A Tragical History Tour: The Wrong Test for the Second Amendment from *Bruen*, *Rahimi*, and Beyond

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I. Introduction

For much of American history, the right to bear arms under the Second Amendment of the Constitution remained largely unadjudicated by the Supreme Court. The landmark *District of Columbia v. Heller* decision in 2008 fundamentally reshaped Second Amendment jurisprudence by establishing an individual right to bear arms unconnected to militia service.[1] Lower courts thereafter grappled with the implications of *Heller* and attempted to define the permissible scope of firearms regulations. To determine whether gun control laws were constitutional under the Second Amendment, the courts balanced historical analysis against a means-end test. The history and tradition in favor of the right to bear arms could be outweighed if the government demonstrated a substantial state interest in public safety was addressed with a narrowly tailored law to limit restraints against an individual's constitutional right. As the lower courts refined the application of this balance, the Supreme Court in 2022 clarified its intended standard of review in *New York State Rifle & Pistol Association, Inc. v. Bruen*.[2] In a significant shift in Second Amendment interpretation, the Court rejected the two-step interest balancing test in favor of an approach focused only on the Constitution's text, plus the history and tradition of the nation from the limited timeframes around its founding and the Civil War era.

In 2024, the Supreme Court attempted to further clarify the *Bruen* test in *United States v. Rahimi*.[3] The two cases are quite different in specific context, with *Bruen* addressing licensing requirements for concealed carry and with *Rahimi* concerning domestic violence restraining orders and firearms possession. However, both rely on the historical-textualist approach to Second and Fourteenth Amendment interpretation. This approach, which emphasizes an understanding of the text of the amendments as intended at the time of ratification, in addition to the history and tradition of the nation, is now the only framework for courts to use when determining the constitutionality of gun control regulations. *Rahimi*

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1) District of Columbia v. Heller, 554 U.S. 570 (2008).

2) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1 (2022).

3) United States v. Rahimi, 602 U.S. 680 (2024).

attempted to clarify how the text, history and tradition must be considered, by directing lower courts to look to historical analogues of modern firearms control regulations rather than finding exact matches from the past. While a reasonable part of a larger analysis, the abandonment of means-end scrutiny makes historical analysis a weak crutch to lean upon rather than a sturdy foundation for securing Second Amendment rights.

To understand the Court's current approach to the constitutional right to bear arms, this article reviews the background of *Bruen* and *Rahimi*, as well as cases subsequently remanded to the lower courts for reconsideration after *Rahimi*. *Bruen* created a complex and evolving landscape for Second Amendment litigation, as evidenced by subsequent case law. While the *Rahimi* decision makes analysis comparatively clearer than it was previously for the lower courts, it has made little progress towards establishing consistent standards for reviewing firearms legislation. Lower courts will continue struggling to apply this new test with consistency across jurisdictions. These cases demonstrate the inherent weaknesses of the *Bruen* and *Rahimi* mandate for courts to forego practical means-end tests, and instead relentlessly apply analogues from times gone by to modern gun control regulations.

II. *New York State Rifle & Pistol Association, Inc. v. Bruen* and the Slippery Slope of History and Tradition

The Second Amendment of the United States Constitution, ratified in 1791, establishes a right to bear arms in language that is lacking in grammatical precision- "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."[4] This phrase, not even a proper sentence, has been given a relatively new immutable meaning. In 2008, the Supreme Court interpreted the amorphous language to mean that in regard to traditionally lawful purposes, such as protection of the home, "the Second Amendment conferred an individual right to keep and bear arms."[5] Subsequent case law further held that this right applies to the states through the Fourteenth Amendment,[6] and that the right includes all bearable arms, rather than just those that existed at the time of the amendment's enactment.[7]

While clarifying the broad applicability of the Second Amendment for home protection, the Court recognized that the right to bear arms is not unlimited, and may be subject to regulation.[8] The Court left open the constitutionality of longstanding firearms regulations such as prohibitions of ownership by felons, or of carrying arms in public buildings. As the *Heller* opinion did not provide a definitive list of just what separates acceptable, longstand-

4) U.S. Const. amend. II.
5) District of Columbia v. Heller, 554 U.S. 570, 595 (2008).
6) McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010).
7) Caetano v. Massachusetts, 577 U.S. 411 (2016).
8) *Heller*, 554 U.S. at 595.

ing regulations from unconstitutional infringements on Second Amendment rights, the floodgates were left open for further clarification. *Heller* limited its review to the regulation of arms in an individual's home, as this was the underlying issue of the D.C. statute before the Court. Some doubts remained as to whether the protections of *Heller* would equally extend to locations outside the home. The Supreme Court attempted to further clarify its position in the 2022 decision *New York State Rifle & Pistol Association, Inc. v. Bruen*, which held that individuals have the right to carry handguns outside of their homes for self-defense.[9)]

In *Bruen,* the petitioners were New York residents who applied for licenses to carry a handgun in public for self-defense. New York requires licenses for all handgun possession.[10)] New York law further prohibits individuals from carrying firearms outside of their homes, unless issued a permit to do so. Before *Bruen*, individuals who wanted to carry a firearm in public for self-defense were required to get an unrestricted license. Obtaining the license required the applicant to prove that "proper cause" existed to issue it, such as showing a special need for self-protection over and above what the general community required.[11)] Absent such proper cause, applicants could receive only a restricted license for public carry for a limited purpose, such as recreational shooting or for work. Application denials received limited judicial review, with courts deferring to the reviewing officer's discretion in anything other than arbitrary or capricious cases.[12)] The *Bruen* petitioners failed to show proper cause for unrestricted licenses, and were rejected.

Prior to *Bruen*, the courts of appeal applied a two-step test for analyzing Second Amendment cases, by balancing historical analysis against a means-end scrutiny. *Bruen* cast aside the step of means-end scrutiny. Instead, the Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."[13)] Instead of taking due consideration of safety or other public interests, the government now bears the burden of demonstrating that a challenged gun control law aligns with historical restrictions on the right to own and carry weapons.

How the burden is to be borne is not clearly delineated. Courts are not required to unwaveringly uphold any and every modern law that presents a passing resemblance to an

9) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 10 (2022).

10) N.Y. Penal Law § 265.01-b (McKinney), Criminal possession of a firearm.

11) N.Y. Penal Law § 400.00(2)(f) (McKinney). The "proper cause" requirement was repealed by 2022 N.Y. Ch. 371. Subsequent to the amendment necessitated by the *Bruen* decision, issuing a carry license for a handgun in New York changed from a "may issue" to a "shall issue" structure, so long as applicants meet established predicate conditions as established in detail under the revised statute.

12) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 13 (2022).

13) *Id*. at 17.

analogue from the pages of a history book. Aberrant laws from the past that are not part of the nation's traditions should not be given the same weight as those that are. The opinion cautions that "analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check."[14] How exactly one is to differentiate between an analogue and an aberration is not as easy to determine. As an example, the Court recognized that weapons have historically been prohibited in "sensitive places," such as government buildings. However, Manhattan could not be similarly categorized just because it is crowded and protected by the New York City Police Department.[15] Historical scholars need to take further heed, for Constitutional rights need to be understood as of the time they were adopted, rather than according to the actual world of today. "The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." Thus, all analysis is to be virtually locked into two fixed points in time, as the Court warns "against giving postenactment history more weight than it can rightly bear."[16] Apparently, judges are supposed to understand and extrapolate the thinking of the founders of the nation, when the population of Manhattan was approximately 33,000 people, and know what sort of regulation they would have approved of regarding a Manhattan of almost 1,700,000 residents in 2020.[17]

In holding the New York licensing requirement as overly burdensome, the Supreme Court reviewed historical restrictions on the right to publicly carry firearms.[18] In no case was an across-the-board prohibition of lawful firearms carrying adopted. Instead, the Court observed that regulations were historically limited in scope and purpose. From the nation's founding and through the antebellum period, common-law offenses like "affray" or going armed "to the terror of the people" placed some limitations on carrying firearms. However, case law clarified that these limitations did not generally restrict the right of the population to publicly carrying guns peaceably. Only carrying for a "wicked purpose" and causing mischief constituted a crime. Thus, despite specific common-law offenses in existence, the peaceful public carrying of firearms was generally allowed in antebellum America, according to the Court.[19]

Many jurisdictions in the mid-19th century adopted surety statutes, which required

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14) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 30 (2022), quoting *Drummond* v. *Robinson*, 9 F. 4th 217, 226 (CA3 2021).

15) *Bruen*, 597 U.S. at 31.

16) *Id*. at 35.

17) Barbara Shupe, Janet Steins & Jyoti Pandit, *New York State Population 1790 to 1980*, 201 (Neal-Schuman Publishers, Inc. 1987); James L. Bahret, *Growth of New York and Suburbs Since 1790*, 407 The Scientific Monthly 11, no. 5 (1920); https://data.census.gov/profile/Manhattan_borough,_New_York_County,_New_York?g=060XX00US3606144919#populations-and-people (accessed February 2, 2025).

18) *Bruen*, 597 U.S. at 38-70.

19) *Id*. at 51-52.

certain people to post bond before publicly carrying weapons. The Court pointed out that such laws were not public carry bans, but were instead more narrowly targeted towards individuals actually threatening harm. Surety statutes presumed a right to public carry, and only required a bond from those deemed potentially dangerous. Evidence regarding the size and enforcement of surety bonds is scarce, and considering their preventative nature, they likely posed a minor burden. The Court held that these historical limitations do not resemble New York's modern proper-cause requirements that prevent law-abiding citizens from exercising their right to self-defense in public.[20]

The Court's opinion unintentionally highlighted the dangers of over-reliance on attempting to understand the thinking of historical contemporaries, by providing an example of its own misplaced use of historical analysis. The opinion referenced the universally condemned case of *Dred Scott v. Sandford*[21] as support for the Court's affirmation of the importance of the right to keep and bear arms in public.

> Chief Justice Taney offered what he thought was a parade of horribles that would result from recognizing that free blacks were citizens of the United States. If blacks were citizens, Taney fretted, they would be entitled to the privileges and immunities of citizens, including the right "to keep and carry arms *wherever they went*." (emphasis added). Thus, even Chief Justice Taney recognized (albeit unenthusiastically in the case of blacks) that public carry was a component of the right to keep and bear arms—a right free blacks were often denied in antebellum America.[22]

It is inconceivable that Justice Thomas believes this is the takeaway from *Dred Scott* in context. In the immortal words of Inigo Montoya, "I do not think it means what you think it means."[23] In suggesting the inferiority of Black people, Justice Taney used historical context to determine that "the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument."[24] Taney meant not to wax loquaciously upon the rights of citizens, but to demonstrate that an entire race of people was less than human. The full sentence, from which the *Bruen* opinion quotes in part, states the following in regard to what it would mean to assume that the word "citizen" in the U.S. Constitution included Black people:

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20) *Id*. at 55-60.
21) Scott v. Sandford, 60 U.S. 393 (1857).
22) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 60 (2022) (citations omitted).
23) The Princess Bride (Twentieth Century Fox 1987).
24) Scott v. Sandford, 60 U.S. 393, 407 (1857).

> It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.[25)]

Justice Taney was trying to show how ridiculous it would be, in his racist mindset, to give Black people *any* rights, rather than offer some sort of lesson on the specific, inherent rights of all Americans. This is not to say that the right to public carry is *not* a component of the right to bear arms, but cherry picking a phrase out of the greater context from an abomination of a Supreme Court opinion to justify a preferred historical narrative makes a mockery of the process. To use this language as justification that public carry is an immutable component of the right to bear arms makes little more sense than claiming citizens today are entitled to riot inside the Capitol Building as part of the right to "hold public meetings upon political affairs," as demanded by *Dred Scott*.

Bruen emphasizes that the Second Amendment right to bear arms is not subject to any less protection than other constitutional rights. It importantly notes that no other individual constitutional rights are exercisable "only after demonstrating to government officers some special need" as in the case of New York's licensing regulations.[26)] Unfortunately, the Court used flawed reasoning to determine that public carrying of arms is, in fact, part of the Second Amendment's protected rights. The dissenting opinion argues that the majority erred by limiting its focus on history to the exclusion of government interests, no matter how compelling those interests may be. Neither the Constitution nor precedent contain such limitation.[27)] The Court ignored relevant facts, such as the different risks that different firearms may present, and the different purposes or varying types of weapons. Also, as noted above, populations change over time, and the dangers and benefits of publicly carrying firearms may vary greatly between urban and rural areas.[28)]

According to the dissent, the majority opinion's over-reliance on historical analysis in Second Amendment cases is impractical and misguided. Judges are trained in legal reasoning, specifically weighing legislative objectives against the means used to achieve them, not historical interpretation. The ambiguities are potentially endless. For example,

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25) *Id*. at 417.
26) New York State Rifle & Pistol Assn., Inc. v. Bruen, 597 U.S. 1, 70-71 (2022).
27) *Id*. at 83-84 (Breyer, J. dissenting).
28) *Id*. at 89-91 (Breyer, J. dissenting).

while the Court acknowledges "sensitive places" where firearms carrying can be restricted, it fails to define these places in a contemporary context, leaving lower courts to determine just exactly how 18th and 19th-century concepts must apply to modern locations with no obvious analogues, such as subways, nightclubs, and stadiums.[29]

The reliance on history produces inconsistent results at best, making it easy for judges with preconceived historical perceptions to dismiss inconvenient examples out of hand as aberrations rather than counter-narratives. Judges placed in the role of amateur historian may find that some existing laws regulating firearms in public "are too old. But others are too recent. Still others did not last long enough. Some applied to too few people. Some were enacted for the wrong reasons. Some may have been based on a constitutional rationale that is now impossible to identify. Some arose in historically unique circumstances. And some are not sufficiently analogous…"[30] Subsequent cases brought before the courts of appeal reveal these concerns in action, and demonstrate that the majority's reasoning did little to help the lower courts conclusively determine exactly what would and would not pass muster under this history-based rationale. Two related decisions in 2024, one decided by the Supreme Court and another that was denied certiorari, would continue to muddy the waters of what conceivably are and are not constitutionally permissible firearms regulations.

III. Post-*Bruen* Clarification and Continued Confusion: Eyes Locked on the Past

The *Bruen* decision left lower courts grappling with many challenges for determining the constitutionality of firearms regulations. *United States v. Rahimi* would offer some clarification regarding the application of *Bruen*, particularly concerning firearms possession by individuals subject to domestic violence restraining orders, but it left many related issues unresolved. A subsequent case from the Supreme Court of Hawai'i further exemplified the struggle of lower courts to apply the "history and tradition" test to a wide range of gun control laws. These cases, taken together, reveal the ongoing tension between the Second Amendment's guarantee of an individual right to bear arms and the increasing difficulty of interpreting legislation to regulate firearms in the interest of public safety when neither modern history and tradition, nor a means-end test, can be applied.

A. *United States v. Rahimi*

As discussed above, the Court has held from *Heller* to *Bruen* that although the Second Amendment is broadly applicable to individuals, this right may be subject to regulation. *United States v. Rahimi* examined the constitutionality of a federal statute that prohibits the

29) *Id*. at 106, 114 (Breyer, J. dissenting).
30) *Id*. at 130 (Breyer, J. dissenting).

possession of firearms by individuals subject to restraining orders for domestic violence.[31]

Rahimi assaulted his girlfriend during an argument at a parking lot in December 2019. Noticing a bystander, he retrieved a gun from his car, at which time his girlfriend fled. Rahimi fired the gun as she ran away. Rahimi later called and threatened to shoot her if she reported his actions. Despite his threats, she obtained a restraining order against him on February 5, 2020, which included findings of family violence, a likelihood it would occur again, and that he was a threat to the physical safety of her and their child. The Court prohibited Rahimi from threatening her for two years, and from any contact other than for discussions related to the child. In addition, Rahimi's gun license was suspended for two years. In May 2020, Rahmi violated the restraining order. In November that same year, he threatened another woman with a gun, and while under arrest, he was identified as the suspect in at least five other shootings.[32]

Rahimi was indicted for possession of a firearm while subject to a domestic violence restraining order.[33] He sought to dismiss the indictment as a violation of his Second Amendment rights. The district court denied the motion, and he pleaded guilty. The court of appeals reversed the decision, interpreting it as inconsistent with the tradition of American firearms regulation as set forth in *Bruen*.[34] The Supreme Court disagreed with how the court of appeals interpreted the tradition of firearms regulation as set forth in *Bruen*, and held that individuals who threaten harm to others may indeed be prohibited from "misusing" firearms as proscribed in federal law.[35] While the end result is sound, the reasoning used to reach this conclusion is unnecessarily convoluted, and ultimately troubling.

The Court cast its gaze back into the mists of time to explain that the right to bear arms did not historically allow anyone to indiscriminately have any weapon for any purpose, and gave examples of regulations related to firearms storage and drunken partiers.[36] *Bruen* directed the lower courts to look at historical tradition with regard to gun control laws, and uphold them as constitutional under the Second Amendment only if they fit into the tradition. However, when presented with a potentially unpleasant result, the Supreme Court cautions the lower courts that its "precedents were not meant to suggest a law trapped in amber… [T]he Second Amendment permits more than just those regulations identical to ones that can be found in 1791."[37] Courts must determine if a new law is only "relatively similar" to traditionally permitted laws, rather than requiring an exact historical match. The uncomfortable reality is that if a court dislikes a regulation, the amorphous test may readily

31) United States v. Rahimi, 602 U.S. 680 (2024).
32) *Id*. at 684-89.
33) 18 U.S.C. § 922(g)(8).
34) United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), cert. granted, 143 S. Ct. 2688 (2023), and rev'd and remanded, 602 U.S. 680 (2024).
35) United States v. Rahimi, 602 U.S. 680, 690 (2024).
36) *Id*. at 691.
37) *Id*. at 691-92.

allow such regulation to be interpreted as against the nation's historical tradition with complete disregard to possible strong government interests such as public safety.

In this case, the Court determined that sufficient historical "similarities" existed to uphold the federal prohibition of firearms possession by a person subject to a domestic violence restraining order. American gun laws have long regulated the misuse of firearms in ways that would harm or threaten others, dating back to English common law. In the 1700s and early 1800s, the principle that arms-bearing was subject to legal constraints developed in two legal regimes: surety laws and "going armed" laws. Surety laws allowed magistrates to require individuals suspected of future misbehavior, including spousal abuse and firearms misuse, to post bonds. "Going armed" laws specifically prohibited carrying dangerous weapons to terrify the public. The goal of such laws was preventing violence by addressing both the threat of future harm and the act of menacing others with weapons.[38] It is at this point in the analysis that the Court raises its head from its history books and looks at the reality of the world around us: "Taken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."[39] Presumably, in the absence of said surety and going armed historical analogies, the Court would have wholeheartedly struck down the prohibition on the possession of firearms by a person judicially determined to present a threat to others because the law failed to fit within "tradition" rather than following its aforementioned "common sense." Maintaining a means-end test would diminish the need for grasping at historical straws to reach a "common sense" conclusion.

The Court made an important distinction from *Bruen*, noting that prohibiting individuals subject to domestic violence restraining orders from possessing firearms does not broadly restrict use of firearms by the general public.[40] This should have been the crux of the reasoning in the case. It provides a clearer standard that lower courts can rely on, without requiring every judge to become an amateur historian every time a firearms regulation is challenged. Historical analogizing alone is an insufficient step to reach the legal conclusion readily seen when balancing the government interest against the individual right: Whereas the unconstitutional New York law in *Bruen* presumed that no citizen had a right to carry firearms unless displaying a specific need, the federal law here presumes that existing Second Amendment rights may be burdened after an individual has been found to pose a credible threat to the physical safety of others.[41] It is difficult to achieve consistent legal analyses and results under the *Bruen* test because it depends on the availability of historical evidence (or relative lack thereof), and how broadly or narrowly a court interprets that

38) *Id*. at 693-99.
39) *Id*. at 698.
40) *Id*.
41) *Id*. at 699-700.

evidence.[42]

The dissenting opinion in *Rahimi* clearly illustrated the shortcomings of the Court's history-reliant analysis, given that it would not have upheld the restrictions of firearms possession by a violent abuser. The dissent placed great weight on the historical use of surety laws to temper acts of violence, as anyone subject to a surety bond would owe a set sum of money if the individual breached the peace. The dissent noted that under early English law, a wife could seek a surety as protection from her husband if he threatened to kill or severely beat her, or if she had reasonable cause to fear such violence.[43] The dissent did not, however, explain how abused wives were to benefit from such bounties if they were killed. The dissent would rather require courts today to remain shackled to the history and tradition of times when a married woman had no legal status apart from her husband[44] than look at the real life dangers that abused spouses continue to face today. If the dissenting opinion's reasoning were to be applied in the real world instead of academic history, then perhaps it would also argue in favor of the open carrying of firearms into Supreme Court hearings.[45] Law-abiding armed visitors could simply provide sureties prior to entry into the nation's highest court so that they are hindered by "a lesser relative burden" by merely providing financial incentives to behave, rather than face the greater burden of disarmament in public.[46] One might wonder if in this instance, the dissent's view of the history and tradition of prohibiting arms in the courtroom would conveniently outweigh this countervailing tradition of less burdensome sureties. Reinstating a means-end test to such restrictions would obviate a reliance on the uncomfortable countervailing history and tradition.

B. *Wilson v. Hawai'i*

The Supreme Court of Hawai'i began its opinion in *State v. Wilson* with a defiance of *Bruen* in no uncertain terms: "Article I, section 17 of the Hawai'i Constitution mirrors the Second Amendment to the United States Constitution. We read those words differently than the current United States Supreme Court. We hold that in Hawai'i there is no state constitutional right to carry a firearm in public."[47] On December 9, 2024, the Supreme

42) *Id*. at 745-46 (Jackson, J., concurring).

43) *Id*. at 762-64 (Thomas, J., dissenting).

44) Under the concept of coverture, "by marriage, the husband and wife become one person in law…that is, the very being or, legal existence of the woman is in many respects suspended during the marriage, or at least is incorporated and consolidated into that of the husband…" Herbert Broom, L.L.D. and Edward A. Hadley, M.A., *Commentaries on the Laws of England, Vol I, 361*-363 (1875).

45) "Before entering the Supreme Court Building, all visitors are screened by a magnetometer and all personal belongings are screened by an x-ray machine. To ensure the safety of visitors and staff and to preserve the collections, facilities, and historic building and grounds, the following items are strictly prohibited inside the building… Guns, replica guns, electric stun guns, ammunition, martial arts weapons or devices, and fireworks…" https://www.supremecourt.gov/visiting/prohibited-items.aspx

46) United States v. Rahimi, 602 U.S. 680, 766 (2024) (Thomas, J., dissenting).

47) State v. Wilson, 154 Haw. 8, 10 (2024), cert. denied, 145 S. Ct. 18 (2024).

Court of the United States denied the defendant's petition for a writ of certiorari.[48] That is not, of course, to be interpreted as either the Supreme Court's tacit approval of the decision, or the end of the story. As this case may be instructive regarding the future of Second Amendment litigation post-*Rahimi*, the ruling from Hawai'i needs to be understood from the unique position of the state (both geographically and historically), and from the statements attached to the Supreme Court's denial of certiorari that offer a harsh rebuke of the state court and an indication of how this case will ultimately be decided if and when it re-appears before the Supreme Court.

In December 2017, a business owner called the police after seeing trespassers on his fenced property. While waiting for officers to arrive, the owner approached Wilson and three others, and detained them at gunpoint. Wilson told the responding officers that he had a weapon. A search revealed a loaded, unregistered .22 pistol. Wilson admitted to legally purchasing the gun in Florida in 2013, but had no permit for it in Hawai'i, and never applied for a permit to own a handgun.[49]

Among his claims, Wilson filed a motion to dismiss charges for possessing a firearm outside the home. The motion was granted by the Circuit Court, relying on the precedent of *Bruen*. The Hawai'i Supreme Court overturned the decision, holding that neither the state's constitution nor historical tradition supported a right to carry arms in public in Hawai'i. A technical rationale for overturning Wilson's challenge was that Haw. Rev. Stat. Ann. §134-9 requires individuals to apply for a license to carry a firearm outside the home. Since Wilson never bothered applying and thus the state never refused to issue any such license, he lacked standing to challenge the statute.[50] The court further held that state statutes requiring handguns and ammunition to "be confined to the possessor's place of business, residence, or sojourn…" and to other statutorily authorized locations[51] did not violate state constitutional rights to bear arms.

The court took exception to certain recent Supreme Court decisions regarding firearms control. For example, "*Bruen* snubs federalism principles. Still, the United States Supreme Court does not strip states of all sovereignty to pass traditional police power laws designed to protect people."[52] It further opined that the state constitution provided greater protections than the federal constitution, and "this court, not the U.S. Supreme Court, drives interpretation of the Hawai'i Constitution."[53] Unfortunately, the court's emphasis on state constitu-

48) Wilson v. Hawaii, 145 S. Ct. 18 (2024).

49) *State v. Wilson*, 154 Haw. at 10-11.

50) *Id*. at 11-13.

51) Haw. Rev. Stat. Ann. §§ 134-25 and 134-27.

52) *State v. Wilson*, 154 Haw. at 10.

53) *Id*. at 14. While not explicitly stated, such language indicates a less than full appreciation for established precedent regarding the Supremacy Clause of the United States Constitution. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof… shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or ↗

tional provisions shifted the focus from the larger flaws of *Bruen*'s reasoning.

The prosecution noted that at the time of arrest, Wilson was not a law-abiding citizen, as he was in the process of criminal trespass, arguing that "[n]either *Bruen*, nor any case, protect a right to commit a crime while armed." Yet the court dismissed this line of argument as inapplicable, since the trespassing charge was not before it, and instead held that the Hawai'i Constitution does not guarantee an individual right to carry firearms in public for self-defense purposes.[54] Even though the state's constitution mirrors the Second Amendment, the Supreme Court of Hawai'i held "that the authors and ratifiers of the Hawai'i Constitution imagined a collective right. Our understanding aligns with what the Second Amendment meant in 1950 when Hawai'i copied the federal constitution's language. And in 1968 and 1978 when Hawai'i's people kept those words."[55]

While the state court's decision at first seems to explicitly contradict *Bruen*, the opinion made pointed arguments in support of its decision under an historical analysis of the unique history and tradition of Hawai'i, which was an independent monarchial nation unified under King Kamehameha in 1810. The law of Mamala-hoe was established under his rule to protect all people. "The law imagines free movement without fear. Living without need to carry a deadly weapon for self-defense."[56] The court further detailed the heavy regulation of weapons in the islands between 1833 and 1893 under the law of the Hawaiian Kingdom, from 1893 to 1898 under the provisional government in charge after the overthrow of the monarchy, and from 1898 to 1959 as a U.S. territory. A careful historical analysis showed no historical, cultural or legal recognition of a right to carry deadly weapons in public.[57]

If U.S. history and tradition reviews are confined to the timeframes of the Second and Fourteenth Amendments, then Hawai'i's own history and tradition of the time must be given considerable weight, as it was not a possession of the United States at either time. Hawaiian history and tradition are of no less consequence to the people of Hawai'i than the history and tradition of the earliest colonists would be to the people of New England. *Bruen* provides little guidance for the Supreme Court of Hawai'i in this regard, however the U.S. Supreme Court may eagerly try to provide such additional assistance if given the chance. Although the Court denied certiorari to the appellants, it was for technical reasons rather than out of appreciation for the Hawai'i Supreme Court's critiques. "By invoking state standing law to dodge Wilson's constitutional challenge, the Hawaii Supreme Court failed to give the Second Amendment its due regard" and that the "correction of the Hawaii

↘ Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl 2. See also Martin v. Hunter's Lessee, 14 U.S. 304 (1816); Ableman v. Booth, 62 U.S. 506 (1858); and Pennsylvania v. Nelson, 350 U.S. 497 (1956).

54) *State v. Wilson*, 154 Haw. at 15.

55) *Id*. at 18.

56) *Id*. at 23-24.

57) *Id*. at 24-27.

Supreme Court's error must await another day."[58] In an accompanying statement, Justice Gorsuch provided a more measured reproach. "I do not mean to suggest Mr. Wilson's Second Amendment defense has merit. I observe only that no one knows the answer to that question because the Hawaii Supreme Court failed to address it."[59] As it is, the earnestness of the Hawai'i Supreme Court's decision is unlikely to overcome strong skepticism from the *Bruen* majority's perspective. An application of the state's history and tradition would be better served if the Supreme Court allowed it to balance the history with an appropriate means-end test to reach a reasonable result.

IV. Remanded re *Rahimi* with Little Clear Direction, and the Future of Interpreting Restrictions on the Right to Bear Arms

After the *Rahimi* decision was issued, the Supreme Court vacated the judgements of more than a dozen other Second Amendment cases related to the right to bear arms to which it had granted certiorari, and remanded them for further consideration. Many have already been reconsidered and decided. A brief review below reveals that most courts of appeal were generally comfortable in re-confirming their earlier holdings.

A. Federal Laws

Like *Rahmi*, the bulk of the cases on remand in its wake involve elements of 18 U.S.C. §922(g), which prohibits the possession or transportation of firearms or ammunition by an individual:

> (1) who has been convicted in any court of… a crime punishable by imprisonment for a term exceeding one year; (2) who is a fugitive from justice; (3) who is an unlawful user of or addicted to any controlled substance…; (4) who has been adjudicated as a mental defective or who has been committed to a mental institution; (5) who, being an alien… is illegally or unlawfully in the United States…; (6) who has been discharged from the Armed Forces under dishonorable conditions; (7) who, having been a citizen of the United States, has renounced his citizenship; (8) who is subject to a court order that— (A) was issued after a hearing…; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or

58) Wilson v. Hawaii, 145 S. Ct. 18, 21 (2024) (Thomas, J. statement respecting the denial of certiorari).
59) *Id*. at 23 (Gorsuch, J. statement respecting the denial of certiorari).

> threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or (9) who has been convicted in any court of a misdemeanor crime of domestic violence…

The cases most similar to *Rahimi* in fact and in relation to the relevant section of the code predictably followed the new precedent in lockstep. The further the underlying claims and fact patterns deviated therefrom, however, the less predictable the holdings became.

1. United States v. Canada

Zavien Lenoy Canada was found guilty of possessing a gun as a felon. He argued that the code was unconstitutional, but the court rejected his claim. The court emphasized that no federal appellate court has ever declared §922(g)(1) unconstitutional, and they declined to do so in this case. Thus, the Fourth Circuit noted that prohibitions on the possession of firearms by felons are presumptively lawful, and re-adopted its previous decision.[60)]

2. United States v. Cunningham

Cunningham was convicted of having a gun as a felon, intending to sell cocaine, and having a gun while committing a drug crime. He claimed that he had a Second Amendment right to own a gun even though he is a felon. The Court of Appeals for the Eighth Circuit disagreed with Cunningham before *Rahimi*, and continued to find his arguments unconvincing even after remand and further consideration. The court concluded that the longstanding prohibition on possession of firearms by felons remains constitutional.[61)]

3. United States v. Jackson

Jackson was convicted of unlawful possession of a firearm as a previously convicted felon. The Court of Appeals for the Eighth Circuit originally rejected the claim that he had a constitutional right under the Second Amendment to possess a firearm as a convicted felon. On remand, the court concluded that *Rahimi* did not change their original decision.[62)]

4. United States v. Lindsey

Lindsey pleaded guilty to making false statements to a financial institution and conditionally pleaded guilty to being a felon in possession of a firearm, while reserving his right to challenge the gun charge. He was sentenced to four years in prison. He argued that the law banning felons from owning guns was unconstitutional. The court initially upheld his conviction. The Eighth Circuit reaffirmed its prior decision succinctly, holding that the

60) United States v. Canada, 123 F.4th 159, 160-161 (4th Cir. 2024).
61) United States v. Cunningham, 114 F.4th 671 (8th Cir. 2024).
62) United States v. Jackson, 110 F.4th 1120 (8th Cir. 2024).

ban on felons possessing firearms is facially constitutional.[63]

5. United States v. Perez-Gallan

Perez-Gallan challenged the federal prohibition of people with domestic violence restraining orders against them from possessing guns.[64] The district court initially sided with Perez-Gallan, citing a previous ruling that the law was unconstitutional, as per the Court of Appeals for the Fifth Circuit's then-binding precedent.[65] On remand, the court held that the specific part of the law Perez-Gallan challenged was not facially unconstitutional, and sent the case back to the district court for reconsideration.

6. Range v. AG United States

Range pleaded guilty in 1995 to a misdemeanor charge related to making a false statement to obtain food stamps. He successfully completed three years of probation, and paid associated costs and fines. His record was blemished only with minor traffic and parking violations and being caught fishing without a license. Because the 1995 misdemeanor conviction was punishable by up to five years in prison, it triggered the federal law preventing him from owning guns, even though his actual sentence included no prison time served. Attempts to buy firearms in subsequent years were blocked due to this conviction. In 2020, Range sued, arguing that the gun ban violated his Second Amendment rights, and asked the court to stop the law from being enforced against him.[66] The Court of Appeals for the Third Circuit found in favor of Range before certiorari was granted. On remand, the court gave due regard to the new precedent. While reaching the same conclusion as before, it added more consideration for arguments based on history and tradition.

7. United States v. Daniels

Daniels's car was searched by an officer who found marijuana cigarette butts in the ashtray, and two loaded firearms. Daniels was never given a drug test, and was not asked if he was using drugs at the time. After arrest, he admitted to being a regular user of marijuana. Under 18 U.S.C. §922(g)(3), an "unlawful user" of a controlled substance is prohibited from firearms possession. A jury found Daniels was such an unlawful user of a controlled substance, and he was sentenced to nearly four years in prison, and thus also prohibited from possessing firearms even after release under 18 U.S.C. §922(g)(1). As the jury neither found that Daniels was intoxicated when arrested, nor identified the last time Daniels used an unlawful substance, the court of appeals reversed the conviction for the gun violation.

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63) United States v. Lindsey, No. 23-2871, 2024 U.S. App. LEXIS 31781 (8th Cir. Dec. 16, 2024).

64) United States v. Perez-Gallan, 125 F.4th 204 (5th Cir. 2024).

65) United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), *overruled by* United States v. Rahimi, 602 U.S. 680 (2024).

66) Range v. AG United States, 124 F.4th 218 (3d Cir. 2024).

On remand, the court again determined that since the jury found no conclusive present or recent unlawful drug use, the conviction was inconsistent with the Second Amendment and reversed.[67] Looking at the past, the court noted that in "our nation's history and tradition of intoxication laws" some laws prohibited carrying arms while intoxicated, but none barred regular drinkers from possessing firearms. The court found it concerning that the government could not find any laws or practices from the time the U.S. was founded that supported disarming regular citizens just for being drunk, even if they were frequently intoxicated. While some laws after the Civil War did prohibit carrying guns while drunk, these were held to be insufficient to justify the modern statute.[68] The court acknowledged the lack of a broadly applicable rule that might make interpreting future similar cases easier. "We sympathize with the desire to articulate a bright-line rule that district courts could apply going forward… A piecemeal approach to laws such as §922(g)(3), determining the contours of acceptable prosecutions through the resolution of continual as-applied challenges, is what *Bruen* and *Rahimi* require..."[69]

B. State Laws

Not all of the cases remanded in light of *Rahimi* centered around 18 U.S.C. §922(g). The cases below concerned state laws in potential conflict with the Second Amendment, and required reconsideration in light of the new direction from the Supreme Court.

1. Antonyuk v. James

New York gun owner plaintiffs sued, alleging in part that the state's gun control statutes violated their Second Amendment rights due to the law's overreach regarding licensing, sensitive locations, and restricted locations. After reconsideration in light of *Rahimi*, the Court of Appeals for the Second Circuit largely reached the same conclusions as initially determined, as "the methodology adopted in *Rahimi* is consonant with the one that we applied in our prior consolidated opinion, and the Court's analysis in *Rahimi* therefore supports our prior conclusions."[70] Those conclusions included that: the law's "good moral character" requirement for license applicants[71] is not facially unconstitutional; the statute's requirement for concealed carry license applicants to disclose social media accounts is likely a violation of both the Second and First Amendments; bans on guns in certain public places, such as public parks, zoos, establishments that serve alcohol, and banquet halls are not facially unconstitutional, and; blanket bans at other locations such as

67) United States v. Daniels, 124 F.4th 967 (5th Cir. 2025).
68) *Id*. at 11-12.
69) *Id*. at 21.
70) Antonyuk v. James, 120 F.4th 941, 955 (2024).
71) N.Y. Penal Law § 400.00 (1)(b) mandates firearms license holders to be of "good moral character, which… shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others".

private property are likely violations of the Second Amendment.

2. Lara v. Commissioner Pennsylvania State Police

Three individuals aged from eighteen to twenty years old wanted to carry firearms outside their homes for lawful purposes, including self-defense, though their age group was prohibited under Pennsylvania law. The Court of Appeals for the Third Circuit reversed the district court's upholding of the law. On remand, the court of appeals considered *Rahimi* and its clarification of *Bruen*, and again concluded that its prior analysis properly reflected the approach in *Bruen* and *Rahimi*.[72] The court continued to hold that in regard to Second Amendment rights, individuals in the eighteen to twenty age range are presumptively among "the people" protected therein.[73] The dissent also made a detailed historical analysis of key points in American history and determined that to the contrary, individuals under age twenty-one were treated as minors before the founding and through Reconstruction, and should not be among the presumptive "people" protected by the Second Amendment.[74]

C. Trends from *Rahimi* Remands – Vindication of *Bruen* or a Road to Confusion?

Some trends are starting to emerge from the courts of appeal post-*Rahimi*. Clear precedent was established for courts to dismiss claims of facial unconstitutionality regarding firearms restrictions for individuals subject to restraining orders for domestic violence. Furthermore, the Eighth Circuit and Fourth Circuit consistently upheld felon-in-possession laws after *Rahimi*. These courts reaffirmed their prior decisions, emphasizing the longstanding and "presumptively lawful" nature of such prohibitions. However, the Fifth Circuit determined that prohibiting all criminals across the board the right to bear arms was too restrictive, in that unlawful users of controlled substances cannot be denied their Second Amendment rights just because of past intoxication unrelated to current criminal charges. It will be interesting to see how other courts make comparisons of "intoxication" between drunkenness of the eighteenth and nineteenth centuries and addictions to synthetic stimulants of today, and whether the levels of dependence of modern narcotics as compared with alcohol will be found substantially similar or lead to different outcomes.

The Third Circuit further demonstrated the difficulties of finding direct historical analogues for modern gun regulations when fact patterns do not neatly fit into those of Supreme Court precedent. The court's struggle to compare food stamp fraud to founding-era crimes in *Range* underscores the awkwardness of forcing modern problems to be stuffed into historical molds. The court seemed to reach for an excuse to invalidate a long-accepted area of firearms regulation by stretching historical interpretation.

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72) Lara v. Comm'r Pa. State Police, 125 F.4th 428 (3d Cir. 2025).
73) *Id*. at 15.
74) *Id*. at 34 (Restrepo, J. dissenting).

> It is true that "founding-era practice" was to punish some "felony offenses with death." For example, the First Congress made forging or counterfeiting a public security a capital offense. That said, the crime to which Range pleaded guilty—making a false statement to obtain food stamps—may be more analogous to other offense defined in the same law punishable by a term of imprisonment or fine. While some states at first punished nonviolent crimes "such as forgery and horse theft" with death, by the early Republic, many states assigned lesser punishments.[75]

The history lesson, now mandated by the Supreme Court, detracted from stronger points the court made regarding the unnecessary broadness of the ban as applied to Range, and the fact that his crime of false statements did not involve a firearm, which presented a situation where there was no weapon to give up.[76] Instead, the court launched into a litany of founding-era laws that showed the relative harshness of other criminal penalties in differing contexts, rather than focusing on the government's failure to show a compelling interest in upholding the law when weighed against the individual's right to bear arms, regardless of the history books.

This begs the question: Whose history is correct? Through *Bruen* and *Rahimi*, the Supreme Court is mandating a constitutional test that has a federal appellate court trying to determine if food stamp fraud is more like colonial crimes punishable by fine, imprisonment, or death. It is difficult to see the benefit of an appellate court reduced to finding parallels between modern food stamp fraud and ancient equine thievery, in order to determine the status of an individual's fundamental constitutional right. A means-end test would be a much more practical and straightforward method for the courts to use when considering current and future firearms regulations, especially when true historical analogues are completely lacking, or painfully insufficient.

V. Conclusion

As demonstrated by subsequently remanded cases, *Rahimi* has done little to clarify what "history and tradition" truly means for modern firearms regulations, making reconsideration no easier for cases remanded but not yet decided,[77] and for petitions pending and

75) Range v. AG United States, 124 F.4th 218, 230-231 (3d Cir. 2024) (citations and footnotes omitted).
76) *Id*.
77) *See* Vincent v. Garland, 144 S. Ct. 2708 (2024); Doss v. United States, 144 S. Ct. 2712 (2024); Borne v. United States, 145 S. Ct. 123 (2024); Farris v. United States, 145 S. Ct. 122 (2024); Willis v. United States, 145 S. Ct. 122 (2024); United States v. Pierre, No. 23-11604, 2025 U.S. App. LEXIS 2931 (11th Cir. Feb. 3, 2025); Talbot v. United States, 145 S. Ct. 430 (2024); Jones v. United States, 145 S. Ct. 432 (2024); Hoeft v. United States, 145 S. Ct. 431 (2024); Kirby v. United States, 145 S. Ct. 430 (2024); Mayfield v. United States, 145 S. Ct. 430 (2024); Dubois v. United States, 220 L.Ed.2d 375 (U.S. 2025).

those yet to be filed. *Bruen* and *Rahimi* compel the courts to apply the American history and tradition of firearms regulation to determine if any particular gun control law is constitutional. One issue that requires further consideration is precisely which history and tradition each court must apply. For example, the history and tradition of Hawai'i is unique among the states. Does the U.S. Supreme Court suggest that each individual state must apply an identical, watered-down historical analysis that gives equal consideration to every facet of the complete histories of every state and region in the aggregate, in addition to colonial American laws and customs, plus English common law? If so, the Court would serve its judicial brethren best by issuing a "federal standard" tome on the history and tradition of firearms in the United States for uniform application in courtrooms across the nation. If not, then the Supreme Court is opening the floodgates to multiple challenges in diverse states with differing historical approaches to firearms against identical laws. Different traditions would need to be applied to similar laws, the constitutionality of which will partially depend upon one's state of residence at the time a claim arises. Neither option is particularly appealing.

The inconsistencies and opportunities for fundamentally different interpretations of history and tradition continue to manifest themselves in the lower courts. For example, decisions from two courts of appeal held that banning gun purchases by those between eighteen and twenty years old was not proved to be part of America's historical tradition.[78] Because the federal government could not provide sufficient evidence that young people within that age range were not demonstrably so restricted during the founding years of the nation, or a limited period in the 1800s, the Second Amendment protects the right of such young individuals to purchase guns today.[79]

American courts should not be eternally locked into these limited timeframes for consideration of laws affecting an important constitutional right. Imagine if historians were to uncover a treasure trove of founding documents which plainly state that the founding fathers made twenty-five the minimum age to be a representative in Congress[80] because anyone younger was considered a legal infant. Would this be all the authority the states need to strip those younger than twenty-five of their right to bear arms because of a "clarification" to history? Or would the courts be comfortable ignoring the founders them-

78) Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583 (5th Cir. 2025) and Lara v. Comm'r Pa. State Police, 125 F.4th 428 (3d Cir. 2025).

79) In a footnote, one court notes that its decision "is not to suggest that 15-or 16-year-olds have Second Amendment rights by virtue of the possibility of *posse comitatus* duty. That issue is not before us, and this evidence on its own would be insufficient to establish any such rights." Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583 (5th Cir. 2025) at note 16. While not making a determination either way, at least the court has not completely precluded a challenge from a hypothetical group of high school students from joining a posse, purchasing semiautomatic pistols, and rounding up some cattle rustlers.

80) U.S. Const., art. I, § 2, cl. 2.

selves by determining that their writings did not constitute sufficient "tradition"?

This example is indicative of the practical difficulty of abolishing a means-end test of firearms regulation that *Rahimi* does not solve. Even without the hypothetical documents described above, historians could argue about the proper context for determining maturity and age in the context of antebellum America based on data we already know. One study estimates that in the United States, a male born in 1870[81] had a life expectancy of approximately 43 years.[82] An American male born in 2021 has a life expectancy of 73.54 years.[83] If the age of majority was considered eighteen in 1879, then a man had lived almost 42% of his total life expectancy upon reaching legal adulthood. A comparable age of maturity, expressed as 42% of total life expectancy today, would be over thirty years old. What conclusions are courts to consistently reach from history and tradition under these circumstances? Arguments may be made that eighteen is a fixed age as part of this nation's history and tradition, just as well as courts may decide to factor in the level of maturity that society considered an eighteen year old at the time around the Civil War and apply that to today.

Bruen and *Rahimi* require a comprehensive reevaluation by the Supreme Court. It is difficult to clearly, consistently, and reasonably determine permissible limitations on the right to bear arms when courts are forced to look only to the past. A means-end test is not perfect, but it permits the courts to address the realities of the modern world in a reasonable manner, rather than stopping time after the passage of the Fourteenth Amendment and ignoring over 150 years of subsequent history and traditions. Proponents of expanded rights to publicly carry firearms might cheer the Court's dubious rationale today, preferring the right result even for impractical reasons. However, it is concerning that a future Supreme Court may apply the exact reasoning of *Bruen* and *Rahimi* to conclude that history and tradition, as in the example above, allow states to prohibit anyone under the relatively tender age of thirty from possessing a firearm. *Bruen* and *Rahimi* are plagued by a failure to recognize that our knowledge of history is not completely static. The past does not change, but our understanding of it certainly does. If America is to look to the past for answers, the Supreme Court should turn its gaze back to a time when means-end tests were part of Second Amendment jurisprudence.

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81) For the purposes of this example, the year 1870 is chosen as a representative of life expectancy in antebellum America, to avoid the impact of likely aberrant lower life expectancies during the Civil War years. Furthermore, the exclusion of female life expectancy is intended as an appropriate reflection of the era's history and tradition, as at the time, women did not have the right to vote, and Congress was the exclusive domain of males. Life expectancy from birth, as opposed to later years, is also used to capture the history and tradition of higher infant mortality rates at that time as compared to today.

82) Michael R. Haines, *Estimated Life Tables for the United States, 1850–1900*, Historical Methods, Vol. 31, no. 4 (Fall 1998), 149-169, Table 1. *See also* J. David Hacker, *Decennial Life Tables for the White Population of the United States, 1790–1900*, Historical Methods, Vol. 43, no. 2 (April–June 2010), 45-79.

83) Social Security Administration, *Actuarial Life Table*, https://www.ssa.gov/oact/STATS/table4c6.html (accessed February 9, 2025).