*, <https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=d&freq=a&tab=dui&fileID=duisent> (last visited Aug. 12, 2025).

⁸ U.S. Department of Transportation, *Countermeasures That Work: A Highway Safety Countermeasure Guide For State Highway Safety Offices*, https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-12/countermeasures-that-work-11th-2023-tag_0.pdf (last visited Aug. 12, 2025).

offenses, but also to undertake a second adjudication to prove that the individual person's possession of firearms poses a heightened danger to public safety for the two-in-seven provision to apply to them. This constitutionally unnecessary procedure is particularly ill-suited for the two-in-seven provision's most common applications, namely criminal prosecutions in which law enforcement officers discover individuals barred from firearm possession with guns in violation of the law. *See* RCW 9A.04(2)(b) (unlawful possession of a firearm in violation of the two-in-seven provision is a class C felony). Were it the law, the superior court's conclusion would gum up criminal dockets, pose thorny questions about what makes an individual person dangerous, and likely result in more guns in the hands of people our Legislature has determined pose a heightened danger of gun violence. *See Zherka*, 140 F.4th at 94–95 (discussing “endless questions” involved in determining a felon is “violent” or “nonviolent”). Thankfully, this is not what the law requires.

H.B. 1562's temporary prohibition on the possession of arms by recidivist drunk drivers fits squarely within America's historical tradition of restricting arms by groups that pose a heightened risk of dangerousness. On this basis alone, Petitioners' as-applied challenge fails.

B. The Legislature May Constitutionally Restrict Firearm Possession for Persons Convicted of Serious Crimes, Including Recidivist Drunk Drivers

Petitioners also belong to another group that traditionally have been subject to disarmament: “legislatures have longstanding authority and discretion to disarm citizens who are not law-abiding and are unwilling to obey the law.” *Jackson*, 110 F.4th at 1126; *see also Duarte*, 137 F.4th at 755 (“[L]egislatures may disarm those who have committed the most serious crimes[.]”). Restricting firearm possession by recidivist drunk drivers is entirely consistent with this principle, and H.B. 1562 is constitutional for this additional, independent reason.

First, as discussed above, the U.S. Supreme Court has repeatedly reaffirmed the constitutionality of categorical bans on

felons, as have circuit courts. In *Heller*, the Court explicitly recognized that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill,” which are “presumptively lawful regulatory measures.” 554 U.S. at 626, 627 n.26; *see also id.* at 631, 635 (plaintiff in *Heller* would only be entitled to possess a firearm if he was “not a felon” and “not insane”); *id.* at 635 (noting “historical justifications” for these restrictions). As now-Justice Kavanaugh has noted, “the Court in *Heller* affirmatively approved . . . felon-in-possession laws . . . based on a history-and-tradition-based test[.]” *Heller v. Dist. Of Columbia*, 670 F.3d 1244, 1278(D.C. Cir. 2011) (Kavanaugh, J., dissenting).

The Supreme Court has continued to reaffirm this principle. *See, e.g., Rahimi*, 602 U.S. at 699 (“many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are presumptively lawful”); *Bruen*, 597 U.S. at 39 n.9 (“[N]othing in our analysis should be

interpreted to suggest the unconstitutionality of . . . licensing regimes[]” that “require applicants to undergo a background check,” because such regimes “are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” (quoting *Heller*, 554 U.S. at 635); *id.* at 81 (Kavanaugh, J., concurring); *New York State Rifle & Pistol Ass’n*, 590 U.S. at 364 (*Heller* “recognized that history supported the constitutionality of . . . laws . . . prohibiting possession by felons and other dangerous individuals[]”). The *en banc* Ninth Circuit agreed just this year. *Duarte*, 137 F.4th at 752. So too have other Circuit Courts. See *Jackson*, 110 F.4th at 1127 (Eighth Circuit); *Dubois*, 139 F.4th at 890–94 (Eleventh Circuit).

Also well established is “the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society.” *Jackson*, 110 F.4th at 1127; see also *Perez-Garcia*, 96 F.4th at 1182 (“[O]ur society has traditionally subjected criminal defendants to temporary restrictions on their liberty—including restrictions

that affect their ability to keep and bear arms—to protect public safety[.]”); *Duarte*, 137 F.4th at 757 (“[P]re- and post-ratification history support the view that legislatures could disarm those who committed the most serious crimes.”). In the English and early American legal tradition, serious offenses, including violent crimes and many non-violent crimes, subjected an offender to total forfeiture of their property, or even death. *See Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019) (noting that capital crimes included even “nonviolent offenses” such as “forgery and horse theft”); *Duarte*, 137 F.4th at 756. As the Eighth Circuit explained, “[e]arly legislatures . . . ordered forfeiture of firearms by persons who committed non-violent hunting offenses . . . [a]nd they authorized punishments that subsumed disarmament—death or forfeiture of a perpetrator’s entire estate—for non-violent offenses involving deceit and wrongful taking of property.” *Jackson*, 110 F.4th at 1127 (citing historical sources); *see also Harmelin v. Michigan*, 501 U.S. 957, 980–81 (1991) (“[T]he First Congress . . . punished forgery of United

States securities[and] ‘run[ning] away with [a] ship or vessel, or any goods or merchandise to the value of fifty dollars,’ . . . with the same penalty: death by hanging.”) (citing 1 Stat. 114); *Duarte*, 137 F.4th at 756 (“Colonies and states also authorized seizure of firearms from those who engaged in misdemeanor hunting offenses, such as hunting partridge or deer.”); *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) (“[D]eath was the standard penalty for all serious crimes at the time of the founding.”) (internal quotation omitted).

As the D.C. Circuit has noted, “[w]ith this perspective, it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms.” *Medina*, 913 F.3d at 158; *see also Zherka*, 140 F.4th at 93 (“Because legislatures at or near the Founding had the authority to pass laws disarming large classes of people based on status alone, we conclude that the Second Amendment does not bar Congress

from passing laws that disarm convicted felons, regardless of whether the crime of conviction is nonviolent.”).

Similarly, the Third Circuit identified a robust American “tradition of forfeiture laws, which temporarily disarmed convicts while they completed their sentences.” *United States v. Moore*, 111 F.4th 266, 269 (3d Cir. 2024), *cert. denied*, No. 24-968, 2025 WL 1787742 (U.S. June 30, 2025). A wide variety of Founding era and early 19th century laws provided for forfeiture for all manner of crimes, including counterfeiting, unlawful assembly, and “go[ing] with force and arms before the court.” *Id.* at 270–71 (citing historical sources). “The bottom line is this: during the founding era, forfeiture laws temporarily disarmed citizens who had committed a wide range of crimes.” *Id.* at 271.

These laws pose comparable or, in the cases of death or permanent forfeiture, far harsher burdens on the right to bear arms than H.B. 1562’s temporary disarmament. Moreover, they “burdened the right to bear arms for the same reasons” as

H.B. 1562: “to deter criminal conduct, protect the public, and facilitate the convict’s rehabilitation.” *Moore*, 111 F.4th at 270; *see also Duarte*, 137 F.4th at 757. Simply put, Petitioners, as recidivist drunk drivers, are “not [] law-abiding citizen[s], and history supports the authority of [the Legislature] to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society.” *Jackson*, 110 F.4th at 1127.

Although Petitioners’ crimes are gross misdemeanors rather than felonies, that is not a meaningful distinction here. In Washington, recidivist drunk driving becomes a felony on the fourth offense. RCW 46.61.502(5)(a). In other states, felony or felony-equivalent classifications apply sooner, on the second or third offense. *See supra* at 10–12, n.1. It cannot be that disarmament of an individual with two or three DUI convictions is constitutional in Connecticut or New York or Alaska or Arizona, but not in Washington. *See Conn. Gen Stat. Sec. 14-227a(g)* (providing a second DUI punishable by up to two

years); New York Vehicle and Traffic Law Section 1193(c) (making a second DUI a felony); Alaska Statute § 28.35.030 (third); Arizona Rev. Statute 28–1383 (third). Indeed, the constitutionally relevant question is not whether the offense giving rise to disarmament is labeled a felony, but whether the offense of conviction demonstrates a “disrespect for legal norms of society.” *Jackson*, 110 F.4th at 1127; *see also Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons[,]” but only when “doing so was necessary to protect the public safety.”).

Here, Petitioners have not argued—nor could they—that the Legislature erred in concluding that recidivist drunk drivers, as a category, have similarly demonstrated disregard for legal norms. *See Rahimi*, 602 U.S. at 699; *cf. United States v. Cunningham*, 114 F.4th 671, 675 (8th Cir. 2024) (“[T]here is no need for felony-by-felony determinations regarding the constitutionality of” the federal felon-in-possession statute “as

applied to a particular defendant.”); *Duarte*, 137 F.4th at 755 (“[L]egislatures may disarm those who have committed the most serious crimes . . . and . . . may categorically disarm those they deem dangerous, without an individualized determination of dangerousness.”). On top of that, “drunk driving is an extremely dangerous crime[,]” *Begay*, 553 U.S. at 141, and “recidivist[]” drunk drivers are among “the most dangerous offenders,” *Birchfield*, 579 U.S. at 465. And as the Legislature found, recidivist drunk driving is a significant risk factor for gun violence. Moreover, in light of the manifest danger posed by recidivist drunk drivers, states also “have a compelling interest in creating effective ‘deterrent[s] to drunken driving’ so such individuals make responsible decisions and do not become a threat to others in the first place.” *Birchfield*, 579 U.S. at 465 (quoting *Mackey*, 443 U.S. at 18).

Our historical tradition, that included punishments of disarmament for non-violent offenses such as counterfeiting and horse theft, therefore also permits disarmament for the serious

and dangerous crime of recidivist drunk driving. And as detailed above, the historical tradition plainly includes categorical restrictions, without the need for the types of individualized determinations the superior court required here. This historical tradition thus provides an independent basis for H.B. 1562’s constitutional application to McLellan and Holloway.

C. Those Likely to Abuse Alcohol May be Disarmed

Petitioners’ Second Amendment claim also fails for a third, independent reason: H.B. 1562 is consistent with the historical tradition of regulations that mitigate the danger of alcohol combined with guns. “[I]n a long line of regulations dating back to the colonial era, colonies, states, and cities have regulated in ways reflecting their understanding that firearms and intoxication are a dangerous mix.” *Wolford v. Lopez*, 116 F.4th 959, 985–86 (9th Cir. 2024) (upholding laws restricting guns at bars). As the Ninth Circuit has explained, these laws took many forms:

Some cities—for example, Chicago in 1851 and St. Paul, Minnesota, in 1858—prohibited retailers of

liquor from keeping gunpowder. Some states—Kansas in 1867, Missouri in 1883, and Wisconsin in 1883—prohibited the carry of firearms while intoxicated. Several colonial laws separated the militia—which at the time included nearly all men, *Heller*, 554 U.S. at 595-96, 128 S. Ct. 2783—from liquor: A 1746 New Jersey law prohibited the sale of liquor to members of the militia while on duty; a 1756 Delaware law prohibited the militia from meeting within half a mile from a tavern and prohibited the sale of liquor at any militia meeting; and a 1756 Maryland law prohibited the sale of liquor within five miles of a training exercise for the militia.

Id. at 985); *see also* An Act to Prevent Traffic in Intoxicating Liquors for the Purpose of Drinking, no. 24, § 15, 1852 Vt. Acts & Resolves 19, 25 (E. P. Walton & Son 1852) (prohibiting liquor “on or near the ground of any . . . military muster”); An Act for the More Effectual Suppression of Drinking Houses and Tippling Shops, § 10, 1853 R.I. Pub. Laws 238, 238-9 (Sayles, Miller & Simons 1853) (same); Mark Anthony Frassetto, *The Historical Regulation of Intoxicated Firearms Possession and Carry: A Response to F. Lee Francis’s ‘Armed and Under the Influence: The Second Amendment and the Intoxicant Rule After*

Bruen, 108 Marquette L. Rev. 531 (2024), <https://scholarship.law.marquette.edu/mulr/vol108/iss2/6> (“These laws . . . were widespread by the time of the ratification of the Second Amendment.”) (citing similar laws from Georgia, Connecticut, Pennsylvania, and South Carolina).

Other states and localities restricted guns in places where alcohol was served:

In 1853, New Mexico prohibited firearms at a “Ball or Fandango” and at any “room adjoining said ball where Liquors are sold.” In 1870, San Antonio, Texas, banned firearms at any “bar-room” or “drinking saloon.” In 1879, New Orleans banned firearms at any “public hall” or “tavern.” In 1890, Oklahoma banned firearms at “any place where intoxicating liquors are sold.”

Wolford, 116 F.4th at 986 (footnote omitted); *see also* 1889 Ariz. Sess. Laws 17 (requiring saloon keepers “to keep posted up in a conspicuous place in his bar room . . . a plain notice to travelers to divest themselves of their weapons”).

Other states have “prohibited intoxicated persons from carrying firearms” or “prohibited selling firearms to intoxicated persons[.]” *Antonyuk v. Chiumento*, 89 F.4th 271, 367

(2nd Cir. 2023), *cert. granted, judgment vacated sub nom. Antonyuk v. James*, 144 S. Ct. 2709 (2024) (citing 1867 Kan. Sess. Laws Ch. 12, p. 25; Wis. Stat. Ann. § 4379b (1889); 1883 Mo. Sess. Laws 76; 1878 Miss. Laws 175); *see also* Act XII of Mar. 10, 1655, *reprinted in 1 The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619*, at 401, 402 (William Waller Hening ed., New York, R. & W. & G. Bartow 1823) (banning “shoot[ing] any gunns at drinkeing”); Act of Apr. 3, § 3, 1883 Wis. Sess. Laws 290 (forbidding any person in a “state of intoxication” from going “armed with any pistol or revolver”); Act of Feb. 17, § 1, 1909 Idaho Sess. Laws 6 (prohibiting “hav[ing] or carry[ing]” any “deadly or dangerous weapon” when “intoxicated, or under the influence of intoxicating drinks”); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468, 469 (1886) (holding that Missouri’s ban on firearm possession by intoxicated persons is “in perfect harmony with the constitution[.]”); Frassetto, *supra*, at 17 (detailing early-20th

century laws restricting sales of arms to intoxicated persons and “habitual drunkards”).⁹

As with the challenged law in *Wolford*, these historical examples are “not directly on point.” *Wolford*, 116 F.4th at 985; *see also id.* at 986. They prohibit firearm possession while a person is intoxicated or is likely to be consuming alcohol; they are not enduring prohibitions that follow a person likely to abuse alcohol in the future. But again, to pass constitutional muster, H.B. 1562 “must comport with the principles underlying the Second Amendment, but it need not be a ‘dead ringer’ or a ‘historical twin.’” *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 30). These laws demonstrate a clear historical principle, with which H.B. 1562 is entirely consistent: they “show that, from before the Founding and continuing throughout the Nation’s history, governments have regulated in order to

⁹ Going publicly armed while intoxicated was also prohibited “during the Founding Era and nineteenth century” via “nearly universal prohibitions on simply being intoxicated in public.” Frassetto, *supra*, at 18.

mitigate the dangers of mixing alcohol and firearms.” *Wolford*, 116 F.4th at 986; *see also id.* (“We are not aware of any dispute as to the constitutionality of the laws just listed or of any similar law.”). And, carried forward to today, 11 states restrict firearm access for those suffering alcohol dependence. *See supra* at 10-11. These modern laws, fully consistent with history, form part of the “regular course of practice” that can “liquidate & settle the meaning of” the Second Amendment. *Hanson v. D.C.*, 671 F. Supp. 3d 1, 23 (D.D.C. 2023), *aff’d*, 120 F.4th 223 (D.C. Cir. 2024), *cert. denied*, No. 24-936, 2025 WL 1603612 (U.S. June 6, 2025)(quoting *Bruen*, 597 U.S. at 35–36).

H.B. 1562 burdens the right to bear arms for the same reason, to mitigate the risk of firearm misuse by individuals under the influence—and in the same manner, by temporarily disarming abusers of alcohol until they no longer pose a danger. H.B. 1562 is thus entirely consistent with America’s historical tradition of firearm regulation.

VII. CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court reverse the superior court's denial of judgment as a matter of law to the Attorney General as to the constitutionality of H.B. 1562, and that the Court remand to the superior court with instructions to dismiss.

This document contains 9,174 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 13th day of August

2025.

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