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NO. 103799-6

SUPREME COURT OF THE STATE OF WASHINGTON

GEOFFREY G. MCLELLAN AND JACKSON W.
HOLLOWAY,

Petitioners–Respondents,

v.

NICHOLAS W. BROWN, in His Official Capacity as Attorney
General,

Respondent–Petitioner.

REPLY BRIEF

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I. INTRODUCTION

Washington's law restricting firearm access for recidivist drunk drivers fits comfortably within three separate historical traditions of firearm restriction. These are: the tradition of disarming dangerous persons, of disarming those who have committed serious crimes, and of restricting the dangerous combination of alcohol and guns. Any one of these traditions would suffice to uphold Washington's law. Taken together, they firmly establish its constitutionality.

Petitioners have conceded the relevant facts. They do not contest that they are recidivist drunk drivers, nor that recidivist drunk drivers are more likely to commit gun violence than the general population. They do not deny that recidivist drunk driving is a serious crime, nor that historical legislatures adopted a panoply of measures aimed at the dangerous mix of alcohol and guns. Instead, they argue that state governments are powerless to restrict recidivist drunk drivers' access to firearms because Founding-era legislatures did not do exactly that and because no

court has made an individualized determination that they, specifically, pose a danger of firearm misuse.

But the United States Supreme Court has rejected such overly strict readings of the Second Amendment. It does not mandate “a law trapped in amber[,]” and modern regulations need not have a ““historical twin.”” *United States v. Rahimi*, 602 U.S. 680, 691 (2024). The history and tradition of the United States does not serve as an exhaustive catalog of all constitutional arms regulations, but is instead an illustrative guide of the principles enshrined within the Second Amendment.

One of those principles is that categories of people who pose a special danger of misuse can be disarmed. Washington’s Legislature found, the science shows, and Petitioners do not dispute, that persons with multiple DUI convictions are more prone to firearm violence than others. Washington’s two-in-seven provision thus plainly accords with historical tradition.

So too does our history support a tradition of disarming those convicted of serious crimes. It does not matter—contrary

to Petitioners' suggestion—that early American legislatures might not have considered 18th-century alcohol offenses sufficiently serious to warrant disarmament. There is no dispute that recidivist drunk driving is a serious offense that often leads to death and other serious harm. Thus, Washington's two-in-seven provision also fits within our historical tradition of disarming serious offenders.

Lastly, Petitioners concede a historical tradition of regulating the dangerous mix of alcohol and guns, but try to interpret that history narrowly to justify only disarmament of those presently intoxicated. But the depth and breadth of historical examples defies such a cramped characterization. Given Petitioners' admitted history of reckless alcohol misuse, Washington's law temporarily disarming them comes well within this historical principle as well.

For any and all of these reasons, Petitioners may be barred from owning firearms consistent with the Second Amendment, and they have failed to state a claim as a matter of law.

II. ARGUMENT

A. Washington’s Two-in-Seven Restriction Fits within the Historical Tradition of Disarming Categories of Dangerous Persons

The history and tradition of the United States establishes the clear principle that people who pose a significant danger to the safety of others can be disarmed. *See* Op. Br. at 19-27; *see also Rahimi*, 602 U.S. at 693 (“[T]he Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others.”); *United States v. Goins*, 118 F.4th 794, 798 (6th Cir. 2024) (“The historical record demonstrates a longstanding and specific tradition of temporarily disarming persons who had engaged in dangerous conduct as a consequence of that dangerous conduct.”).

Petitioners cannot deny—and affirmatively admitted below—that recidivist drunk driving is extremely dangerous. CP 121. They concede that they are recidivist drunk drivers. CP 2, 4. And they do not contest the Legislative findings—or the copious evidence supporting them—that one “particularly strong

risk factor[] for future violence include[s] . . . frequent risky alcohol use.” Laws of 2023, ch. 295 § 1(4); *see also* Op. Br. at 6-10 (summarizing researching showing that DUI convictions are linked to future firearm violence); Ans. Br. at 27 (explicitly refusing to address studies supporting the Legislature’s determination). They thus offer no basis to reject the Legislature’s conclusion that recidivist drunk drivers, as a category, pose a heightened risk of gun violence that justifies temporary disarmament, at least until they can demonstrate, through five years of not being convicted of a serious offense, that they no longer pose a heightened risk. The two-in-seven provision thus comports with the Second Amendment. *See United States v. Duarte*, 137 F.4th 743, 755 (9th Cir. 2025) (*en banc*) (“[L]egislatures may categorically disarm those they deem dangerous, without an individualized determination of dangerousness[.]”).

Petitioners resist this conclusion with essentially two strands of argument. Neither is persuasive.

1. Legislatures may disarm dangerous groups without an individualized determination of dangerousness

Petitioners insist that any disarmament requires an individualized assessment of dangerousness. *See* Ans. Br. at 21. But this argument is entirely ahistorical. As the State has detailed, Founding-era legislatures routinely disarmed entire categories of people perceived to be dangerous, without further individualized determinations. Op. Br. at 20-24; *See also, e.g., Duarte*, 137 F.4th at 759-60; *United States v. Jackson*, 110 F.4th 1120, 1126-27 (8th Cir. 2024).

Given this undisputed historical tradition, courts routinely reject arguments like Petitioners' here and uphold statutes categorically disarming dangerous groups. *See, e.g., Duarte*, 137 F.4th at 759-60; *Jackson*, 110 F.4th 1126; *United States v. Perez-Garcia*, 96 F.4th 1166, 1189 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2707 (2025); *United States v. Hunt*, 123 F.4th 697, 707 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025); *see also Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J.,

dissenting) (“[F]ounding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety.”); *United States v. Harrison*, 153 F.4th 998, 1032, 1033 (10th Cir. 2025) (holding that “legislatures can disarm those believed to pose a risk of future danger,” and remanding to the district court to determine “whether the government could justify its assertion that non-intoxicated marijuana users”—as a category—“pose a risk of danger”); *United States v. VanDyke*, No. 24-2861, --- F.4th ----, 2025 WL 3000188, at *6 (9th Cir. Oct. 27, 2025) (“America’s history of firearm regulation also includes ‘longstanding prohibitions’ on firearm possession by certain categories of people . . . based on legislatively presumed danger, rather than an individualized assessment of risk.”) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Similarly, courts have upheld laws categorically disarming felons without requiring individualized determinations of dangerousness. *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th

Cir. 2025); *Zherka v. Bondi*, 140 F.4th 68, 85 (2d Cir. 2025). Finally, at least two courts have specifically upheld category-based disarmament of drunk drivers—including the Sixth Circuit, on which Petitioners otherwise place great reliance. *Goins*, 118 F.4th at 801 (“Goins engaged in conduct that endangered the Kentucky public when he drove under the influence. It is within this nation’s historical tradition for Kentucky to temporarily limit his firearm possession as a result of the dangerousness his conduct exhibited.”); *United States v. Prather*, 791 F.Supp.3d 1195, 1202 (D. Mont. June 10, 2025) (upholding disarmament of individual convicted of felony DUI without requiring individualized showing of dangerousness).

Petitioners ask this Court to disregard this mountain of precedent, suggesting that *Rahimi* implicitly requires an individualized determination of dangerousness. *See* Ans. Br. at 9-10, 21. They are wrong. Petitioners confuse the facts of *Rahimi* for its limits. “To be sure, *Rahimi* concerned . . . a law that disarms someone only if a *judge* finds they pose a risk of danger,

while this case involves . . . a law that disarms those whom a legislature found pose a risk of danger. But *Rahimi* expressly declined to address whether legislative judgments of danger can justify disarmament.” *Harrison*, 153 F.4th at 1023 (citations and footnote omitted). Indeed, the *Rahimi* Court went out of its way to clarify that 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[.]” *Rahimi*, 602 U.S. at 698. More than that, the Court doubled down on its statement from *Heller* that “many” categorical “prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” *Id.* at 699 (quoting *Heller*, 554 U.S. at 626)(“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]”). While it is certainly true that some laws—like the law at issue in *Rahimi*—involve individualized fact-finding, the existence of these laws does not

wipe away the historical tradition of categorical disarmament.

In arguing that individualized determinations are necessary, Petitioners place great weight on the minority of Courts of Appeals that have concluded that disarmament statutes may not be constitutional as applied to persons whose predicate behavior has no plausible link to a heightened risk of physical violence. *See* Ans. Br. at 13-17. Three of these cases dealt with application of the federal ban on firearms possession for drug users, 18 U.S.C. § 922(g)(3), to marijuana users. *See United States v. Connelly*, 117 F.4th 269, 272 (5th Cir. 2024) (nonviolent person who used marijuana as sleep aid and for anxiety); *United States v. Harris*, 144 F.4th 154, 157 (3d Cir. 2025) (no facts beyond person’s marijuana use); *United States v. Cooper*, 127 F.4th 1092 (8th Cir. 2025) (same).¹ Another dealt

¹ As discussed below in Section II.C., *Harris* supports the State insofar as it recognizes the historical principle that states may disarm individuals whose substance abuse causes them to pose a danger to others—like recidivist drunk drivers do. *Harris*, 144 F.4th at 158.

with the federal felon-in-possession ban in the context of someone whose felony was making a false statement on a food stamp application. *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024) (en banc). Whatever the merits of these cases under their own facts, they are irrelevant to a case like this one, in which the Legislature found, the evidence shows, and Petitioners do not dispute, that the category of people subject to disarmament pose a heightened risk of danger. *See Op. Br.* at 36-37.²

² Petitioners also cite *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), which upheld the federal felon-in-possession ban as applied to those convicted of felony theft. *Diaz* did not require an individualized analysis of dangerousness, however; instead, it held that because theft was a felony at the Founding and was punished by death and estate forfeiture, and permanent disarmament was a punishment for other crimes, disarming those convicted of felony theft, as a category, falls within the nation's historical tradition. *Id.* at 468-70. Most circuit courts, however, have upheld the federal felon-in-possession ban in full, without the need to determine whether a particular crime was a felony at the Founding. *See Zherka*, 140 F.4th at 85 (Second Circuit); *Jackson*, 110 F.4th at 1127 (Eighth Circuit); *Duarte*, 137 F.4th at 752 (Ninth Circuit); *Vincent*, 127 F.4th 1263, 1266 (Tenth Circuit); *Dubois*, 139 F.4th at 890-94 (Eleventh Circuit).

The Sixth Circuit caselaw illustrates this neatly. In *Williams*, on which Petitioners also (oddly) rely, the Sixth Circuit opened the door to as-applied challenges in theory, but in the same breath shut the door to those whose criminal records indicate a heightened risk of violence. *United States v. Williams*, 113 F.4th 637, 661 (6th Cir. 2024). As the court held, “[b]ecause Williams’s criminal record shows that he’s dangerous, his as-applied challenge fails.” *Id.* at 662. The court made this determination without any individual fact-finding regarding Williams beyond the facts of his convictions for serious crimes. *Id.* Thus, the mere fact that he was convicted of a dangerous crime meant that “[t]he government [could], consistent with the Second Amendment, punish him for possessing a firearm. And the government may enact this prohibition through a broad, class-wide ban.” *Id.*

Then in *Goins*, the same court made clear that recidivist drunk driving was a dangerous offense justifying categorical disarmament. *Goins*, 118 F.4th at 801. Petitioners try to

distinguish *Goins* because in that case, the defendant's conditions of probation forbade him from possessing a gun. Ans. Br. at 27-28. But the only offenses of conviction that barred Goins from possessing a firearm were felony (recidivist) drunk driving, driving under the influence on a suspended license, and possession of a controlled substance (which substance the court did not identify). *Goins*, 118 F.4th at 796. The fact that these prohibitions were also written into his conditions of probation does not change the underlying Second Amendment analysis. *Goins* stands squarely for the proposition that recidivist drunk drivers may be disarmed—as a class—because of their elevated risk of danger. *See also Prather*, 791 F.Supp.3d at 1202.

Another way of thinking about this is that these courts have largely agreed with their sister circuits in approving categorical disarmament on the basis of dangerousness, but have sometimes disagreed about whether particular subcategories fit within the historical tradition. *See, e.g., Williams*, 113 F.4th at 662 (upholding a “class-wide ban” for individuals convicted of

dangerous crimes); *Range*, 124 F.4th at 230 (noting that “the Government d[id] not try to justify disarming Range on th[e] ground” that he was dangerous because there was “no evidence” that “that food-stamp fraud is closely associated with physical danger”); *see also Harrison*, 153 F.4th at 1033 (approving disarmament of categories of people deemed by the legislature to present a risk of danger and remanding to the district court to determine whether marijuana users as a category present such a risk). But what none of these courts have done is require an individualized determination of dangerousness for people who concededly fit within a category of people whose conduct demonstrates an elevated risk of dangerousness—like Petitioners do here.

Thus, even under Petitioners’ proffered view of the law—the minority view, by a large measure—Petitioners’ challenge still fails.

Having said all of that, Petitioners do raise a real concern. If courts are to rely on history, and history resounds with

offensive and arbitrary categorical arms restrictions, then why couldn't a modern legislature categorically disarm groups based on bald assertions that certain groups are dangerous and ought to be disarmed? *See* Ans. Br. at 24-25. *Bruen* doesn't provide any answer. (Although it and *Rahimi* definitively foreclose Petitioners' preferred answer of requiring "a historical twin" that "trap[s] the law "in amber." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 30 (2022); *Rahimi*, 602 U.S. at 691; *see also infra* at 20-23). Other sources of law such as the First and Fourteenth Amendments would certainly foreclose the most disturbing 18th-century restrictions (and many of the hypotheticals offered by Petitioners). *See, e.g., Duarte*, 137 F.4th at 760, But it is true that some categorical restrictions might not implicate those protections.

Vexing as this problem may be in theory, however, it is a problem for another case. This is so for at least four reasons.

First, the legislative determination of dangerousness here is amply supported and uncontested. In passing the two-in-seven

provision, the Legislature specifically highlighted studies demonstrating a “correlation between alcohol abuse and future gun violence,” and this correlation is well corroborated by public health research. *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>; Op. Br. at 7-10. Petitioners explicitly decline to challenge these legislative findings or the evidence supporting them. *See* Ans. Br. at 26-27. Accordingly, they offer no basis to claim the Legislature overreached. *Cf. Williams*, 113 F.4th at 662 (“Our nation’s history shows that the government may require individuals in a disarmed class to prove they aren’t dangerous in order to regain their right to possess arms. Thus, in an as-applied challenge . . . , the burden rests on Williams to show he’s not dangerous. And he can’t make that showing.”).

Second, and relatedly, Washington’s law reflects a virtually unanimous national consensus of disarming recidivist

drunk drivers. *See* Op. Br. at 10-12. While the specifics of state laws vary slightly, at least 47 states have passed laws bringing recidivist drunk driving within the federal felon-in-possession statute, 18 U.S.C. § 922(d)(1). *Id.* Washington’s law is thus anything but an “outlier.” *Contra* Ans. Br. at 21. Rather, the fact that our Legislature’s determination of dangerousness is echoed by nearly every other state lends further support to its legitimacy. *See VanDyke*, 2025 WL 3000188, at *6 (finding legislative determination of dangerousness for those subject to protective orders “[f]urther illustrat[ed]” by “the fact that dozens of state legislatures restrict, or permit state courts to restrict, gun possession by people subject to protective orders”).

Third, unlike laws disarming, for example, Catholics or Black Americans, and unlike Petitioners’ hypotheticals including “people who are unemployed” and “all men,” Ans. Br. at 25, Washington’s two-in-seven provision turns on an individual’s *conduct*, not their status. More than that, it turns on specific, unlawful, and dangerous conduct. And even more than that, it

permits individuals to show that they have improved their conduct and no longer pose a danger by remaining law-abiding for five years. The whole point of Petitioners’ hypotheticals—the reason they’re persuasive, to the extent they are—is to show that unbounded legislative discretion could theoretically sweep in large swathes of obviously innocent people who would be left without recourse. But Washington’s law doesn’t do that.³

Fourth and finally, Washington’s law provides a mechanism for individuals to demonstrate they no longer pose a risk. Op. Br. at 5-6. So long as Petitioners go five years without being convicted (or found not guilty by reason of insanity) of certain serious crimes, they can have their firearm rights fully restored. RCW 9.41.041. Because the Legislature has already

³ Petitioners do offer one hypothetical—“people who play video games”—that would implicate conduct, as opposed to status. Ans. Br. at 25. But even before we get to any potential Second Amendment issues, disarming video game enthusiasts would almost certainly violate the First Amendment. *See Brown v. Ent Merchs. Ass’n*, 564 U.S. 786, 805 (2011).

provided Petitioners a predictable statutory method for restoring their firearm rights, which is entirely within their control, this Court need not graft an additional individualized mechanism onto the statute. *See Williams*, 113 F.4th at 661 (“When a disarmament statute doesn’t provide an administrative scheme for individualized exceptions, as-applied challenges provide a mechanism for courts to make individualized dangerousness determinations.”).

In short, there may come a case that squarely presents Petitioners’ concerns about arbitrary disarmament. But this is not that case.⁴

⁴ While Petitioners may have a legitimate criticism of a Second Amendment that eschews traditional constitutional interest balancing in favor of *Bruen*’s historical approach—since American history contains significant failures to protect the rights of marginalized groups, including religious minorities, people of color, women, and others—that criticism need not extend to Washington’s own constitution, which independently protects the right to armed self-defense. *See* Const. art. I, § 24; *see also State v. Jorgenson*, 179 Wn.2d 145, 156 (2013) (holding art. I, § 24 of the Washington Constitution is read “independently of the Second Amendment”). Petitioners do not bring a claim under the Washington Constitution, so it is not addressed here.

2. Washington’s legislature is not confined to addressing only categories of dangerous people that concerned 18th-century legislatures

Next, Petitioners contend that the two-in-seven provision is constitutionally infirm because “alcohol offenders” are not the sort of dangerous people who have historically been disarmed. *See, e.g.*, Ans. Br. at 22-23 (contending that “the State has failed to produce any evidence that the founding generation deemed recidivist alcohol offenders dangerous enough to disarm beyond the present state of intoxication”).

Rahimi rejected the need for such a “historical twin.” There, “the Government ha[d] not identified a founding-era or Reconstruction-era law that specifically disarmed domestic abusers,” despite domestic violence being an ancient problem. *Rahimi*, 602 U.S. at 704 (Sotomayor, J., concurring). But the Supreme Court rejected the argument that this doomed the law, holding that “a ‘historical twin’ is not required.” *Id.* at 701; *see*

But there is good reason to think that none of Plaintiffs’ alarming hypotheticals would pass muster under Washington’s independent protection of the right to armed self-defense.

also id. at 704 (explaining the government “did not need to” identify a historical law disarming domestic abusers) (Sotomayor, J., concurring). This is because “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791.” *Id.* at 691-92. Following *Bruen* and *Rahimi*, history delineates the principles which guide regulation—here, that dangerous individuals may be disarmed—but modern legislatures may apply these principles “based on present-day judgments about categories of people whose possession of guns would endanger the public safety[.]” *Kanter*, 919 F.3d at 464; *see also Goins*, 118 F.4th at 801 n. 5 (“It is not a question of whether there are historical analogues of governments disarming individuals for purely drug use but rather if there are historical analogues for disarming dangerous individuals.”). Here, as in *Rahimi*, the two-in-seven provision comports with the principles underlying the Second Amendment, which allows state legislatures to restrict members of dangerous groups from possessing firearms.

The absence of a “historical twin” is especially irrelevant because recidivist drunk driving is a uniquely modern problem, one that, similar to firearms misuse, involves the use of dangerous machinery in a way that recklessly endangers human life. *See Bruen*, 597 U.S. at 27 (“[C]ases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.”). The Founding generation simply had no cause to consider laws such as H.B. 1562 a century before cars were invented. Nor did Founding-era legislatures have the benefit of the robust public health literature drawing a clear link between recidivist drunk driving and dangerous firearms misuse. *Bruen* and *Rahimi* explicitly allow space for modern legislatures to tackle modern problems. But “[u]nder the [Petitioner’s] approach, the legislatures of today would be limited not by a distant generation’s determination that such a law was unconstitutional, but by a distant generation’s failure to consider that such a law might be necessary.” *Rahimi*, 602 U.S. at 705-06 (Sotomayor, J.,

concurring); *see also id.* at 739-40 (“[I]mposing a test that demands overly specific analogues has serious problems[,]” including that “it assumes that Founding-era legislatures maximally exercised their power to regulate, thereby adopting a ‘use it or lose it’ view of legislative authority.”) (Barrett, J., concurring). Petitioners would have this Court trap the law in amber, in direct contravention of *Rahimi*.

* * *

Our history plainly establishes the principle that dangerous people may be categorically disarmed. Petitioners do not contest that recidivist drunk drivers pose an elevated risk of danger. Nor do they contest that they come within that group. Their as-applied challenge thus fails as a matter of law.

B. Washington’s Two-in-Seven Restriction Fits within the Historical Tradition of Punishing Those Convicted of Serious Crimes

Petitioners’ challenge fails for a second, independent reason. The historical evidence shows that Founding-era legislatures punished serious crimes by death or forfeiture of *all* the defendant’s property, including firearms. *See* Op. Br. at 40-49. In light of these harsh penalties that encompassed disarmament, it follows *a fortiori* that the two-in-seven provision—a temporary disarmament that follows a conviction for recidivist drunk driving, a serious crime—is constitutional under the Second Amendment.

Petitioners disagree, arguing that unless the Founding generation imposed estate forfeiture or the death penalty for carrying a firearm while intoxicated, the State has not met its burden. *See* Ans. Br. at 23, 33. This is wrong for the same reason as Petitioners’ argument about dangerousness. The Second Amendment does not tie modern legislatures’ hands based on how the Founding generation legislated; it requires only that

modern legislatures legislate consistent with historical principles. This is particularly the case where the crime of recidivist drunk driving did not exist at the Founding. Petitioners cannot deny—indeed, affirmatively admitted below—that drunk driving is an extremely dangerous crime. CP 121. And Petitioners offer no reason why repeatedly committing this serious crime cannot subject the convicted person to temporary disarmament, given that non-deadly crimes such as horse theft, forgery, and embezzlement were traditionally punishable by total asset forfeiture or even harsher penalties. *See Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019) (summarizing Founding era felonies punishable by death); *see also Goins*, 118 F.4th at 801 (upholding disarmament of recidivist drunk driver); *Prather*, 791 F.Supp.3d at 1202 (same). Their suggestion that drunk driving does not merit disarmament because “the danger stems from the act of drunk driving itself and has nothing to do with firearm misuse,” Ans. Br. at 27, is a red herring. Forgery, horse theft, and embezzlement—or drug trafficking, rape, and

even murder—need not involve a firearm to subject an individual to disarmament. From the beginning, American legislatures have disarmed (or worse) individuals who committed serious offenses, irrespective of whether the crimes involved firearms.

Petitioners’ final argument is that disarming anyone who demonstrates “disrespect for legal norms of society,” *Jackson*, 110 F.4th at 1127, sweeps too broadly. Ans. Br. at 31. But Petitioners have not been disarmed for jaywalking, or indeed for marijuana possession or food stamp fraud. Recidivist drunk driving is unquestionably “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 it has deadly consequences. *See Washington Traffic Deaths Reach 33-Year High* (May 13, 2024), 29 <https://wtsc.wa.gov/wtsc-2023-traffic-fatalities/> (noting that, in 2023, at least 400 Washingtonians were killed in crashes involve intoxicated drivers). Washington’s two-in-seven provision thus fits well within our Nation’s unbroken tradition of disarming

individuals convicted of serious offenses. Petitioners' challenge fails as a matter of law.

C. Washington's Legislature May Constitutionally Disarm People with a History of Dangerous Alcohol Abuse

H.B. 1562 is constitutional under the well-settled historical traditions of disarming categories of dangerous persons and persons who have committed serious crimes. It is also constitutional for the independent reason that it falls within a robust historical tradition of preventing alcohol and firearms from mixing together. Op. Br. at 33.

Petitioners concede this tradition but contend that it only extends as far as disarming those who are "presently intoxicated." Ans. Br. at 2; *see also id.* at 34-35. But from the beginning, legislatures have adopted various methods of ensuring that "the dangerously drunk" are kept separate from firearms. *Harris*, 144 F.4th at 158. Founding-era legislatures, for example, prohibited intoxicated persons from carrying firearms, shooting firearms, or buying firearms. Op. Br. at 49-53. They

passed laws to ensure liquor was not served near militiamen, nor guns permitted where alcohol was likely to be abused, nor gun use permitted at times when people were likely to be drunk. *Id.* They “enacted surety regimes empowering magistrates to make drunkards give security for peace and good behavior or be imprisoned,” similar to the surety regimes the Supreme Court relied on in *Rahimi. Harris*, 144 F.4th at 159. “Habitual drunkards” were even prohibited from acquiring firearms at all under the early twentieth century Uniform Firearms Act. Mark 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. 101, 117 (2024), <http://dx.doi.org/10.2139/ssrn.4742106>.

Petitioners try to flyspeck these historical examples, arguing that none regulated in exactly the same way as the two-in-seven law. But the sheer variety of laws “from before the Founding and continuing throughout the Nation’s history[.]”

showing that “governments have regulated in order to mitigate the dangers of mixing alcohol and firearms[]” precludes Petitioners’ efforts to narrowly construe history. *Wolford v. Lopez*, 116 F.4th 959, 986 (9th Cir. 2024). Taken together, these “regulations on the dangerously drunk . . . support [the] constitutionality” of regulations that disarm “those whose [substance] use would likely cause them to pose a physical danger to others if armed.” *Harris*, 144 F.4th at 158.

Here it bears emphasizing that Washington’s two-in-seven provision does not disarm people merely because they have a chemical dependency. It is thus much more narrowly drawn than 18 U.S.C. § 922(g)(3), the law at issue in *Connelly*, *Harris*, and others, which disarms any person “who is an unlawful user of or addicted to any controlled substance.” H.B. 1562 is not triggered by the status of having a chemical dependency, but rather by a person’s having repeatedly taken the dangerous and reckless *action* of driving while drunk. This direct link between demonstrated, dangerous alcohol misuse and disarmament

means the law fits snugly within the historical tradition of disarming the “dangerously drunk.” *Harris*, 144 F.4th at 157.

Petitioners also ignore the Uniform Firearms Act, which—in contrast to the two-in-seven provision’s clear and established consequence for recidivist drunk driving—left firearm restrictions up to the discretion of local law enforcement. Frassetto, 108 *Marquette L. Rev.* 101, 117-18. Twentieth-century laws, like the Uniform Firearms Act, that illustrate durable principles of constitutional law are appropriate to reference in examining American history and tradition. While courts “must . . . guard against giving post enactment history more weight than it can bear[.]” *Bruen*, 597 U.S. at 35, where—as here—more recent history confirms (rather than contradicts) public understanding at the time of ratification, such history is part of the “regular course of practice,” which “can liquidate & settle the meaning of disputed or indeterminate terms & phrases in the Constitution[.]” *id.* at 35-36 (quoting *Chiafalo v. State*, 591 U.S. 578 (2020)) (citation modified).

Here, there is an unbroken tradition of policing the mixing of alcohol and guns—unsurprisingly, as they are and always have been a dangerous combination. The two-in-seven provision is consistent with this principle in both its purpose and the degree to which it burdens the right to armed self-defense. It is therefore constitutional as applied to Petitioners.

III. CONCLUSION

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 remand to the superior court with instructions to dismiss.

This document contains 5,039 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 25th day of
November 2025.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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WA STATE ATTORNEY GENERAL'S OFFICE, COMPLEX LITIGATION DIVISION

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