Guns on the Premises: Supreme Court Ruling Requires Businesses to Rethink Firearm Policies

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***Wolford v. Lopez*, 609 U.S. ___ (June 25, 2026)**

In *Wolford v. Lopez*, the U.S. Supreme Court held that a Hawaii law generally barring licensed concealed-carry permit holders from carrying firearms onto private property that is open to the public — unless the property owner expressly authorizes the firearm — violated the Second and Fourteenth Amendments. The ruling's reach extends far beyond Hawaii: California, Maryland, New Jersey, and New York have adopted comparable default-consent statutes, each of which is now vulnerable to challenge under the majority's reasoning in *Wolford*.

Background

Before 2022, when the Supreme Court handed down its decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Hawaii had made it quite difficult for private citizens to obtain a license to carry a handgun outside the home. The state issued only four licenses to do so between 2000 and 2018. *Bruen* held that the Second and Fourteenth Amendments protect the right to carry handguns in public for self-defense; in the wake of that decision, Hawaii issued far more carry permits.

In 2023, Hawaii enacted Act 52, which, among other things, reversed the common-law default rule governing firearms on private property open to the public. In common law, anyone — including an armed visitor — has an implied license to enter such property unless the owner expressly excludes them. Act 52 flipped that premise: instead, a carry-permit holder generally could not bring a firearm, even unloaded, onto private property open to the public unless the owner, lessee, operator, or manager expressly authorized doing so, whether orally, in writing, or by posted sign. Meanwhile, California, Maryland, New Jersey, and New York each enacted similar

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laws.

Jason Wolford and several other concealed-carry permit holders in Maui County, joined by a gun-rights organization, sued Hawaii's attorney general, challenging Act 52's private-property default rule and related provisions. The district court preliminarily enjoined enforcement. On appeal, the U.S. Court of Appeals for the Ninth Circuit — which consolidated the Hawaii case with a similar challenge to California's law — affirmed the injunctions only in part. The Ninth Circuit agreed that Hawaii and California could not ban firearms in banks or hospitals, but allowed most of the challenged restrictions, including the private-property default rule, to remain in effect. The Supreme Court granted certiorari to resolve the constitutional question.

Supreme Court's Decision

In a majority opinion authored by Justice Alito, the Supreme Court held that Act 52 violated both the Second and Fourteenth Amendments. Applying the two-step framework from *Bruen*, the majority first asked whether the Second Amendment's plain text covers the conduct at issue. That step was easily satisfied: no one disputed that petitioners are among "the people" who seek to bear arms, so Hawaii's law was presumptively unconstitutional.

The majority illustrated the law's practical effect through an extended hypothetical about a permit holder running ordinary daily errands — stopping at a gas station, a grocery store, a restaurant, and a dry cleaner — and at each stop facing the risk of criminal liability absent posted consent. In the majority's words, the law "hobbles what the Second Amendment protects: the right of Americans to carry arms for self-defense as they go about their daily lives." The majority also rejected Hawaii's argument that its distinctive cultural traditions could give the Second Amendment a different meaning within its borders, reaffirming that the amendment "has the same meaning in all parts of the United States."

At the second step, the majority evaluated three historical analogues Hawaii offered to justify its law and found each wanting.

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Eighteenth-century anti-poaching and hunting laws from Pennsylvania, New Jersey, Maryland, and New York, the Supreme Court reasoned, applied to land where wild game animals could be found, rather than to retail establishments that residents frequent daily, and thus did little to advance the Second Amendment's core purpose of protecting self-defense. The real target of those hunting laws, in the court's view, was the theft of game and the risk that gunfire would injure the property owner, other authorized users, or livestock. These harms bear no resemblance to a person quietly carrying a concealed firearm. Because of that mismatch, the Supreme Court found the gap between the anti-poaching statutes and Act 52 "too wide" to sustain Hawaii's law.

The Supreme Court similarly cast aside the comparison with an 1893 Oregon statute barring armed trespass on "enclosed premises." It found the statute's relevance doubtful in the first place — Oregon courts had construed "enclosed land" to mean outdoor land marked off by a visible boundary, not a commercial establishment open to the public, and the statute did not even require the owner's consent to be express. But even reading the law from Hawaii's preferred interpretation, the court explained that a single state's law adopted nearly a century after the Second Amendment — and well after the Fourteenth — cannot by itself establish a national historical tradition.

Finally, the majority rejected Hawaii's reliance on an 1865 Louisiana statute enacted as part of that state's Black Codes — Reconstruction-era legislation that Louisiana used to help suppress formerly enslaved Black Americans by, among other things, leaving them unable to defend themselves against attack. The Supreme Court found the Louisiana statute independently unpersuasive because it was neither widespread nor widely accepted among the states. The majority also held that, given the statute's role in a scheme to disarm freed Black Americans, the "tainted" artifact "cannot be taken seriously" as evidence of the Second Amendment's original meaning. Because Hawaii identified no adequate historical analogue, the court held that Act 52's private-property default rule violated the Second and Fourteenth Amendments, reversing and remanding the judgment below.

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Justice Barrett, who joined the majority opinion in full, also filed a concurrence, which was joined by Justices Thomas and Gorsuch in part (addressing the Reconstruction-era analogues). Justice Barrett elaborated on the majority's step-one analysis with a more robust rebuttal of the property-law framing advanced by Hawaii and the principal dissent. Justice Barrett reasoned that the Second Amendment applies to any state-rule property law that restricts the bearing of arms because the Second Amendment binds the state regardless of the legal label the state attaches to its regulation.

Justice Barrett framed the critical question as the "why" behind Hawaii's law and concluded that Hawaii had not identified any particular firearms abuse it was trying to prevent. Rather, by the state's own account, the law was enacted because many Hawaiians oppose public carry generally — a response to the general risks associated with firearms, not to any specific, heightened danger tied to particular places or conduct. Turning to the historical record, Justice Barrett concluded that the antipoaching laws addressed specific, narrow harms — theft, gunfire, and physical risk associated with hunting — that do not share Act 52's rationale, and that the Black Code's discriminatory purpose of suppressing freed Black Americans is not "relevantly similar" to any interest Hawaii has asserted.

Justice Jackson, joined by Justice Sotomayor, wrote the principal dissent. For Justice Jackson, this case "is about property rights, not gun rights." Because no one disputes that a property owner may exclude an armed visitor outright, she reasoned that Act 52 merely dictates the form that consent must take, making this a question of state property law that the Second Amendment does not reach. She criticized the majority's step-one analysis as an ahistorical "plain text" test. On step two, she contended that Founding- and Reconstruction-era laws governing "premises" and "plantations" □ not just open land □share the same consent-based mechanism and protective purpose as Act 52.

Justice Jackson also argued that the majority's categorical exclusion of the Louisiana Black Code is methodologically inconsistent: either all historical evidence, including uncomfortable

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evidence, must be considered, or the historical-tradition test is result-driven. In her dissent, Justice Jackson argued that *Bruen* has become a "fig leaf" that allows a judge to invalidate nearly any modern gun regulation by identifying some distinction, however slight, from historical analogues.

Justice Kagan dissented separately in a brief opinion. In her view, Act 52 operates just like the Founding- and Colonial-era statutes Hawaii cited. Each sets a default rule against armed carry that the property owner is free to reverse, so the "how" is identical, and each responds to the dangers that an armed visitor can pose to someone else's property. So, the "why" is close enough to allow the court to determine that Hawaii's law is also compatible with the Second Amendment. Justice Kagan acknowledged that the older statutes had a particular concern with poaching, but she did not consider that dispositive, reasoning that "the regulatory challenges posed by firearms today are not always the same" as those that occupied earlier legislatures.

Key Takeaways

- **Property owners whose property is open to the public should revisit their firearms policies.** Retail, hospitality, restaurant, and real estate clients with premises in Hawaii, California, Maryland, New Jersey, or New York should carefully review their current rules regarding firearms and revise them as needed. The statutory "no carry unless expressly authorized" default is no longer available in Hawaii and is now constitutionally suspect elsewhere, so the implied-license default found in the common law now likely controls, absent new legislation. Property owners that wish to exclude armed patrons will need affirmative, visible signage or posted-notice policies, rather than relying on a statutory default.
- **Further challenges are likely in at least four states.** Businesses and litigants in California, Maryland, New Jersey, and New York can expect follow-up litigation challenging the default statutory limitations in each of those states. The majority's approach makes it easier for future challengers to clear the threshold of *Bruen*'s first step and shift the burden

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to the government at the second, historical-analogue step.

- **Insurers and risk managers underwriting premises and general liability policies in the affected states should reassess coverage and pricing assumptions.** Policies and pricing that were built around the prior default rule are likely now inadequate since the shift back to an implied-license standard changes the baseline exposure landscape for insured properties.
- **Weapons policies in the workplace should be reviewed and potentially revised.** Employers with premises in the affected states may need to revisit workplace weapons policies. The majority's daily-errand hypothetical highlights the interplay between an employer's own property rules and the carry rights of customers and employees. Employers should confirm their posted policies are clear and enforceable under the restored default.
- **Narrowly tailored restrictions may still be permissible.** Government and public-sector entities in the five affected states may want to explore narrower, place-specific restrictions — such as limits tailored to schools or alcohol-serving establishments — rather than broad default-rule statutes. Because both the majority and the concurrence can be read to imply that narrower, more targeted regulations could fare better under *Bruen*'s second-step historical-analogue analysis, such restrictions should be considered.

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