

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY**

STATE OF OHIO,

Plaintiff-Appellant,

- vs -

DONALD DEMPSEY,

Defendant-Appellee.

CASE NO. 2026-T-0014

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2025 CR 00865

OPINION AND JUDGMENT ENTRY

Decided: October 26, 2026

Judgment: Affirmed

Dennis Watkins, Trumbull County Prosecutor, *Charles L. Morrow*, and *Scott Stevenson*, Assistant Prosecutors, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellant).

Elizabeth Miller, Ohio Public Defender, and *Russell Patterson*, Assistant Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215 (For Defendant-Appellee).

ROBERT J. PATTON, J.

{¶1} Plaintiff-appellant, the State of Ohio (“State”), appeals the judgment of the Trumbull County Court of Common Pleas dismissing the indictment against defendant-appellee, Donald Dempsey (“Dempsey”), charging him with carrying concealed weapons and improperly handling firearms in a motor vehicle. In granting Dempsey’s motion to dismiss, the trial court determined that Ohio’s age-based restriction for carrying concealed weapons, as applied to Dempsey, was unconstitutional pursuant to U.S. Const., amend.

II. The trial court found the State failed to carry its burden to show that the restriction applied was consistent with this Nation’s history and tradition of firearm regulation.

{¶2} On appeal, the State argues that the trial court’s decision was erroneous because the State met its burden to show that the age-based restriction is consistent with the Nation’s history and tradition of firearm regulation. The State maintains two positions: first, that there is a historical tradition of banning concealed carry altogether, and second, that, at the founding era, the common law established age 21 as the age of majority. Therefore, according to the State, those between the ages of 18 and 20 were considered “infants” or “minors” whose rights, including firearm rights, were sweepingly limited.

{¶3} Upon review, we conclude that the trial court correctly dismissed the indictment. We do not find the historical equivalents submitted by the State to be “relevantly similar” to Ohio’s age-based restriction. See *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 29 (2022). On the State’s first proposition that there is a history of banning concealed weapons altogether, the historical analogues cited have nothing to do with an age-based restriction. Rather, they appear to have applied regardless of age. Thus, we conclude that Ohio’s age-based restriction does not represent a “similar restriction[] for similar reasons” to the historically acceptable laws banning concealed carry altogether. *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

{¶4} Secondly, while the State’s historical examples may support the idea that this Nation’s history and tradition are consistent with imposing restrictions on rights for *minors*, they do not support restricting rights for otherwise law-abiding *adults*. “[O]rdinary, law-abiding, adult citizens—are part of ‘the people’ whom the Second Amendment protects.” *Bruen* at 31-32, citing *D.C. v. Heller*, 554 U.S. 570, 580 (2008). As Dempsey is

a legal adult who has reached the age of majority, the State’s purported historical basis for its position, restricting the rights of minors, is simply inapposite.

{¶5} Accordingly, the judgment of the Trumbull County Court of Common Pleas is affirmed.

Substantive and Procedural Facts

{¶6} A Trumbull County Grand Jury indicted Dempsey on two counts: carrying a concealed weapon, a fourth-degree felony, in violation of R.C. 2923.12(A)(2) and (F)(1), and improperly handling firearms in a motor vehicle, a fourth-degree felony, in violation of R.C. 2923.16(B) and (I). At arraignment, Dempsey pleaded not guilty to the charges.

{¶7} After receiving discovery from the State, Dempsey filed a motion to dismiss the indictment. Dempsey argued that, as applied to him, a prosecution for violations of R.C. 2923.12(A)(2) and 2923.16(B) would be unconstitutional. Dempsey acknowledged in his motion that, while there are some founding-era regulations that restricted firearm purchases of individuals aged 18 to 20, those regulations were in place because individuals under 21 were considered children at that time. Dempsey contended that no historical analogue exists restricting an adult’s firearm rights on the sole basis of age.

{¶8} The State submitted a memorandum in opposition to Dempsey’s motion. The State cited voluminous historical sources arguing that as Ohio could conceivably impose an outright ban on concealed carry, which would be consistent with this Nation’s history and tradition of firearm regulation, Ohio can likewise choose to ban concealed carry for any subset of its citizenry.

{¶9} Alternatively, the State argued that as the age of majority was historically 21, those who have not achieved that age are “civically unreliable,” which was used to

restrict firearm rights for individuals ages 18 to 20. The State's position rested on the premise that those under 21 were considered "infants" or "minors" during the founding era who did not enjoy the same rights as adults.

{¶10} The trial court granted Dempsey's motion to dismiss, holding that R.C. 2923.12(A)(2) and 2923.16(B) were unconstitutional as applied to Dempsey. The trial court reasoned that modern law provides that "[a]ll persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes." (Emphasis added.) R.C. 3109.01. Accordingly, the trial court determined that, while there may be historical analogues for restricting a minor's firearm rights, no such basis exists to suggest an adult's firearm rights can be restricted solely on the basis of the adult's age.

The Appeal

{¶11} The State timely appeals and assigns, as its sole assignment of error, that the trial court erred by dismissing the indictment. We disagree.

{¶12} In the trial court, Dempsey raised an "as applied" constitutional challenge. "In an 'as applied' challenge, the party challenging the constitutionality of the statute contends that the 'application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional. The practical effect of holding a statute unconstitutional 'as applied' is to prevent its future application in a similar context, but not to render it utterly inoperative.'" *Yajnik v. Akron Dept. of Health, Hous. Div.*, 2004-Ohio-357, ¶ 14, quoting *Ada v. Guam Soc. of Obstetricians & Gynecologists*, 506 U.S. 1011 (1992) (Scalia, J., dissenting).

{¶13} “The determination of a statute’s or regulation’s constitutionality is a question of law.” *O’Brien v. Ohio Lottery Comm.*, 2005-Ohio-1412, ¶ 14 (11th Dist.), citing *Thorp v. Strigari*, 2003-Ohio-5954, ¶ 10 (1st Dist.). Therefore, “[w]e review a trial court’s decision on a motion to dismiss pursuant to a de novo standard of review.” *State v. Fast*, 2021-Ohio-2548, ¶ 62 (11th Dist.), citing *State v. Rode*, 2011-Ohio-2455, ¶ 14 (11th Dist.).

Ohio’s Statutory Provisions Regarding Carrying Concealed Weapons

{¶14} The Eighth District has previously stated, “Ohio is, and has always been, an open-carry state permitting people to openly carry firearms in their hands.” *State v. Abdel-Haq*, 2026-Ohio-554, ¶ 5 (8th Dist.), citing *State v. Massingill*, 2021-Ohio-2674, ¶ 15 (8th Dist.). Dempsey, however, was charged with carrying concealed weapons in violation of R.C. 2923.12(A)(2) and (F)(1), which provides:

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

(2) A handgun other than a dangerous ordnance;

(F)(1) Whoever violates this section is guilty of carrying concealed weapons . . . if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony of the fourth degree.

{¶15} This prohibition, however, “does not apply to any person who has been issued a concealed handgun license that is valid at the time of the alleged carrying or possession of a handgun” R.C. 2923.12(C)(2). Thus, a person who has been issued a concealed handgun license cannot be convicted under R.C. 2923.12(A)(2) solely for carrying a concealed handgun. R.C. 2923.16(B), the improperly handling firearms in a

motor vehicle statute which Dempsey was also charged with, likewise contains a general exception for those issued a concealed handgun license. See R.C. 2923.16(F)(5)(a).

{¶16} Historically, obtaining a concealed handgun license required satisfying the list of statutory qualifications for the application and issuance contained in R.C. 2923.125(D)(1)(a) through (s). One of those requirements is that an applicant be at least 21 years of age. R.C. 2923.125(D)(1)(b).

{¶17} In 2021, the General Assembly, recognizing the troubling reality that citizens could open carry, yet “once an individual were to put on a sweatshirt or jacket, they would be in violation of the law,” introduced 2021 Am.Sub.S.B. No. 215, which was ultimately enacted as R.C. 2923.111 on June 13, 2022.¹ The statute generally permits anyone classified as a “qualifying adult” to carry concealed weapons without having first obtained a concealed handgun license.

{¶18} R.C. 2923.111(C)(1)(a) provides that “[a] person who is a qualifying adult and . . . has, concealed on the person's person or ready at hand, a handgun that is not a restricted firearm shall be deemed to have been issued a valid concealed handgun license.” Therefore, by operation of law, a “qualifying adult” is treated as though they possess a concealed handgun license for certain purposes.

{¶19} Accordingly, as R.C. 2923.12(C)(2) exempts those with a concealed handgun license from criminal liability for a violation of R.C. 2923.12(A)(2), one of the statutes by which Dempsey was charged, the General Assembly effectively extended who

1. Ohio Senate, *Senate Passes Johnson Bill to Remove Barriers for Law Abiding Gun Owners*, (Dec. 15, 2021), <https://ohiosenate.gov/members/terry-johnson/news/senate-passes-johnson-bill-to-remove-barriers-for-law-abiding-gun-owners> (accessed Aug. 18, 2026) [<https://perma.cc/HZG8-S6JP>].

is absolved from criminal liability for a violation of R.C. 2923.12(A)(2) from only those possessing a concealed handgun license to anyone deemed a “qualifying adult.”

{¶20} R.C. 2923.111(A)(2) defines a “qualifying adult” as someone who is

(a) Twenty-one years of age or older;

(b) Not legally prohibited from possessing or receiving a firearm under 18 U.S.C. 922(g)(1) to (9) or under section 2923.13 of the Revised Code or any other Revised Code provision; [and]

(c) Satisfies all of the criteria listed in divisions (D)(1)(a) to (j), (m), (p), (q), and (s) of section 2923.125 of the Revised Code.

{¶21} Therefore, Ohio’s statutory scheme categorically prohibits adults ages 18-20 from carrying concealed weapons as they are neither “qualifying adults” under R.C. 2923.111(A)(2) nor are they eligible to apply for a concealed handgun license under R.C. 2923.125(D)(1)(b).

{¶22} Notably, the parties agree in this case that Dempsey’s age was the sole basis preventing him from carrying a concealed weapon. In other words, had Dempsey reached age 21, there is no dispute that he would have been afforded the protections granted to a “qualifying adult” under R.C. 2923.111(A)(2) and therefore could not have been convicted of R.C. 2923.12(A)(2) or R.C. 2923.16(B) as he would have been treated as a licensee by operation of law. R.C. 2923.111(C)(1)(a). The State conceded this fact during oral argument.

{¶23} Thus, the sole question before this court is whether the age-based restriction on carrying concealed weapons contained in R.C. 2923.111(A)(2)(a), which only qualifies adults having reached the age of 21, is constitutionally permissible as applied to Dempsey considering U.S. Const., amend. II. We answer that question in the

negative—as applied to Dempsey, Ohio’s age-based restriction for carrying concealed weapons is unconstitutional. In our holding, we join the Second District Court of Appeals of Ohio and several federal circuit courts. *State v. Matosky*, 2025-Ohio-5658 (2d Dist.), *appeal accepted*, 2026-Ohio-1248; *State v. Reid-Payne*, 2026-Ohio-672 (2d Dist.), *appeal accepted*, 2026-Ohio-2301.

Constitutional Challenges Under the Second Amendment

{¶24} U.S. Const., amend. II provides that, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The term “the people” “unambiguously refers to all members of the political community.” *Heller*, 554 U.S. at 580. Accordingly, there is “no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595. That *individual right* is “fully applicable to the States.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 750 (2010). “[W]hen the government crosses the line from permissible regulation into unconstitutional infringement, courts have a duty to say so” *United States v. Hemani*, 608 U.S. 772, 779 (2026).

{¶25} The standard applied to a Second Amendment challenge was clarified by the Supreme Court of the United States:

[W]hen 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. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Bruen, 597 U.S. at 17, quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49, fn. 10 (1961).^{2, 3}

{¶26} *Bruen* acknowledged the inherent difficulty in deciphering which historical analogues are a proper comparison:

Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are “relevantly similar.” C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993). And because “[e]verything is similar in infinite ways to everything else,” *id.*, at 774, one needs “some metric enabling the analogizer to assess which similarities are important and which are not,” F. Schauer & B. Spellman, *Analogy, Expertise, and Experience*, 84 U. Chi. L. Rev. 249, 254 (2017). For instance, a green truck and a green hat are relevantly similar if one’s metric is “things that are green.” See *ibid.* They are not relevantly similar if the applicable metric is “things you can wear.”

Bruen at 28-29.

{¶27} “[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin [the Nation’s] regulatory tradition.” (Emphasis added.). *Rahimi*, 602 U.S. at 692. Thus, to determine whether a historical analogue is “relevantly similar,” courts must focus on two prongs—“how and why” a law-abiding citizen’s right to armed self-defense is burdened. *Bruen* at 29; *accord State v. Barber*, 2025-Ohio-1193, ¶ 20 (1st Dist.), *appeal accepted*, 2025-Ohio-2048.

{¶28} The “how” considers “whether modern and historical regulations impose a comparable burden on the right of armed self-defense,” and the “why” considers “whether

2. The parties agree in this case that the plain text of U.S. Const., amend. II presumptively protects Dempsey’s conduct. We accordingly limit our analysis.

3. While *Bruen* pin cites page 50 of *Konigsberg*, this author has pin cited page 49 as such change is consistent with the Supreme Court of Ohio’s judicial opinion writing manual which states, “[w]hen citing a footnote, include the page number on which the footnote appears.”

that burden is comparably justified.” *United States v. Martinez*, 169 F.4th 1147, 1153-1154 (9th Cir. 2026), quoting *United States v. Duarte*, 137 F.4th 743, 755 (9th Cir. 2025), quoting *Bruen*, 597 U.S. at 29. Accordingly, we are tasked with determining whether the contemporary law, R.C. 2923.111, imposes “similar restrictions for similar reasons” to historically acceptable laws. *Rahimi* at 692.

Judicial Findings are Relevant to the “How” Inquiry

{¶29} At oral argument, Dempsey directs our attention to recent United States Supreme Court decisions and their handling of 18 U.S.C. 922(g) challenges. *Compare Rahimi with Hemani*, 608 U.S. 772. Specifically, Dempsey suggests that, relevant to the “how” prong of the analysis, the presence or absence of a judicial finding to trigger the relevant 922(g) disarming restriction is typically indicative of the constitutionality of the statute. We agree.

{¶30} In *Rahimi*, the defendant challenged 18 U.S.C. 922(g)(8), generally disarming those who are subject to a domestic violence restraining order “if that order includes a finding that he ‘represents a credible threat to the physical safety of [an] intimate partner.’” *Rahimi*, 602 U.S. at 685, quoting 18 U.S.C. 922(g)(8). There, the Supreme Court compared the restriction to founding-era surety laws targeting firearms, explaining that at least ten founding-era jurisdictions enacted laws requiring those who had *offensively misused* their weapons to post a bond. *Id.* at 696.

{¶31} Most critically, however, “[b]efore the accused could be compelled to post a bond for ‘go[ing] armed,’ a complaint had to be made to a judge or justice of the peace by ‘any person having reasonable cause to fear’ that the accused would do him harm or breach the peace.” *Id.*, quoting Mass.Rev.Stat., Ch. 134, 1, 16. In other words, a judicial

finding was required before the restriction was imposed against the individual at the founding-era. The present-day federal restriction imposed by 18 U.S.C. 922(g)(8) likewise did not take effect until a judicial finding was made that the defendant posed a “credible threat to the physical safety” of another. 18 U.S.C. 922(g)(8). Therefore, the *Rahimi* court concluded that “when an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Rahimi* at 698.

{¶32} Here, no such judicial finding was made against Dempsey, making this case more akin to *Hemani*, 608 U.S. 772. In *Hemani*, the defendant was charged with a violation of 18 U.S.C. 922(g)(3), which effectively disarms anyone “who is an unlawful user of . . . any controlled substance.” *Hemani* was indicted after his home was searched, a firearm was located, and he had admitted to smoking marijuana “about every other day.” *Id.* at 778. The government submitted, in part, that founding-era “habitual drunkard laws,” which typically allowed for confinement, jailing, or the imposition of surety against habitual drunkards, was relevantly similar to 18 U.S.C. 922(g)(3) as the intent is to prevent intoxicants from committing violent crimes. *Id.* at 781-783.

{¶33} The *Hemani* court disagreed, noting that habitual drunkard laws were only enacted against those who used intoxicants to the extreme point where the drunkard became “incapable of conducting [his] own affairs.” *Id.* at 784, citing Ark.Rev.Stat., Ch. 78, 1 (1838). For illustrative purposes, the *Hemani* court explained that society only classified a habitual drunkard as someone who drank 24 ounces of hard liquor *daily*; individuals could drink 12 ounces of hard liquor daily and merely be considered “occasional drunkards” for the purposes of these analogues. *Id.* at 785.

{¶34} To the contrary, 18 U.S.C. 922(g)(3) applies regardless of what controlled substance an individual uses, in what amounts, whether his drug use has ever made him a danger to himself or others, why he keeps a gun, or how safely he does so. *Hemani*, 608 U.S. at 781. Accordingly, the lack of a judicial finding informed the Court’s conclusion that the analogues differed in *how* they burdened the Second Amendment right as the Court rejected the notion that anyone who “regularly uses marijuana is categorically violent and dangerous *without any further showing*.” (Emphasis added.) *Id.* at 793. Thus, the Supreme Court held 18 U.S.C. 922(g)(3) was unconstitutional as applied to *Hemani* as there was no judicial finding that *he* was violent or dangerous.

{¶35} As discussed later, Ohio’s age-based restriction much more closely resembles the facts of *Hemani* as opposed to *Rahimi*. An age-based restriction operates as an all-encompassing limitation on a constitutionally protected right for a defined subset of citizens without any judicial endorsement that any member of said subset poses a danger to society. And in Dempsey’s case specifically, the State concedes that no such judicial endorsement could be made, representing a stark contrast to the facts of *Rahimi*, which justified restrictions only against an individual posing a “credible threat to the physical safety” of another. *Rahimi*, 602 U.S. at 685. “[W]ithout any further showing” this court cannot reasonably conclude that Dempsey’s age makes him a credible threat to society. *Hemani* at 793.

The State has Failed to Identify a “Relevantly Similar” Historical Analogue

{¶36} Relying on the First District Court of Appeals’ decision in *State v. Hall*, 2025-Ohio-1644 (1st Dist.), *appeal accepted*, 2025-Ohio-3300, the State first submits that

history and tradition support the general regulation of concealed carry. The *Hall* court noted that

throughout our nation's history, legislatures maintained the power to limit or prohibit the carrying of concealed weapons and to enforce such prohibitions with criminal penalties

. . .

the purpose behind our nation's history of [carrying concealed weapons] laws was to reduce the risk of surprise attacks from hidden weapons, while leaving untouched the right to carry openly for self-defense.

Id. at ¶ 79, 87.

{¶37} Historical concealed-carry prohibitions operated as blanket restrictions on the *manner* of carrying that applied equally to all people; they did not selectively prohibit concealed carry based on the carrier's age or distinguish some adults from others. See *id.* at ¶ 86 ("antebellum legislatures . . . to effectuate their desire to reduce the risk of such assassinations . . . generally chose to prohibit the *act* of carrying concealed, rather than disabling particular individuals from doing so.") By contrast, Ohio's statutory scheme is not a regulation on the *manner* of carry. Instead, the statutes determine *who* may carry a concealed weapon by expressly denying that authority to adults age 18 to 20 yet permitting every other law-abiding adult to do so. In other words, R.C. 2923.111(B) does the exact opposite of the cited analogue—it permits the *act* but chooses to disable *some* individuals.

{¶38} Thus, while those analogues may demonstrate that legislatures historically possessed authority to regulate or even prohibit the manner of carrying arms, they do not establish a historical tradition of denying that right to one class of otherwise law-abiding adults while permitting it to all others. In other words, it is of no significance to the

constitutional question in this case whether concealed carry may be regulated—undoubtedly, it may. At the founding era, “[l]egislatures were free to regulate the *manner* in which such protected weapons had to be carried, so long as, in doing so, they did not render the weapon unusable for this essential purpose.” (Emphasis in original.) *Hall*, 2025-Ohio-1644, at ¶ 79 (1st Dist.). However, that is not the policy position the General Assembly has taken; Ohio has affirmatively chosen to *permit* concealed carry. Therefore, the “how” prong of a *Bruen* analysis certainly fails as Ohio’s age-based burden is not a “similar restriction.” *Rahimi*, 602 U.S. at 692.

{¶39} Here lies the crux of our disagreement with the First District Court of Appeals. The *Hall* court determined that, “[w]here history shows that states had the power to prohibit all concealed carry, they certainly had the power to prohibit some of it.” *Hall* at ¶ 108. Recently, the Sixth District also joined this position. *State v. Byrd*, 2026-Ohio-3664, ¶ 69 (6th Dist.). However, in our view, such position represents an unsupportable logical jump, especially when we are guided by *Bruen*’s “how” inquiry. A tradition of prohibiting a particular practice *as a whole* establishes legislative power over the practice *as a whole*—not a divisible power to distribute the underlying constitutional right selectively among adults in any arbitrary fashion the legislature chooses. Applying “subsets” of adults where history and tradition have not done so runs afoul to *Bruen*’s “how” prong, requiring the modern law to represent a “similar restriction.” *Rahimi* at 692.

{¶40} The “why” prong fares no better as the restriction is not imposed “for similar reasons” either. *Id.* As observed in *Hall*, “the purpose behind our nation’s history of [carrying concealed weapons] laws was to reduce the risk of surprise attacks from hidden weapons” *Hall* at ¶ 87. Paradoxically, by enacting R.C. 2923.111 “permitting most

Ohio adults to carry concealed weapons, without having to take any steps to obtain a concealed-carry license, it is clear that Ohio has departed from the view that the simple act of carrying a concealed weapon is itself dangerous.” *Barber*, 2025-Ohio-1193, at ¶ 55 (1st Dist.); *contra Hall* at ¶ 96.

{¶41} In its second argument, the State notes that 18- to 20-year-olds were historically seen as “minors” or “infants” for legal purposes, and it is consistent with this Nation’s history and tradition of firearms regulation to impose restrictions on minors. The State further submits that 18- to 20-year-olds present greater danger and were historically seen as “impulsive.” We disagree.

{¶42} As explained by Judge Crouse of the First District Court of Appeals and adopted by the Second District Court of Appeals, “the age of majority, not age 21, provides the relevant constitutional line,” because “[h]istory suggests that founding-era limitations on firearm rights were imposed not because of any judgment that those under 21 years of age were dangerous with arms, but because those under 21 were under the legal limitations inherent in minority, and under the legal care and protection of a guardian or parent.” *Matosky*, 2025-Ohio-5658, ¶ 27 (2d Dist.), quoting *State v. Reed*, 2025-Ohio-4708, ¶ 17 (1st Dist.) (Crouse, P.J., concurring separately). There are three supporting reasons for this:

First, . . . no state prior to the 1880s prohibited infants from possessing guns. While it may have been difficult for founding-era 18-to-20-year-olds to obtain weapons, they were generally permitted to have them if they could get them. This suggests that the line drawn at 21 was not a categorical determination of dangerousness, but an incidental effect of legal minority and restrictions on economic rights.

Second, numerous legal writers in the 18th- and 19th-centuries emphasized that the 21-year threshold for legal

majority was not rooted in hard-nosed assessments of danger with firearms. Instead, they acknowledged the somewhat arbitrary product of tradition. Blackstone noted that the age of majority was “merely arbitrary, and juris positivi [i.e., of positive law],” fixed “by the constitutions of different kingdoms . . . at different times.” [1 Blackstone, *Commentaries on the Laws of England*, 452 (1765)]. New York Chancellor James Kent likewise described the 21-year line more as an arbitrary legal threshold than a concrete determination about maturity. See [2 Kent, *Commentaries on American Law*, 171 (1827)] (“the age of majority . . . has been variously established in different countries, but with us is fixed at the age of twenty-one”). And John Bouvier, author of America’s first major legal dictionary, wrote of how the law “fixed” an age of majority that was “uniform as to all,” despite the reality that “[t]he age at which man no longer requires aid and advice for his conduct, is not the same in every individual; some being precocious, and others slow at arriving at maturity.” [1 Bouvier, *Institutes of American Law*, § 337 (1854)]. In fact, modern legal historians have suggested that the common law shifted the age of majority from 14 or 15 years to 20 or 21 years during the medieval period, not because of shifting conceptions of maturity, but in order to accommodate the “weight of the arms” worn by adult knights. See James, *The Age of Majority*, 4 Am. J. Legal Hist. 22, 30 (1960); see also Hamilton, 91 Tul. L. Rev. at 63-64.

Third, a close examination of the Uniform Militia Act of 1792 . . . and accompanying state laws further reinforces that any firearms disabilities experienced by those under 21 were not safety-related, but were legal incidents of infancy . . . Compulsory enrollment of those under 21 suggests that the Second Congress believed 18-to-20-year-olds could, at least in certain circumstances, be trusted to keep and carry weapons. And this generally meant trusting them to keep those arms in their homes, as militia weapons were generally furnished, kept, and maintained by the individual militiamen. See Cornell & DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L.Rev. 487, 509-10 (2004); 15 Kopel & Greenlee, *The Second Amendment Rights of Young Adults*, 43 S.Ill.Univ.L.J. 496, 501 (2019) (“American militiamen were expected to keep their own arms at home, and to be proficient with those arms.”).

. . .

In sum, the history suggests that individuals aged 18 to 20 were not deemed too dangerous to bear arms at the founding. They were merely hindered in securing arms by the limitations imposed on their legal and economic autonomy, because of their age and dependence upon their parents or guardians. The Uniform Militia Act showed that the founding generation felt 18-to-20-year-olds *could* be trusted to keep weapons in their homes, if only the State would help them to circumvent common-law difficulties relating to legal minority.

Any tradition of firearm restrictions based on age and infancy, therefore, should be viewed as tied to the line between minority and majority, not to the line between 20 and 21 years. Minors today, like infants at the founding, are in the custody of a parent and/or guardian

Individuals who . . . are between the ages of 18 and 20, are not minors today. Such individuals enjoy effectively full legal rights and autonomy. They can participate freely in the economic and legal life of the community and have the right to vote. See U.S. Const., amend. XIX [sic]. Most significantly, the law leaves 18-to-20-year-olds today only themselves to depend upon for aid and protection.

(Emphasis in original.) (Bracketed text in original.) *Matosky* at ¶ 27, quoting *Reed* at ¶ 18-24.

{¶43} Ohio has codified the age of majority. That age is 18. “All persons of the age of *eighteen years or more*, who are under no legal disability, are capable of contracting and *are of full age for all purposes*.” (Emphasis added.) R.C. 3109.01. Accordingly, Dempsey is part of “the people” whom the Constitution protects. “Reading the Second Amendment in the context of the Twenty-Sixth Amendment unambiguously places 18[-] to 20-year-olds within the national political community . . . 18[-] to 20-years-old are ‘among “the people” for other constitutional rights such as the right to vote, freedom of speech, peaceable assembly, government petitions, and the right against unreasonable government searches and seizures . . . There is no reason to adopt an

inconsistent reading of ‘the people.’ An inconsistent reading subjugates the constitutional right to bear arms in public for self-defense [to] . . . a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” (Cleaned up.) *Worth v. Jacobson*, 108 F.4th 677, 691 (8th Cir. 2024), *cert. denied*, __ U.S. __, 145 S.Ct. 1924 (2025).

{¶44} Therefore, it appears nonsensical to this court to declare an individual fully vested with constitutional rights at age 18 while uniquely withholding the Second Amendment right until 21 without any other judicial finding disabling that individual for cause. Accordingly, this court declines to do so.

{¶45} We take further issue with the State’s logically inconsistent argument as presented during oral argument. The State simultaneously asserted that “impulsive” 18- to 20-year-olds should be prohibited from concealed carry as they present greater danger to the public, yet the State admits that, had Dempsey been open-carrying the same firearm, he could not have been charged with any crime. We fail to understand the State’s position that Dempsey’s alleged impulsivity would somehow disappear merely by carrying the same weapon openly as opposed to concealed. Presiding Judge Kinsley of the First District Court of Appeals aptly noted this irreconcilable legal paradox in her dissenting opinion: “Ohio law therefore entrusts young adults with the responsibility of publicly possessing and displaying loaded guns, but denies them the ability to transport those weapons in handbags, pockets, or the passenger area of cars.” *State v. Stonewall*, 2025-Ohio-4974, ¶ 53 (1st Dist.) (Kinsley, P.J., dissenting).

Conclusion

{¶46} Accordingly, we agree with the conclusion articulated by the Second District Court of Appeals: “there is no analogous historical tradition of restricting a legal adult’s right to bear arms based solely on the adult’s age.” *Matosky*, 2025-Ohio-5658, at ¶ 28 (2d Dist.), *motion to certify allowed*, 2026-Ohio-1248, and *appeal accepted*, 2026-Ohio-1248; *accord Reid-Payne*, 2026-Ohio-672, at ¶ 11 (2d Dist.), *appeal accepted*, 2026-Ohio-2301; *contra Stonewall*.

{¶47} Much like the United States Supreme Court has declined to adopt a position that anyone who “regularly uses marijuana is categorically violent and dangerous *without any further showing*,” we likewise decline to adopt a position that any adult age 18 to 20 is categorically violent and dangerous *without any further showing*. (Emphasis added.) *Hemani*, 608 U.S. at 793.

{¶48} The State concedes that no such showing can be made in Dempsey’s case. Finding that the State has failed to carry its burden to show that Ohio’s age-based restriction is consistent with this Nation’s history and tradition of firearm regulation, the State’s sole assignment of error is without merit. Ohio’s age-based restriction, as applied to Dempsey, is unconstitutional pursuant to U.S. Const. amend. II.

{¶49} Although split, our conclusion garners additional support from several federal circuit courts. *E.g.*, *Jacobson*, 108 F.4th at 691 (8th Cir. 2024), *cert. denied*, ___ U.S. ___, 145 S.Ct. 1924 (2025). *See also Reese v. Bur. of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 600 (5th Cir. 2025) (holding a federal statute prohibiting the sale of handguns to 18- to 20-year-olds unconstitutional as “eighteen-to-twenty-year-old individuals among ‘the people’ whose right to keep and bear arms is protected.”); *contra*

McCoy v. Bur. of Alcohol, Tobacco, Firearms & Explosives, 140 F.4th 568, 580 (4th Cir. 2025).

{¶50} For the reasons set forth above, the judgment of the Trumbull County Court of Common Pleas is affirmed.

MATT LYNCH, P.J.,

EUGENE A. LUCCI, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

JUDGE ROBERT J. PATTON

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE EUGENE A. LUCCI,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.