

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA,

Plaintiff-Appellee,

v.

From Buncombe County

ERIC JAMES DUCKER,

Defendant-Appellant.

BRIEF OF *AMICI CURIAE* ACLU OF NORTH CAROLINA LEGAL FOUNDATION AND CATO INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT ERIC JAMES DUCKER

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STATEMENT OF INTEREST¹

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members dedicated to the principles of liberty and equality embodied in the Constitution. **The ACLU of North Carolina Legal Foundation (ACLU-NC)** is one of ACLU's affiliates, with over 30,000 members statewide. Since its founding in 1920, the ACLU has vigorously defended the civil liberties enshrined in the U.S. Constitution and in state constitutions. ACLU-NC routinely litigates under the U.S. and state constitutions in North Carolina's federal and state courts, and has represented parties or filed amicus briefs in this Court in several recent cases in support of individual constitutional rights. *See, e.g., Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418 (2024); *State v. Wright*, 388 N.C. 225 (2025); *State v. Daw*, 386 N.C. 468 (2024); *Washington v. Cline*, 385 N.C. 824 (2024); *M.E. v. T.J.*, 380 N.C. 539 (2022); *Dewalt v. Hooks*, 382 N.C. 340 (2022); *Deminski v. State Bd. of Educ.*, 377 N.C. 406 (2021). ACLU-NC's litigation priorities include protecting the constitutional rights of individuals against government overreach and ensuring equal justice for all in North Carolina's criminal legal system. This case raises critical questions about the extent to which the State can deny individuals their constitutional rights to self-defense under the Second Amendment and Article I, Section 30 of the N.C. Constitution and to hunt under Article I, Section 38 of the N.C. Constitution, based solely on the fact of a prior felony conviction and without consideration of whether an individual poses a credible danger to the safety of others.

¹ No person or entity other than amicus curiae, their members, or amici's counsel, wrote this brief or contributed money for its preparation.

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement. Among other rights the Institute seeks to protect is the right of armed self-defense, and in that regard the Institute has represented parties and appeared as amicus in several cases involving this fundamental right. *See, e.g., United States v. Rahimi*, 602 U.S. 680 (2024); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). Institute scholars have also published important research on the right to possess firearms. *See, e.g.,* Timothy Sandefur, *THE PERMISSION SOCIETY*, ch. 7 (2016).

ACLU-NC and Cato Institute respectfully submit this brief to assist the Court in considering the constitutional rights implicated in this appeal.

ISSUE PRESENTED

Whether the Second Amendment of the United States Constitution and Article I, Section 30 of the State Constitution require North Carolina courts to recognize and evaluate as-applied constitutional challenges to N.C. Gen. Stat. § 14-415.1.

ARGUMENT

North Carolinians value their constitutional rights to keep and bear arms. An estimated 40 percent of North Carolinians keep guns in their homes.² The rights to keep and bear arms, and to hunt, are enshrined in our state constitution. *See* N.C. Const. art. I §§ 30, 38. Yet N.C. Gen. Stat. § 14-415.1, which categorically disarms people convicted of felonies—no matter how minor, non-violent, or old the conviction—imposes severe constraints and unequal burdens on too many North Carolinians’ exercise of their constitutional rights.

Just under four years ago, the U.S. Supreme Court transformed how courts review the constitutionality of government restrictions on firearm possession. In *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Court held that a government seeking to restrict an individual’s right to keep and bear firearms bears the burden to show that the restriction is consistent with the Second Amendment’s text and history. Two years later, in *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court affirmed the power of government to bar dangerous persons from accessing firearms, but it also made clear

² 2024 Behavioral Risk Factor Surveillance System Survey Results: North Carolina, N.C. STATE CTR. FOR HEALTH STATS., <https://schs.dph.ncdhhs.gov/data/brfss/2024/nc/all/GunStat.html> (last visited Mar. 26, 2026).

that determination of dangerousness—and the permissible scope of such restrictions—is not subject to generalizations and should be grounded in the facts of each case.

These precedents require trial courts to evaluate, on a case-by-case basis, whether and to what extent individuals like Eric Ducker can be barred from firearm possession based on a prior felony conviction. The court of appeals thus erred when it determined that the Second Amendment allows N.C. Gen. Stat. § 14-415.1(a) to be applied to bar all North Carolinians previously convicted of a felony from purchasing, owning, possessing, or having “in their custody, care, or control any firearm,” without regard to whether the predicate felony was violent, the individual’s overall history of violence, and the time elapsed since conviction.

Because of its sweeping scope and general effect of imposing a lifetime ban on gun possession, § 14-415.1 may violate the Second Amendment as applied to certain criminal defendants. And because the protections of Article I, Section 30 of North Carolina’s Constitution at least match those afforded by the Second Amendment, certain applications of § 14-415.1 also violate our State Constitution. Careful as-applied scrutiny in § 14-415.1 cases is critical to mitigate the harsh and unequal impact of the law on rural and Black North Carolinians.

As explained below, this Court should remand to the trial court for determination of whether Mr. Ducker’s conviction as a felon in possession of a firearm under § 14-415.1 violates his rights under the Second Amendment and Article I, Section 30.

I. *Bruen* and *Rahimi* require the State to demonstrate, on a case-by-case basis, that facts and historical tradition support disarmament of individual North Carolinians convicted of felonies.

Bruen and *Rahimi* make clear that the constitutional right to keep and bear arms is an individual and fundamental right. *Rahimi* emphasizes that the State may not deny an individual their Second Amendment rights without credibly showing that the individual poses a threat to others. It follows that the constitutionality of any effort by the State to deny an individual's Second Amendment rights must be evaluated at a more granular level, with careful consideration of whether relevant facts and circumstances demonstrate that the individual is dangerous.

Below, the court of appeals correctly observed that *Bruen* establishes a two-part test for determining whether a firearm regulation is constitutional. *First*: the government defending the regulation must establish that the conduct being regulated falls outside of the scope of the Second Amendment right as originally understood. *State v. Ducker*, 298 N.C. App. 759, 763 (2025) (quoting *Bruen*, 597 U.S. at 18). When the text of the Second Amendment covers the conduct, it is presumptively protected. *Id.* (quoting *Bruen*, 597 U.S. at 17). If the conduct is excluded from coverage, the regulation is constitutional and the inquiry ends. *Bruen*, 597 U.S. at 18.

Second: If the conduct falls within the Second Amendment's scope, the government must also demonstrate that the restriction is relevantly similar to historical gun regulation at the time of the Founding. *See Bruen*, 597 U.S. at 24. The restriction must have a historical analogue—not only as to purpose, but also scope. *Rahimi*, 602 U.S. at 692 (“Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding.”).

In this case, the court of appeals stumbled when it determined, in the first part of the *Bruen* inquiry, that Mr. Ducker’s felony conviction categorically excludes him from Second Amendment protection. *See Ducker*, 298 N.C. App. at 765–766. Having made this faulty determination, the court erroneously declined to analyze whether the application of § 14-415.1 to Mr. Ducker comports with the historical tradition of firearms regulation.

The court of appeals then compounded its error by reviewing Mr. Ducker’s state constitutional challenge as if N.C. Const. art. I, § 30 provides less robust protection for an individual’s right to keep and bear arms than its federal counterpart. In reviewing Mr. Ducker’s Section 30 claim, the court used legal criteria and a multi-factor test that does not align with — and has been effectively abrogated by — *Bruen* and *Rahimi*.

A. Mr. Ducker and other people convicted of felonies are among “the people” protected by the Second Amendment.

Even when individuals asserting their rights to keep and bear arms are “law abiding,” the Supreme Court has emphasized that “the people” who enjoy the Second Amendment’s protection necessarily includes “*all Americans*.” *Heller*, 554 U.S. at 580–81 (emphasis added). As Justice Scalia reasoned in *Heller*:

[I]n all six other provisions of the Constitution that mention “the people,” the term unambiguously refers to all members of the political community, not an unspecified subset . . . We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

Id.

In *Rahimi*, the Supreme Court likewise assumed that the defendant, who had a lengthy and violent criminal history, was still among the “people” protected by the Second Amendment. The Court emphasized that the individual right to keep and bear arms is “fundamental,” 602 U.S. at 690, and explicitly rejected the government’s suggestion that

“irresponsible” individuals are automatically excluded from Second Amendment protection:

“Responsible” is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law. In *Heller* and *Bruen*, we used the term “responsible” to describe the class of ordinary citizens who undoubtedly enjoy the Second Amendment right. But those decisions did not define the term and said nothing about the status of citizens who were not “responsible.” The question was simply not presented.

Id. at 701–02 (internal citations omitted). *See also id.* at 752 (Thomas, J., dissenting) (“It is also undisputed that the Second Amendment applies to Rahimi Since Rahimi is a member of the political community, he falls within the Second Amendment’s guarantee.”)

Just as Mr. Ducker, who is currently a free man, is included in “the people” protected by the First, Fourth, and Ninth Amendments based on his past criminal conviction, so too is he included in “the people” protected by the Second Amendment. In holding that Mr. Ducker was not so protected, the court of appeals erroneously hewed to its pre-*Bruen* and *Rahimi* decision rejecting a challenge to § 14-415.1. *State v. Fernandez*, 256 N.C. App. 539, 546–47 (2017).³ The court also relied on the Fourth Circuit’s flawed post-*Rahimi* decision in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). In *Hunt*, the Fourth Circuit rejected an as-applied challenge to 18 U.S.C. § 922(g)(1) (the federal felon-in-possession statute), declaring that people convicted of felonies are categorically unprotected by the Second Amendment. *See id.* at 705. But the *Hunt* panel labored to explain why *Rahimi* does not erode this categorical exclusion, resting heavily on the

³ In *Fernandez*, the court of appeals relied on now-abrogated Fourth Circuit case law to hold that the defendant, who had a felony conviction, “cannot show he is a ‘law-abiding, responsible citizen” and thus “cannot rebut the [felon-in-possession statute’s] presumption of lawfulness.” *Id.* The *Ducker* panel did not acknowledge the abrogated law relied on in *Fernandez*, but it did note that its post-*Fernandez* decision in *State v. Nanes*, 297 N.C. App. 863 (2025), conflicted with *Fernandez*’s categorical holding. *See Ducker*, 298 N.C. App. at 765 n.1.

Supreme Court’s pre-*Rahimi* dicta about the Second Amendment applying only to “law abiding” and “responsible” citizens. *Id.*

Of course, this Court is not bound by the Fourth Circuit’s precedent, *State v. McDowell*, 310 N.C. 61, 74 (1984), and there is good reason for this Court to eschew *Hunt*’s analysis. *Hunt* has been criticized by a later panel of the Fourth Circuit and conflicts with several other circuits’ precedent. *See United States v. Jacobs*, 166 F.4th 395, 399 n.3 (4th Cir. 2026) (acknowledging *Hunt*’s binding precedent while doubting the correctness of, and declining to extend, *Hunt*’s holding that those with felony convictions are categorically excluded from “the people” protected by the Second Amendment); *United States v. Cockerham*, 162 F.4th 500, 510 (5th Cir. 2025) (rejecting *Hunt*’s “categorical” affirmation of § 922(g)(1)’s constitutionality). *See also Range v. Att’y Gen.*, 124 F.4th 218, 227–28 (3d Cir. 2024) (en banc) (rejecting the government’s contention that “felons are not among the people protected by the Second Amendment”) (cleaned up)); *United States v. Connelly*, 117 F.4th 269, 275 (5th Cir. 2024) (marijuana user was “a member of our political community and thus has a presumptive right to bear arms”); *United States v. Williams*, 113 F.4th 637, 646 (6th Cir. 2024) (“[O]ther circuits have read too much into the Supreme Court’s repeated invocation of ‘law-abiding, responsible citizens’ . . . construing the Second Amendment to apply only to such citizens is inconsistent with both *Heller* and the individualized nature of the right to keep and bear arms.”).

B. Second Amendment rights are individual and fundamental rights, requiring a fact- and history- bound approach to determining felony-based disarmament.

Because Mr. Ducker is among “the people” protected by the Second Amendment, the trial court erred when it declined to engage with his argument that § 14-415.1 is

unconstitutional as applied to him. *See* Def.-Appellant’s New Br. at 7–8 (quoting trial court’s denial of Mr. Ducker’s pre-trial motion to dismiss because “I don’t think we’re there yet in the State of North Carolina.”). The court of appeals then repeated the trial court’s error when it refused to consider Mr. Ducker’s criminal history—including the age and nature of the underlying felony that formed the basis of his conviction under § 14-415.1—in the context of analogous historical restrictions on gun possession.

As the Supreme Court has repeatedly affirmed, the Second Amendment right is an individual and fundamental right; like other constitutional rights, the government bears the burden of “justify[ing] its regulation” of those rights. *Rahimi*, 602 U.S. at 691; *see also Heller*, 554 U.S. at 580 (a right attributed to “the people” refers to an individual right); *McDonald*, 561 U.S. at 778 (“[I]t is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”). In *Rahimi*, the Court closely examined the defendant’s criminal history, including the factual details underlying various criminal charges brought against him, the recency and persistence of his violent conduct, as well as the particulars and procedural protections of the statute governing entry of the protective order against him. 602 U.S. at 686–90.

As held in *Rahimi*, the historical record demonstrates that individuals who “pose a credible threat to the physical safety of others” can be disarmed. *Id.* at 693. The question is whether Mr. Ducker fits within that category. A trial court cannot make—and an appellate court cannot review—that evaluation without a full examination of the facts of Mr. Ducker’s situation. *See Williams*, 113 F.4th at 657–58 (courts reviewing felon-in-possession convictions must “focus on each individual’s specific characteristics. That

necessarily requires considering the individual’s entire criminal record—not just the predicate offense”).

The court of appeals below claimed that it “need not perform [a] felony-by-felony analysis to determine the constitutionality of § 14-415.1 as applied to each individual defendant who challenges it.” *Ducker*, 298 N.C. App. at 765. As discussed, this position can no longer be squared with Second Amendment precedent. Moreover, the court of appeals failed to explain why courts’ consideration of Second Amendment defenses in criminal proceedings should differ from the fact-bound review courts undertake for other constitutional defenses. As the Supreme Court explained in *Bruen*:

The constitutional right to bear arms in public for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant’s right to confront the witnesses against him.

597 U.S. at 70–71 (internal citation omitted).

To ensure the Second Amendment is not relegated to second-class status, this Court must remand for the trial court to weigh the facts of Mr. Ducker’s case against the historical standards for disarming those convicted of crimes.

C. State constitutional principles require at least the same level of protection for an individual's rights under Article I, Section 30 as under the Second Amendment.

Section 14-415.1's categorical disarmament of people with felony convictions is also inconsistent with Article I, Section 30 of our state constitution. Section 30 provides, in relevant part: "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[.]" But for an omitted comma, Section 30's relevant language⁴ is identical to the Second Amendment.

"Constitutional challenges under our State Constitution mirror those made under the federal constitution." *State v. Nanes*, 297 N.C. App. 863, 871 (2025). "[T]he United States Constitution provides a constitutional floor of fundamental rights guaranteed all citizens of the United States," and the pertinent question when considering parallel state provisions is "whether the state Constitution guarantees *additional* rights to the citizen" above the federal provision. *State v. Jackson*, 348 N.C. 644, 648 (1998) (emphasis added). Accordingly, "the individual right to keep and bear arms under Article I, Section 30 is the same or perhaps even a greater individual right than that as recognized under the Second Amendment." *State v. Whitaker*, 201 N.C. App. 190, 197 (2009).

After *Bruen* and *Rahimi*, the North Carolina courts' approach to Section 30 claims should align with the legal standards applicable to Second Amendment claims. Certainly, Mr. Ducker shares a common interest with fellow Americans and North Carolinians in keeping and bearing firearms for self-defense and other lawful purposes. The court of

⁴ Section 30 doesn't replicate the Second Amendment's comma between "to keep and bear Arms" and "shall not be infringed." Section 30 further provides: "[A]s standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice."

appeals therefore erred when it continued to apply the previous multi-factor tests for assessing Section 30 claims initiated in *Britt v. State*, 363 N.C. 546 (2009), without regard to intervening U.S. Supreme Court precedent.

The court of appeals identified five factors for courts to weigh in determining whether Section 30 required invalidation of Mr. Ducker's conviction under § 14-415.1:

- (1) The type of felony convictions, particularly whether they involved violence or the threat of violence;
- (2) The remoteness in time of the felony convictions;
- (3) The felon's history of law-abiding conduct since the crime;
- (4) The felon's history of responsible, lawful firearm possession during a time period when possession of firearms was not prohibited; and
- (5) The felon's assiduous and proactive compliance with Section 14-415.1(a).

Ducker, 298 N.C. App. at 767–68 (citing *Whitaker*, 201 N.C. App. at 205 and *Britt*, 363 N.C. at 550). It also stated that “[t]he individual making the as-applied challenge must present evidence which would allow the trial court to make findings of fact as to each factor.” *Id.* at 768 (cleaned up).

The court of appeals' multi-factor inquiry, as well as its insistence that the defendant bears the burden to demonstrate an as-applied violation of Section 30, does not survive *Bruen*. See 597 U.S. at 19 (rejecting two-step approach and noting that, “[i]nstead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”); see also *Rahimi*, 602 U.S. at 691–92 (government bears the burden of showing individual disarmament accords with historical tradition of firearm regulation); *Range*, 124 F.4th at 226 (rejecting multi-factor inquiry post-*Bruen*).

The court of appeals' reliance on *Britt* impermissibly sank Section 30's protections below the floor established by its federal equivalent. By re-affirming the criteria that a person demonstrate “assiduous and proactive compliance” with § 14-415.1, the court of

appeals' decision all but guarantees the failure of a Section 30-based defense to § 14-415.1. The very fact of a charge under § 14-415.1, however, suggests non-compliance, or that the defendant's compliance was not "assiduous and proactive." To be sure, some of five factors identified by the court of appeals—such as the time elapsed since conviction or the nonviolent character of the predicate felony—are likely relevant to deciding an individual's dangerousness. But by placing the burden on the person asserting their Section 30 rights to produce evidence supporting findings of fact as to each factor, the court of appeals wrongly erases the government's burden to demonstrate that the defendant poses a credible threat to the safety of others. This approach falls far short of the rigorous inquiry required to protect an individual, fundamental right.

II. The breadth of North Carolina's felon-in-possession law requires especially careful as-applied Second Amendment scrutiny.

Although "the right secured by the Second Amendment is not unlimited," its enshrinement "necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 626, 636. *Bruen* elaborated that broad, categorical restrictions on gun ownership by lawmakers are not owed judicial deference but require closer scrutiny to ensure that they are consistent with the history and tradition of the Second Amendment. 597 U.S. at 26 ("[W]hile that judicial deference to legislative interest balancing is understandable . . . it is not deference that the Constitution demands here. The Second Amendment 'is the very *product* of an interest balancing by the people.' . . . It is this balance . . . that demands our unqualified deference.").

The court's narrow holding in *Rahimi* was that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 602 U.S. at 702. The Supreme Court held that

18 U.S.C. § 922(g)(8), which denies the right to keep and bear arms by people subject to a domestic violence protective order “matches the surety and going armed laws” in effect around the Founding, “which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* at 699. The Court also emphasized that the deprivation of rights in Rahimi’s case was limited in duration. *Id.*

Bruen and *Rahimi* require re-evaluation of the breadth of felon-in-possession laws—and for good reason: “a felon is not always more dangerous than a misdemeanor.” *Lange v. California*, 594 U.S. 295, 305 (2021) (cleaned up). Not all people convicted of a felony “present a special danger of misuse” of firearms or “pose a credible threat to the physical safety of others,” *Rahimi*, 602 U.S. at 698, 700, and many crimes now categorized as felonies are not of the type that would have justified a revocation of gun ownership at the Founding. *See, e.g., Range*, 124 F.4th at 232 (application of 18 U.S.C. § 922(g)(1) to individual convicted of felony food-stamp fraud did not align with the “longstanding history and tradition” of our Republic and therefore violated the Second Amendment); *Connelly*, 117 F.4th at 272 (application of 18 U.S.C. § 922(g)(3) & (d)(3) to “non-violent, marijuana smoking gunowner” is inconsistent with our “history and tradition of firearms regulations” and thus violates the Second Amendment); *United States v. Hemani*, No. 24-40137, 2025 WL 354982 (5th Cir. Jan. 31, 2025) (same).

Certainly, this is true in the state of North Carolina, where the category “felony” encompasses a broad and wide-ranging host of offenses that vary greatly in seriousness, and often do not entail violence. Nevertheless, § 14-415.1 broadly prohibits “any person who has been convicted of a felony” from purchasing, owning, or possessing any firearm, making exception only for antitrust violations, unfair trade practices, or restraints of

trade. This prohibition is not “of limited duration” like the statutory application upheld in *Rahimi*, but rather endures presumptively for life, with a discretionary petition for rights restoration only available twenty years after completion of a person’s sentence. *See* N.C. Gen. Stat. § 15A-145.4.

While N.C. Gen. Stat. § 14-415.1 does restrict the gun ownership of many individuals who “pose a credible threat to the physical safety of others,” *Rahimi*, 602 U.S. at 700, it also sweeps in many plainly non-violent offenses for which the revocation of gun rights would never have been contemplated at the Founding. As in *Range*, North Carolina also categorizes some kinds of fraud related to food stamps as either a Class H or Class I felony. *See* N.C. Gen. Stat. §§ 108A-39(b); -53.1(b); -53.1(a). But North Carolinians may also permanently lose their right to bear arms for unlawfully changing the mileage on a vehicle’s odometer, N.C. Gen. Stat. §§ 20-343, -350 (class I felony), digging up a Venus flytrap, N.C. Gen. Stat. § 14-129.3 (class H felony), taking the pine straw from someone else’s property, N.C. Gen. Stat. § 14-79.1 (Class H felony), intentionally losing an athletic contest for material gain, N.C. Gen. Stat. § 14-377 (class I felony), or offering a prize of fifty dollars or greater at a Beach Bingo game, N.C. Gen. Stat. § 14-309.14 (Class I felony).⁵

These particular low-level offenses are not the most common offenses triggering loss of firearm rights. But the most commonly charged felony in North Carolina for which individuals lose such rights—obtaining property by false pretenses, N.C. Gen. Stat. § 14-100—is also a non-violent felony.⁶ And violent crimes make up only a small percentage of

⁵ Each of these offenses falls into a class of severity equal to or greater than Mr. Ducker’s original convicted offense.

⁶ Jessica Smith, *Detailed North Carolina Statewide & County Level Criminal Charging Data*, UNC SCH. OF GOV’T (June 8, 2020),

felony charges statewide—amounting to only 16.4% of all charged felonies in 2019.⁷ “Even when felony drug charges are removed from the analysis, violent offenses constitute only 24.4% of the remaining felony charges.”⁸ Yet Section 14-415.1 applies to individuals convicted of such crimes in the same way as if they were convicted of first-degree murder.

The court of appeals claimed that it “need not perform [a] felony-by-felony analysis to determine the constitutionality of Section 14-415.1 as applied to each individual defendant who challenges it,” because of its view that all convicted felons “fall outside of the protections of the Second Amendment.” *Ducker*, 298 N.C. App. at 765. As discussed above, this position conflicts with Supreme Court precedent. In a state that independently enshrines the right to bear arms, and has further recognized the importance of gun ownership through a recently enacted constitutional right to hunt, *see* N.C. Const. art. I, § 38, as-applied challenges to § 14-415.1 must be available.

III. As-applied challenges can help curb the regionally and racially discriminatory impact of this law and protect Second Amendment rights for all North Carolinians.

Gun possession is common in North Carolina. In a 2024 government survey, more than 40 percent of North Carolinians reported having a firearm in their home.⁹ And, because of the vast array of behavior that is classified as a felony offense, an estimated

<https://nccriminallaw.sog.unc.edu/2020/06/08/detailed-north-carolina-statewide-county-level-criminal-charging-data/>.

⁷ *Id.*

⁸ *Id.* (using a “liberal” approach to overcategorize felonies as violent, even those without an element of violence, e.g. burglary).

⁹ *2024 Behavioral Risk Factor Surveillance System Survey Results: North Carolina*, N.C. STATE CTR. FOR HEALTH STATS., <https://schs.dph.ncdhhs.gov/data/brfss/2024/nc/all/GunStat.html>.

170,000 North Carolinians have been convicted of a felony.¹⁰ In 2010, about one out of every 12 Americans had a felony conviction on their record.¹¹ This combination means that the state’s broad felon-in-possession statute casts a net so large that it invites arbitrary and discriminatory enforcement. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 165 (1972) (describing the dangers of wide-reaching criminal statutes); *see also Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part) (“In our own time and place, criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something.”). And the law’s indefinite and presumptively lifetime¹² recission

¹⁰ Collen Chien et al., *The North Carolina Second Chance Expunction Gap*, PAPER PRISONS (2020), at 3 <https://paperprisons.org/states/pdfs/reports/The%20North%20Carolina%20Second%20Chance%20Expunction%20Gap.pdf>.

¹¹ Sarah K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States 1948–2010*, 54 DEMOGRAPHY 1795, 1808 (2017). Official records are not kept on the number of people in North Carolina with felony convictions. But North Carolina’s incarceration rate is in the middle of the pack compared to other states, *see* U.S. Criminal Justice Data, SENT’G PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data/> (last visited March 26, 2026), so national data is likely to be a good indicator for the state. And national rates are also significant because North Carolina’s felon in possession law also applies to people with out of state convictions.

¹² The statutory scheme for rights restoration extends only to those who have a single, “nonviolent” felony conviction, who have waited twenty years after the completion of their sentence, who have been a resident of North Carolina for more than one year, and who submit their fingerprints to the sheriff for a background check. N.C. Gen. Stat. § 14-415.4(d). If the person was convicted of an out-of-state or federal felony, it is only available if they have first had their right to possess a firearm restored in the jurisdiction where the conviction occurred. *Id.* A person is ineligible for restoration if, among other things, they are an “unlawful user of, or addicted to, marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance,” if they have been dishonorably discharged from the military, or if they have been convicted of any violent misdemeanor. *Id.* § 14-415.4(e). Only if the person survives all of these limiting criteria may they *petition* the district court where they reside to have their right to possess a firearm restored. *Id.* § 14-415.4(d). Even where a petitioner satisfies all the

of constitutional rights does not fall evenly across the state. Rural North Carolinians and Black North Carolinians are more harshly impacted.

A. The felon-in-possession law is particularly disruptive for rural North Carolinians.

Rural North Carolinians are especially likely to own guns.¹³ North Carolinians own guns for a variety of reasons, but the most common reasons are to protect oneself, one's home, and one's family, and to engage in recreational activities like hunting.¹⁴ In 2024, about three-quarters of North Carolinians living in urban areas reported having no guns in their homes, while only about half of North Carolinians living in rural areas did.¹⁵ Veterans were also significantly more likely to have guns in their homes than non-veterans.¹⁶ The prevalence of gun ownership among rural North Carolinians and veterans results in the severe burden of the felon-in-possession statute falling especially hard on these groups. And that burden is particularly harsh for North Carolinians for whom hunting is a way of life: a means to feed their families, manage wildlife, or recreate. More

requisite criteria, the statute's text does not require that the petition be granted, apparently leaving the matter within judicial discretion. *Id.*

¹³ *Crime Protection Main Reason for NC Gun Ownership*, PUB. POL'Y POLLING (Feb. 11, 2009), https://e1.nmcdn.io/assets/ppp/wp-content/uploads/2017/09/PPP_Release_NC_211.pdf.

¹⁴ *Id.*

¹⁵ *2024 Behavioral Risk Factor Surveillance System Survey Results: North Carolina*, N.C. STATE CTR. FOR HEALTH STATS., <https://schs.dph.ncdhhs.gov/data/brfss/2024/nc/all/GunStat.html>.

¹⁶ *Id.*

than half a million North Carolinians are registered hunters,¹⁷ and one study estimated that hunters add more than \$21 million in value to the state economy in one year.¹⁸ The right to hunt and fish is so important to North Carolinians that it is enshrined in the state constitution. *See* N.C. Const. art. I, § 38. The careful, case-by-case analysis of felon-based disarmament required by the Second Amendment and Section 30 will help ensure that rural North Carolinians are able to sustain their livelihoods and constitutionally protected traditions.

B. The felon-in-possession law disproportionately impacts Black North Carolinians.

North Carolina's felon-in-possession law results in a disproportionately high number of Black residents, and especially Black men, losing a fundamental constitutional right, often permanently. Black North Carolinians are more likely to have felony convictions than other residents of the state.¹⁹ Data suggests that this disparity extends beyond what can be explained by differential rates of criminal offending.²⁰ Nationwide,

¹⁷ Jason O. Boyd, *The number of registered hunters in NC*, WNTC (Oct. 22, 2023), <https://www.wnct.com/news/north-carolina/the-number-of-registered-hunters-in-nc/>.

¹⁸ William R. Casola et al., *Economic contributions of wildlife management areas in North Carolina*, 140 *FOREST POL. & ECON.* 102747, 7 (2022), [Economic contributions of wildlife management areas in North Carolina](#).

¹⁹ *See Cmty. Success Initiative v. Moore*, 384 N.C. 194, 217, 219 (2023) (citing evidence that 21% of North Carolina adults are African American and noting no dispute between the parties' experts that 42% of the population of people with felony convictions in North Carolina are African Americans).

²⁰ For example, one study found that, nationwide, "roughly 85% of African-Americans' higher probability of drug arrest are not attributable to differences in drug use, drug sales, nondrug offending, or neighborhood context." Ojmarrh Mitchell & Michael S. Caudy, *Examining Racial Disparities in Drug Arrests*, 32:2 *JUST. Q.* 288, 309 (2015), https://ncdoj.gov/wp-content/uploads/2023/12/WG2-Materials-10.21_Examining-Racial-Disparities-in-Drug-Arrests-Justice-Quarterly-32-no.-2-288-313-2013-2015.pdf.

Black residents are more likely to be stopped by police, searched by police, charged with more severe crimes, and sentenced more harshly than white residents.²¹ And in North Carolina specifically, one study found that Black drivers were about twice as likely as white drivers to be stopped on the highways, and once stopped, they were about twice as likely to be searched, even though police were less likely to find contraband on searched Black drivers than on white drivers.²² This contributes to North Carolina imprisoning its Black residents at nearly four times the rate it imprisons its white residents.²³ And many of these convictions do not involve higher level felonies: the majority of new felony convictions over the last ten years have been for the lowest-level offenses (Class H and I), such as possession of methamphetamine and possession of Schedule II controlled substances.²⁴

Another study found that, in the federal system and controlling for factors such as age, criminal history, and education, Black men are more likely to be charged with offenses carrying mandatory minimum sentences than other arrestees. M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122:6 J. POL. ECON. 1320, 1335–36 (2014), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=facarticles>.

²¹ William Y. Chen, *Racial Cumulative Disadvantage*, 6:2 WAKE FOREST J.L. & POL. 441, 443–45 (2016), <https://ssrn.com/abstract=2985076>.

²² Frank R. Baumgartner et al., SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 73, 161 (2018).

²³ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENT’G PROJ., 21 (2016), <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

²⁴ *Structured Sentencing Statistical Report: Fiscal Year 2024*, N.C. SENT’G & POL’Y ADVISORY COMM’N, at 54–55 (June 2025), <https://www.nccourts.gov/assets/documents/publications/FY%202024%20Statistical%20Report.pdf?VersionId=krxE5SwcEyYRIaX1CGXNwL3NHnX.RWpS>.

Perhaps ironically, the most frequently sentenced felony in 2024 in North Carolina was felon-in-possession of a firearm.²⁵ Broad application of Section 14-415.1 thus keeps people cycling in and out of the criminal justice system, rather than contributing to their communities as productive citizens — solely because they have exercised what would otherwise be their constitutional rights.

The wide net cast by North Carolina’s felon-in-possession law, combined with the ever-growing category of “felony” offenses and underlying disparities in gun ownership and felony convictions, causes “the scales of justice [to be] so tipped that even-handed administration of the law is not possible.” *Papachristou*, 405 U.S. at 171. Narrowing this dragnet by applying the law only to convictions that would have resulted in disarmament at the time of the Second Amendment’s ratification is necessary to comply with the Supreme Court’s dictates—and also supports equal justice under the law for all North Carolinians.

CONCLUSION

Amici respectfully urge this Court to reverse the court of appeals and remand for the trial court to assess whether the State has met its burden to show that Mr. Ducker’s § 14-415.1 conviction is consistent with the Second Amendment and Article I, Section 30 of the North Carolina Constitution.

²⁵ *Id.* at 55.

Respectfully submitted this the 27th day of March, 2026,

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CERTIFICATE OF SERVICE

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