

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELAWARE DEPARTMENT OF	§	
SAFETY AND HOMELAND	§	
SECURITY; NATHANIEL	§	No. 412, 2025
MCQUEEN, JR., in his official	§	
capacity as Cabinet Secretary,	§	Court Below: Superior Court
Delaware Department of Safety and	§	of the State of Delaware
Homeland Security; and COL.	§	
MELISSA ZEBLEY, in her official	§	C.A. No. K23C-07-019
capacity as superintendent of the	§	
Delaware State Police,	§	
	§	
Defendants Below,	§	
Appellants/Cross-Appellees,	§	
	§	
v.	§	
	§	
GAVIN J. BIRNEY; DELAWARE	§	
STATE SPORTSMEN'S	§	
ASSOCIATION, INC. and	§	
BRIDGEVILLE RIFLE & PISTOL	§	
CLUB, LTD.,	§	
	§	
Plaintiffs Below,	§	
Appellees/Cross-Appellants.	§	

Submitted: June 10, 2026
Decided: September 8, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, Justices;
and **NEWELL**, Chief Judge,¹ constituting the Court *en banc*.

Upon appeal from the Superior Court. **REVERSED**.

¹ Sitting by designation under Del. Const. art. IV, § 12 and Supreme Court Rules 2(a) and 4(a) to complete the quorum.

Jennifer Kate Aaronson, Esquire, (*argued*), Ian R. Liston, Esquire, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware, *for Defendants Below/Appellants and Cross-Appellees Delaware Department of Safety and Homeland Security, Nathaniel McQueen, Jr., and Col. Melissa Zebley.*

Francis G.X. Pileggi, Esquire, (*argued*), Keith A. Walter, Esquire, LEWIS BRISBOIS BISGAARD & SMITH LLP, Wilmington, Delaware; Alexander D. MacMullan, Esquire, LEWIS BRISBOIS BISGAARD & SMITH LLP, Wayne, Pennsylvania, *for Plaintiffs Below/Appellees and Cross-Appellants Gavin J. Birney, Delaware State Sportsmen's Association, Inc., and Bridgeville Rifle & Pistol Club, Ltd.*

SEITZ, Chief Justice, for the Majority:

In 2022, the General Assembly enacted and Governor Carney signed into law House Bill 451. The Bill raised the age from eighteen to twenty-one years old to purchase, own, or possess certain firearms and ammunition. The legislation exempted military personnel, law enforcement, concealed carry permit holders, and supervised recreational activities.

The plaintiffs filed suit claiming that the Bill was unconstitutional but limited their challenge to the Delaware Constitution. On cross-motions for summary judgment, the Superior Court found that the General Assembly had an important governmental objective for H.B. 451 – addressing the epidemic of gun violence by individuals aged eighteen to twenty. The court also determined that the legislation was substantially related to achieving the government’s objective of reducing gun violence for that age group. But the court ultimately concluded that H.B. 451 was unconstitutional because it overburdened the right of individuals in that age group to bear arms in self-defense.

On appeal, the State argues that the Superior Court erred in its burden analysis by making unsupported or incorrect assumptions about exceptions to the law. The plaintiffs support affirmance but take a different tack. They claim that the court should have applied the U.S. Supreme Court’s recent “history and tradition” test to declare H.B. 451 unconstitutional. For the reasons explained below, we hew to our

means-scrutiny precedent and decline to adopt the newly created history and tradition federal test. We also agree with the State that the Superior Court erred in its burden analysis. Thus, we reverse.

I.

A.

In 2022, the General Assembly enacted House Bill 451 to address gun violence by individuals under twenty-one years old using legally purchased firearms.² It cited “conclusive scientific research that shows the human brain is still developing in young adults aged 18 to 21 which impacts their decision making, self-control, aggressive impulses, and risk-taking behaviors.”³ According to the General Assembly, eighteen-to-twenty-one-year-olds are the most common perpetrators of gun violence, making up roughly one-third of all shooters.⁴ It is also the most common age range for Delaware shooting victims.⁵ This age range is

² Del. H.B. 451, 151st Gen. Assem. (2022) (“An Act to Amend Title 11 of the Delaware Code Relating to Firearms.”) [hereinafter H.B. 451].

³ *Id.*

⁴ *Id.*

⁵ Br. of *Amicus Curiae* Giffords Law Center to Prevent Gun Violence 2 [hereinafter *Amicus Br.*] (citing Jim Salt, *Delaware Shootings 2018: An Analysis of Incidents, Suspects, and Victims* 12 (Del. Crim. Just. Council 2019), <https://tinyurl.com/yc4dc8cn>; Jim Salt, *Delaware Shootings 2019: An Analysis of Incidents, Suspects, and Victims* 12 (Del. Crim. Just. Council 2020), <https://tinyurl.com/mrxmbkyf>; Jim Salt, *Delaware Shootings 2020: An Analysis of Incidents, Suspects, and Victims* 15 (Del. Crim. Just. Council 2021), <https://tinyurl.com/3stkb65r>).

overrepresented in mass shooters – six of the United States’ nine most lethal mass shootings since 2018 were committed by individuals under twenty-one.⁶ Also, roughly one-third of school shooting victims are shot by a perpetrator in this age range.⁷

H.B. 451 became effective in 2025, three years after its enactment. It prohibits individuals under twenty-one years of age “from purchasing, owning, possessing, or controlling a firearm or ammunition of a firearm,” other than a shotgun or muzzle-loading rifle, unless they are an adult who is “an active member of the Armed Forces, a qualified law-enforcement officer, or has a license to carry a concealed deadly weapon.”⁸ Individuals under twenty-one may possess or control a firearm for lawful hunting, instruction, sporting, or recreational activities, provided that they are under the direct supervision of an adult aged twenty-one or older. The General Assembly determined that these restrictions were the most effective means to address gun violence by this age group, while still preserving meaningful avenues for firearm

⁶ Floor Debate on H.B. 451 before Del. H.R., 151st Gen. Assem. at 6:06:4-6:07:20, <https://tinyurl.com/mr2n5fzk> (statement of Rep. Peter C. Schwartzkopf), (last visited Sept. 1, 2026).

⁷ *Amicus* Br. 12 (citing Joshua D. Brown & Amie J. Goodin, *Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018*, 108 Am. J. Pub. Health 1385, 1386 (2018)).

⁸ Del. H.B. 451 syn., 151st Gen. Assem. (2022).

access. According to the *Amicus*, similar measures elsewhere have proven effective in reducing gun violence in this age group.⁹

B.

In 2022, then eighteen-year-old Gavin Birney, the Delaware State Sportsmen’s Association, and the Bridgeville Rifle and Pistol Club filed a complaint in the Court of Chancery seeking to enjoin H.B. 451’s enforcement. The court dismissed the complaint because the plaintiffs’ constitutional challenges raised legal issues outside the Court of Chancery’s equitable and statutory jurisdiction.¹⁰ The plaintiffs then filed a joint declaratory judgment action in the Superior Court alleging violations of the state and federal constitutions. The State removed the case to federal court. The parties thereafter agreed to stay the federal court litigation and proceed through a new Superior Court complaint limited to state constitutional claims.

⁹ *Amicus* Br. 21 (observing that the “firearm mortality rate among children under 20 was almost twice as high in the quartile of states with the weakest laws than in the quartile of states with the strongest laws” (citing Sriraman Madhavan, Jordan S. Taylor, Julia M. Chandler, Kristan L. Staudenmayer & Stephanie D. Chao, *Firearm Legislation Stringency and Firearm-Related Fatalities Among Children in the US*, 229 J. Am. Coll. Surgeons 150, 152 (2019))); *id.* at 22 (arguing that studies “underscore[] the importance of minimum-age restrictions” (quoting Katherine A. Vittes, Jon S. Vernick & Daniel W. Webster, *Legal Status and Source of Offenders’ Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 Inj. Prevention 26, 29-30 (2013))).

¹⁰ *Birney v. Del. Dep’t of Safety & Homeland Sec.*, 2022 WL 16955159, at *1 (Del. Ch. Nov. 16, 2022).

The plaintiffs alleged that H.B. 451 violated Article I, Section 20 of the Delaware Constitution by infringing the rights of individuals aged eighteen to twenty-one to own firearms. Although the complaint raised only a state constitutional claim, the plaintiffs alleged in the complaint that the Second Amendment is a “floor” that controls the “right to bear arms both in and outside of the home.”¹¹

Specifically, the plaintiffs pled that the Superior Court could not properly evaluate H.B. 451’s constitutionality using an interest-balancing test, also known as “means-end scrutiny,” and urged it to apply the recent “history and tradition” test announced by the U.S. Supreme Court in *New York State & Rifle Association, Inc. v. Bruen*.¹² The U.S. Supreme Court held in *Bruen* that any restriction on the Second Amendment’s right to bear arms had to fit within the Nation’s “historical tradition of firearm regulation.”¹³ H.B. 451 failed this test, the plaintiffs alleged, because it

¹¹ App. to Answering & Cross-Opening Br. at B19 [hereinafter B_] (Pl’s First Am. Compl. for Decl. Relief at 4 [hereinafter Compl.]).

¹² 597 U.S. 1 (2022).

¹³ *Id.* at 24. The Court later held that while a challenged regulation need not have a “historical twin,” it must be “relevantly similar” to a Founding-era firearm regulation. *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *Bruen*, 597 U.S. at 29). The Court has stressed that the similarity of a historical analogue’s “purpose and operation” – while not dispositive – is important to the analysis. *United States v. Hemani*, 146 S. Ct. 1677, 1686 (2026).

acted as a ban on commonly-used firearms, a practice they claimed does not fit within the country's history and tradition of firearms regulation.¹⁴

The State responded that, under settled Delaware Supreme Court precedent, Delaware courts use means-end scrutiny to evaluate state constitutional challenges to firearms legislation. Under this Court's most recent decision, *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, to sustain the legislation, the State must show (i) an important government objective which is more than "a general safety concern" justifying the legislation; (ii) the legislation is substantially related to achieving that important government objective; and (iii) the legislation does "not burden[] the fundamental right to bear arms in self-defense more than is reasonably necessary to ensure that the asserted governmental objectives are met."¹⁵

The State argued that the legislation met all three requirements. According to the State, the Bill was substantially related to preventing gun violence among young people – an important and tailored objective. And it did not unreasonably burden firearm rights because it did not affect shotgun or muzzle-loading rifle access,

¹⁴ B21 (Compl. at 6) ("*Bruen*, like *Heller* before it, also made clear that a firearms ban, like H.B. 451, that bans arms in common use by law-abiding citizens, for lawful purposes, cannot be consistent with the Nation's historical tradition of firearms regulation and cannot stand." (citing *Bruen*, 597 U.S. at 21-22; *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008))).

¹⁵ 176 A.3d 632, 656 (Del. 2017) (citing *Doe v. Wilm. Hous. Auth.*, 88 A.3d 654, 666-67 (Del. 2014)).

supervised recreational activities, public safety professionals, and allowed other avenues for firearm access through the concealed-carry permitting process.

While disputing the validity of the intermediate scrutiny test, the plaintiffs countered that even if it applied, H.B. 451 faltered on its third requirement, as it overburdened the right to bear arms in self-defense by the age group.

C.

Ruling on cross-motions for summary judgment, the Superior Court began its analysis by explaining that it must follow this Court’s decisions in *Doe v. Wilmington Housing Authority*¹⁶ and *Bridgeville*, each of which applied intermediate scrutiny to decide a Section 20 challenge. It stated, however, that even if it “were permitted to discard the test adopted by the Delaware Supreme Court – which it is not – [it] remains unconvinced the *Bruen* framework would be preferable for analyzing Section 20.”¹⁷ The court pointed out that many courts nationwide have found *Bruen* difficult to apply, leading to inconsistent rulings. As it observed, “[t]he Third, Fifth, and Eighth Circuits have struck down laws they found infringed upon the rights of 18-to-20-year-olds. The Fourth, Tenth, and Eleventh Circuits upheld strikingly

¹⁶ 88 A.3d 654 (Del. 2014).

¹⁷ *Birney v. Del. Dept. of Safety and Homeland Sec.*, 345 A.3d 1037, 1054 (Del. Super. 2025) [hereinafter Op.].

similar laws, finding restrictions on the Second Amendment rights of 18-to-20-year-olds fit within the *Bruen* framework.”¹⁸

Turning to the first step in the *Bridgeville* analysis, the court found that protecting “the safety of those under the age of 21 years old and the safety of their communities”¹⁹ was important and not a mere “general safety concern” because it “targets a specific subsection of the population, as opposed to the indiscriminate regulations present in *Doe*.”²⁰ As to the second step, the court found “enough evidence in the record to show that preventing 18-to-20-year-olds from purchasing or possessing a firearm would necessarily relate to preventing them from committing firearm-related offenses.”²¹

But the court ruled against the State on the third requirement. It found that H.B. 451 unreasonably burdened the plaintiffs’ right to keep and bear arms for self-defense. According to the court, the law’s carveouts for shotguns and muzzle-loading rifles protected the right to keep and bear arms for hunting and recreational

¹⁸ *Id.* (citation modified).

¹⁹ *Id.* at 1058 (quoting App. to Opening Br. at A73-74 [hereinafter A_] (Defs.’ Answering Br. in Opp. to Pl.’s Mot. for Summary Judgment at 13-14)).

²⁰ *Id.* at 1059.

²¹ *Id.* at 1060.

use.²² But that carveout did not address self-defense because it did not include handguns, “the quintessential self-defense weapon.”²³

Even though H.B. 451 had a concealed carry carveout for handguns, the court identified three licensing scheme deficiencies under intermediate scrutiny. First, the court viewed the licensing scheme as giving the Superior Court absolute discretion to grant or deny a permit.²⁴ Second, the court found that some requirements for obtaining a permit, like what constitutes “good moral character,” were vague.²⁵ And third, the court determined that the permit process lacked appellate review.²⁶ For these reasons, the court discounted H.B. 451’s concealed carry permit carveout and held that H.B. 451 resulted in a near “total ban” on young adults’ right to bear arms in self-defense.²⁷ According to the court, H.B. 451 infringed the right of individuals

²² *See id.* at 1063.

²³ *Id.* at 1064 (quoting *Heller*, 554 U.S. at 629).

²⁴ *Id.* at 1065-66.

²⁵ *Id.* at 1065.

²⁶ *Id.* at 1066.

²⁷ *See id.* at 1064-66. During briefing in this Court, the State filed motions to remand for further fact development and to suspend briefing. According to the State, the Superior Court found on its own initiative and without a record that Section 1441’s concealed carry regime was overly burdensome. Furthermore, the State claimed that it discovered that Birney had obtained a concealed carry permit months before filing the operative complaint in the Superior Court. He was not, therefore, subject to H.B. 451’s restrictions and lacked standing to challenge the legislation. We denied the motion to suspend briefing and elected to consider the motion to remand if needed with this decision.

aged eighteen to twenty “to keep and bear arms for the defense of self, family, home and State” and was therefore unconstitutional.²⁸

D.

In their cross-appeal, the plaintiffs argue that the Superior Court erred by applying intermediate scrutiny. First, they claim that the intermediate scrutiny standard applied in *Doe* and *Bridgeville* arose from the then-prevailing law in the U.S. Court of Appeals for the Third Circuit.²⁹ They say that the Third Circuit’s recent decision in *Lara v. Commissioner Pennsylvania State Police*, applying *Bruen* to strike down a Pennsylvania firearm ban on young adults during declared emergencies, requires us to apply *Bruen* to invalidate H.B. 451.³⁰ Second, they argue that the *Bruen* “history and tradition” test is more rights-protective than intermediate scrutiny. Therefore, they claim, intermediate scrutiny now falls below the threshold

²⁸ *Id.* at 1066 (quoting Del. Const. art. I, § 20). The court concluded that:

[a]t a minimum, some provisions of H.B. 451 infringe on the right of a subsection of adults, aged eighteen to twenty, to exercise their right to “defense of self, family, home and State.” Accordingly, those provisions violate the Delaware Constitution and are unenforceable. H.B. 451’s provisions that do not affect the rights of 18-to-20-year-olds – such as those outlining the rehabilitative services offered to those under the age of eighteen – remain intact.

Id. (quoting Del. Const. art. I, § 20).

²⁹ Answering Br. 12-13.

³⁰ 125 F.4th 428 (3d Cir. 2025); Answering Br. 13-14.

of minimum rights provided by the federal Constitution.³¹ Finally, they contend that Section 20 is “broader” than the Second Amendment, and therefore we must apply *Bruen* or some other test that is at least as rights-protective.³²

The State counters that the organizations lack standing to challenge H.B. 451 and to file a cross appeal.³³ On the merits, the State argues that intermediate scrutiny is the correct standard because federal law does not control our Section 20 jurisprudence, *Bruen* is not more protective than intermediate scrutiny, and *Lara* is distinguishable and not controlling precedent.³⁴ Finally, the State contends that if we adopt *Bruen*, H.B. 451 passes constitutional review for two reasons – first, the plaintiffs are an excluded class for Second Amendment purposes; and second, H.B. 451 conforms with the country’s history and tradition of firearm regulation, as demonstrated by restrictions during the founding and reconstruction eras on purchasing firearms, as well as surety laws, university firearm restrictions, and vagrancy laws.³⁵

³¹ Answering Br. 14.

³² *Id.* at 26-27.

³³ Reply Br. 29-32.

³⁴ *Id.* at 24-29.

³⁵ *Id.* at 35-45.

In its appeal, the State argues that the court correctly applied intermediate scrutiny, but that its ultimate holding should be reversed due to three compounding errors. First, the State contends that the court improperly made a finding of fact – that the concealed carry permit process is entirely discretionary – when nothing in the record explains how the permitting process operates, including its approval percentages or timeline.³⁶ According to the State, this finding was especially problematic in light of the U.S. Supreme Court’s contrary finding in an unrelated case that 11 *Del. C. § 1441* creates a *de facto* “shall issue” – *i.e.*, mandatory – licensing regime.³⁷ Second, the State contends that the court erred by holding that it could not consider the mitigating effects of a discretionary carveout when assessing H.B. 451’s burden.³⁸ And finally, the State asserts that the court incorrectly concluded that H.B. 451 lacks any meaningful avenue for young adults to access self-defense weapons.³⁹

On appeal, we review questions of law, including a legislative act’s constitutionality and standing questions, *de novo*.⁴⁰ A plaintiff seeking to declare a

³⁶ See Opening Br. 43-44; Reply Br. 17, 21.

³⁷ Opening Br. 44.

³⁸ *Id.* at 46.

³⁹ *Id.* at 25-40.

⁴⁰ *In re COVID-Related Restrictions on Religious Servs.*, 326 A.3d 626, 638 (Del. 2024).

state law unconstitutional must overcome the “strong judicial tradition” of presuming “the constitutionality of a legislative enactment.”⁴¹ “Legislative acts should not be disturbed except in clear cases . . . and should not be declared invalid unless [their] invalidity is beyond doubt.”⁴²

We proceed in three parts. In Section II we explain that the State waived its standing arguments on appeal. In Section III we explain why we apply our precedent and decline to adopt the U.S. Supreme Court’s history and tradition test. And finally, in Section IV, we explain how the Superior Court erred in its state constitutional analysis.

II.

A.

Standing is “the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.”⁴³ We treat standing as a threshold issue to “ensure that the litigation before the tribunal is a ‘case or controversy’ that is appropriate for

⁴¹ *Town of Fenwick Island v. State*, --- A.3d ---, 2026 WL 1468816, at *3 (Del. May 26, 2026) (quoting *Roberson v. State*, --- A.3d ---, 2026 WL 962171, at *3 (Del. Apr. 9, 2026)).

⁴² *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974) (citing *Klein v. Nat’l Pressure Cooker Co.*, 64 A.2d 529, 532 (Del. 1949)).

⁴³ *Albence v. Higgin*, 295 A.3d 1065, 1085 (Del. 2022) (citing *Dover Hist. Soc’y. v. City of Dover Plan. Comm’n* 838 A.2d 1103, 1110 (Del. 2003)).

the exercise of the court’s judicial powers.”⁴⁴ “The party invoking the jurisdiction of a court bears the burden of establishing the elements of standing.”⁴⁵

The standing elements in Delaware courts “are generally the same as the requirements for establishing Article III standing in federal court”⁴⁶ – an “injury in fact, causation, and redressability.”⁴⁷ An injury in fact “requires the plaintiff to demonstrate an injury that is ‘concrete,’ ‘particularized,’ and ‘actual or imminent, not speculative.’”⁴⁸ The second requirement, causation, “requires the plaintiff to show ‘that the injury was likely caused by the defendant.’”⁴⁹ Finally, the “redressability requirement generally serves to ensure that there is a sufficient ‘relationship between “the judicial relief requested” and the “injury” suffered.’”⁵⁰ In other words, it requires the plaintiff to demonstrate “that the injury would likely be redressed by judicial relief.”⁵¹

⁴⁴ *Dover Historical Soc’y*, 838 A.2d at 1110.

⁴⁵ *Higgin*, 295 A.3d at 1086 (quoting *Dover Historical Soc’y*, 838 A.2d at 1110).

⁴⁶ *Id.* (citing *Dover Historical Soc’y*, 838 A.2d at 1111).

⁴⁷ *Diamond Alt. Energy, LLC v. Env’t. Prot. Agency*, 606 U.S. 100, 111 (2025) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

⁴⁸ *Id.* (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024)).

⁴⁹ *Id.* at 111 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)).

⁵⁰ *Id.* at 112 (quoting *California v. Texas*, 593 U.S. 659, 671 (2021)).

⁵¹ *Id.* at 111 (quoting *TransUnion*, 594 U.S. at 423).

Standing in the Delaware state courts, however, differs from Article III standing in certain key respects. The U.S. Constitution limits a federal court’s jurisdiction to actual cases and controversies.⁵² There is no equivalent limitation in the Delaware Constitution. Instead, “we ‘apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are “mere intermeddlers.””⁵³ In other words, “Delaware’s courts may hear cases and controversies that the federal courts cannot.”⁵⁴ Without a specific statutory grant of review, however, a plaintiff generally must satisfy Article III standing requirements.⁵⁵

The State argues that all three plaintiffs lack standing. The plaintiffs concede that Birney lacks standing, both due to his age and because he holds a concealed carry permit – and has since before he filed the operative complaint.⁵⁶ As for the organizational plaintiffs, they argue that the State waived its standing arguments.

⁵² *Id.* at 110 (“Article III of the Constitution confines the jurisdiction of federal courts to ‘Cases’ and ‘Controversies.’ For a lawsuit to constitute a case within the meaning of Article III, the plaintiff must have standing to sue.” (internal citation omitted)).

⁵³ *Higgin*, 295 A.3d at 1086 (Del. 2022) (quoting *Dover Historical Soc’y*, 838 A.2d at 1111).

⁵⁴ *Id.* at 1086-87 (citing *Reeder v. Wagner*, 974 A.2d 858, 2009 WL 1525945, at *2 (Del. June 2, 2009) (TABLE)).

⁵⁵ *See id.*

⁵⁶ Cross-Reply Br. 9 n.3; *see also* Ex. B to Mot. to Remand 6 (March 6, 2026 Letter from Jennifer Kate Aaronson to Francis G.X. Pileggi) (noting DOJ records reflect Birney’s application received by DOJ on Nov. 14, 2022, and granted by the Superior Court on January 4, 2023)).

The State concedes that it did not make its standing arguments in the Superior Court.⁵⁷ It also did not make the argument in its opening brief on appeal. Either omission typically results in waiver, which means that the lack of standing argument cannot be pursued on appeal.⁵⁸ Relying on our decision in *Employers Insurance Co. of Wausau v. First State Orthopaedics, P.A.*, however, the State argues that litigants cannot waive standing requirements and therefore standing can be raised at any time.⁵⁹

It is true that, as an alternative basis for its holding that a party did not waive a standing argument, this Court in *Employers Insurance* stated that litigants cannot waive standing requirements.⁶⁰ But the Court was tracking standing under federal law, where, as explained above, standing is jurisdictional and cannot be waived.⁶¹ And in *Employers Insurance*, the Court recognized the difference between standing as a jurisdictional matter under federal law and as a prudential matter under

⁵⁷ Reply Br. 29.

⁵⁸ Del. Supr. Ct. R. 14(b)(vi)(A)(3) (“The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal.”).

⁵⁹ 312 A.3d 597, 612-13 (Del. 2024).

⁶⁰ *Id.* at 613.

⁶¹ *Id.* at 607 (explaining the standing requirements “[u]nder Article III of the United States Constitution.”); see *In re Pressman-Gutman Co.*, 459 F.3d 383, 402 n.20 (3d Cir. 2006) (“Article III standing, . . . of course, is not subject to waiver.”) (citing *United States v. Hays*, 515 U.S. 737, 742 (1995)).

Delaware law.⁶² We reinforce that distinction here between federal and Delaware law.⁶³ In Delaware, standing is not jurisdictional and is therefore waivable.⁶⁴ By not raising the issue below or in its opening brief on appeal, the State waived its standing argument as to both organizational standing and standing to cross-appeal.⁶⁵

⁶² *Empls. Ins.*, 312 A.3d at 608 n.70 (quoting *Higgin*, 295 A.3d at 1086) (“Delaware’s standards for determining standing are generally the same as the requirements for establishing Article III standing in federal court. Unlike the federal courts, however, where standing may be subject to stated constitutional limits, we apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers.”).

⁶³ *Higgin*, 295 A.3d at 1086; *see also ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) (“We have recognized often that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability . . .”).

⁶⁴ *See, e.g., Bako Pathology LP v. Bakotic*, 288 A.3d 252, 270 (Del. 2022) (“[Plaintiffs] waived certain arguments by not fairly presenting them to the trial court or to this Court. For example, [they] raise two third-party beneficiary standing arguments for the first time on appeal.”); *HBK Master Fund L.P. v. Pivotal Software, Inc.*, 2023 WL 10405169, at *21 (Del. Ch. Aug. 14, 2023) (“Respondent waived the standing argument by failing to preserve it in its pre-trial briefing.”); *Harker v. Grimes*, 2022 WL 3665050, at *5 n.54 (Del. Ch. May 31, 2022), *rep’t & rec. approved*, (Del. Ch. 2022) (“The Principal failed to raise standing in the opposition and, as such, the issue has been waived.” (citing *Emerald P’rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003))); *Am. Fed’n. of State, Cty. & Mun. Empls., Council 81 v. State*, 2013 WL 4077871, at *6 (Del. Ch. July 31, 2013) (“[When] arguments are not matters of subject matter jurisdiction, they can be waived.”).

⁶⁵ That a standing defense can be waived does not preclude the court, on its own initiative and at any time, from raising or considering standing as a prudential matter. We also note that, as to the cross-appeal issue, regardless of the propriety of the cross appeal, “we can affirm on the basis of an argument . . . raised below and argued as an alternative ground for affirmance on appeal.” *Ginsberg v. Harleysville Worcester Ins. Co.*, 329 A.3d 504, 511 (Del. 2024) (citing *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995)); *see also Haley v. Town of Dewey Beach*, 672 A.2d 55, 58-59 (Del. 1996) (“[Appellee] may defend [a] judgment with any argument that is supported by the record, even if it questions the trial court’s reasoning or relies upon a precedent overlooked or disregarded by the trial court.” (citing *United States v. Am. Ry. Express Co.*, 265 U.S. 425, 435 (1924))). The plaintiffs raised the *Bruen* argument in the Superior Court.

III.

We begin our review with the plaintiffs’ cross-appeal, as it controls the proper analysis for the State’s appeal. In *Bruen*, the U.S. Supreme Court changed course for Second Amendment challenges to firearm regulations. It reasoned that means-end tests like intermediate scrutiny allowed too much subjectivity in the legal analysis.⁶⁶ Under the Court’s new test, if “the Second Amendment’s plain text covers an individual’s conduct, the [U.S.] Constitution presumptively protects that conduct” and “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”⁶⁷ In *Lara*, the U.S. Court of Appeals for the Third Circuit applied the *Bruen* framework to invalidate a Pennsylvania restriction on young adults’ open carry rights during declared emergencies.⁶⁸

The plaintiffs argue that we must apply *Bruen* and *Lara* to evaluate the constitutionality of H.B. 451 under the Delaware Constitution. As to *Bruen*, they contend that we cannot use a test no longer followed by the U.S. Supreme Court.

⁶⁶ *Bruen*, 597 U.S. at 25 (stating that a historical approach “is, in our view, more legitimate, and more administrable, than asking judges to ‘make difficult empirical judgments’ about ‘the costs and benefits of firearms restrictions.’” (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010))).

⁶⁷ *Id.* at 24.

⁶⁸ 125 F.4th at 438-45.

They also claim that *Bruen* sets a new “floor” which intermediate scrutiny falls below. As to *Lara*, they note that we have looked to Third Circuit precedent in prior Section 20 challenges. We explain next, however, why we are not compelled to, and decline to, adopt a new test and overrule Delaware precedent.

A.

Here is the text of Article I Section 20 alongside the text of the Second Amendment:

Delaware Constitution (Art. I, § 20)	U.S. Constitution (Second Amendment)
A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.	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.

We observed in *Doe v. Wilmington Housing Authority* that Section 20 “is not a mirror image of the Second Amendment”⁶⁹ and our Section 20 jurisprudence is “not dependent upon federal interpretations of the Second Amendment.”⁷⁰ The U.S. Supreme Court has also held that even if a state constitutional right has a federal constitutional analogue, that state’s court may nevertheless “reject the mode of

⁶⁹ 88 A.3d 654, 665 (Del. 2014); *see also Bridgeville*, 176 A.3d at 642 (quoting Del. Const. art. I, § 20; U.S. Const. amend. II); Randy J. Holland, *The Delaware State Constitution* 88-89 (2nd ed. 2017) (comparing same).

⁷⁰ 88 A.3d at 665.

analysis used by [the U.S. Supreme] Court in favor of a different analysis of its corresponding constitutional guarantee.”⁷¹ Thus, we are not required to federalize Section 20.

B.

The plaintiffs argue that the textual differences are immaterial because *Bruen* set a new floor for firearm rights that means-end scrutiny falls below. We disagree. First, as a member of the *Bruen* Majority explained before joining the U.S. Supreme Court, the “history and tradition” test is not necessarily more deferential to the State than means-end scrutiny. As then Judge Kavanaugh explained, “[i]ndeed, governments appear to have *more* flexibility and power to impose gun regulations under a test based on text, history, and tradition than they would under strict scrutiny.”⁷²

Second, as noted above, even if *Bruen* set a new “floor” for firearm rights, we are not required to adopt it for our Section 20 jurisprudence. It is true that states must abide by the U.S. Constitution. But the federal “floor” is enforced in state

⁷¹ *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 293 (1982); accord *Florida v. Powell*, 559 U.S. 50, 71 (2010) (Breyer, J., dissenting on other grounds) (“[A state court’s] interpretation of [its own] Constitution . . . need not track our construction of the parallel provision in the Federal Constitution.”).

⁷² *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

courts through challenges brought under the Second Amendment.⁷³ It does not affect our review of a state constitutional provision.⁷⁴

Finally, although we have described Section 20 as “broader” than the Second Amendment, that breadth relates to the right to bear arms “outside the home, including for hunting and recreation” and the right of “defense of self and family in addition to the home.”⁷⁵ It has no bearing on the test we use to evaluate a constitutional challenge to state legislation under Section 20.

C.

According to the plaintiffs, the Third Circuit’s decision in *Lara v. Commissioner Pennsylvania State Police* should control the result here.⁷⁶ *Lara* invalidated a suite of Pennsylvania laws prohibiting “18-to-20-year-olds from

⁷³ See *Bruen*, 597 U.S. at 37 (“[I]ndividual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government.”).

⁷⁴ In *Bridgeville*, we wrote that “our Delaware Constitution may provide ‘broader or additional rights’ than the federal constitution, which provides a ‘floor’ or baseline rights.” 176 A.3d at 642 (quoting Randy J. Holland, *State Jury Trials and Federalism: Constitutionalizing Common Law Concepts*, 38 Val. U. L. Rev. 373, 375 (2004)). We explained that our interpretation of the Delaware Constitution need not be in “lock step” with the U.S. Supreme Court’s interpretation of similar provisions of the federal constitution. *Id.* at 642 n. 47 (quoting *Dorsey v. State*, 761 A.2d 807, 814 (Del. 2000)). Of course, the federal Constitution would act as a floor had the plaintiffs also brought a Second Amendment challenge, but they chose to limit their arguments to the Delaware Constitution.

⁷⁵ *Doe*, 88 A.3d at 665 (emphasis omitted); see also *Bridgeville*, 176 A.3d at 636-37.

⁷⁶ 125 F.4th 428 (3d Cir. 2025).

carrying firearms outside their homes during a state of emergency.”⁷⁷ “Relying on the Second Amendment to the U.S. Constitution,” those plaintiffs sued to enjoin enforcement.⁷⁸ As such, the court applied *Bruen*.⁷⁹ Looking to Pennsylvania laws at the founding, the panel majority held that the analogue, a 1721 statute “primarily focused on preventing Pennsylvanians from hunting on their neighbors’ land,” was not similar in its “why and how” to the challenged open-carry restriction.⁸⁰ Thus, the court struck down the present-day Pennsylvania restriction.

The plaintiffs say this decision binds us because we have previously followed that court’s Second Amendment framework for Section 20 challenges. But *Lara* was decided under the U.S. Constitution. For the reasons explained above, we need not apply *Bruen*, and we are not required to apply *Lara* to challenges under the Delaware Constitution.

Of course, when this Court decided *Doe* and *Bridgeville*, we used means-end scrutiny, as the Third Circuit did at that time. The plaintiffs say we should continue that trend and follow the Third Circuit’s Second Amendment decisions. For the reasons explained next, however, we believe that the means-end scrutiny test

⁷⁷ *Id.* at 431.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 443 (quoting *Rahimi*, 602 U.S. at 692) (second quotation).

continues to be workable in Delaware, and we have the same reservations expressed by the Superior Court and some federal courts about the history and tradition test.

Specifically, *Lara* was neither *en banc* nor unanimous, and right now sits on one side of an even circuit split. While two circuits are consistent with the Third Circuit panel decision,⁸¹ three arrived at opposite results. The Eleventh Circuit sitting *en banc* upheld a law forbidding those under twenty-one from purchasing firearms, because individuals in that age group were considered minors at the founding, and thus could not enter into contracts to purchase firearms.⁸² Using similar reasoning, the Fourth Circuit held the same.⁸³ So did the Tenth Circuit, explaining that “regulations imposing conditions or qualifications – such as a minimum purchase age of 21 – on the commercial sale or purchase of arms” do not violate the Second Amendment.⁸⁴

Like the Fourth, Tenth and Eleventh Circuits, the dissent in *Lara* focuses on the minor status of persons under twenty-one at the country’s founding. The dissent

⁸¹ See *Worth v. Jacobson*, 108 F.4th 677, 698 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 1924 (2025) (holding that the state had “not met its burden to proffer sufficient evidence to rebut the presumption that 18 to 20-year-olds seeking to carry handguns in public for self-defense are protected by the right to keep and bear arms.”); *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 600 (5th Cir. 2025) (same).

⁸² *Nat’l Rifle Ass’n v. Bondi*, 133 F.4th 1108, 1118 (11th Cir. 2025) (*en banc*).

⁸³ *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568, 576-77 (4th Cir. 2025).

⁸⁴ *Rocky Mt. Gun Owners v. Polis*, 121 F.4th 96, 127-28 (10th Cir. 2024).

reasoned that under-twenty-one-year-olds are not part of “the people” protected by the Second Amendment because “there is ample evidence that the Founding-era public would not have understood the text of the Second Amendment to extend its protection to those under 21.”⁸⁵ The State makes a similar argument as to Section 20 in its cross-answering brief, in the event we were to apply *Bruen* to Section 20 challenges.⁸⁶

The history and tradition debate for individuals under twenty-one has yet to be resolved at the federal level. We see no benefit in bringing the same uncertainty to Delaware and its Constitution.

D.

Finally, in *Bruen* and prior decisions like *District of Columbia v. Heller*, the U.S. Supreme Court found that a history-focused test would be more objective than means-end scrutiny, and would ensure that firearm rights were protected in line with the founders’ intent.⁸⁷ In practice, however, “scholars and historians alike” have criticized these decisions for “selective use of historical sources, . . . the silence of

⁸⁵ *Lara*, 125 F.4th at 448 (Restrepo, J., dissenting) (“At the Founding, people under 21 lacked full legal personhood.” (citing, e.g., 1 William Blackstone, *Commentaries on the Laws of England* 453 (Oxford, Clarendon Press 1765))).

⁸⁶ Reply Br. 37-38 (arguing H.B. 451 passes scrutiny under *Bruen* because (a) individuals under twenty-one were considered minors at the Founding under English common law and (b) Delaware law is the same as English common law as of 1776 unless amended by statute).

⁸⁷ 597 U.S. at 37; 554 U.S. at 634-35.

most voices within the historical record, and even basic errors of historical fact.”⁸⁸

And as decisions applying it demonstrate, *Bruen* is often difficult to apply with confidence, as historical evidence can be contradictory or inconclusive, leading to inconsistent results.⁸⁹

⁸⁸ Joseph Blocher & Eric Ruben, *Originalism-by-Analogy and Second Amendment Adjudication*, 103 Yale L.J. 99, 102 (2023) (citing, e.g., Albert W. Alschuler, *Twilight-Zone Originalism: The Peculiar Reasoning and Unfortunate Consequences of New York State Pistol & Rifle Association v. Bruen*, 32 Wm. & Mary Bill of Rights J. 1, 6-8 (2023)).

⁸⁹ *Rahimi*, 602 U.S. at 742 (Jackson, J., concurring) (“The message that lower courts are sending now in Second Amendment cases could not be clearer. They say there is little method to *Bruen*’s madness.”). Justice Jackson cited the following examples:

Barris v. Stroud Twp., 310 A.3d 175, 190 (Pa. 2024) (“[M]ore guidance in this challenging and ever-shifting area of the law is welcome.”); *State v. Wilson*, 543 P.3d 440, 453 (Haw. 2024) (“[B]y turning the test into history and nothing else, [*Bruen*] dismantles workable methods to interpret firearms laws.”); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated sub nom. Dubois v. United States*, 145 S. Ct. 1041 (2025), *and reinstated by* 139 F.4th 887 (11th Cir. 2025) (“We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of [18 U.S.C. §] 922(g)(1).”); *United States v. Daniels*, 77 F.4th 337, 358 (5th Cir. 2023) (Higginson, J., concurring), *cert. granted, judgment vacated*, 144 S. Ct. 2707, 219 L. Ed. 2d 1313 (2024) (“[C]ourts, operating in good faith, are struggling at every stage of the *Bruen* inquiry. Those struggles encompass numerous, often dispositive, difficult questions.”); *Atkinson v. Garland*, 70 F.4th 1018, 1024 (7th Cir. 2023) (“[T]he historical analysis required by *Bruen* will be difficult and no doubt yield some measure of indeterminacy.”); *id.* at 1036 (Wood, J., dissenting) (“As other courts have begun to apply *Bruen*, [the] need for further research and further guidance has become clear.”); *Gonyo v. D.S.*, 210 N.Y.S.3d. 612, 615 (N.Y. Sup. 2024) (“Interpretations and applications of *Bruen* by lower courts have been widely divergent and thus, very difficult to apply as precedent.”); *United States v. Sing-Ledezma*, 706 F. Supp. 3d 650, 655 (W.D. Tex. 2023), *rev’d in part*, No. 24-50022, 2024 WL 5318254 (5th Cir. Nov. 6, 2024) (“[T]he Court pauses to join the choir of lower courts urging the Supreme Court to resolve the many unanswered questions left in *Bruen*’s wake.”); *United States v. Bartucci*, 658 F. Supp. 3d 794, 800 (E.D. Cal. 2023) (“[T]he unique test the Supreme Court announced in *Bruen* does not provide lower courts with clear guidance as to how analogous modern laws must be to founding-era gun laws. In the short time post-*Bruen*, this has caused disarray among the lower courts.”); *United States v. Bullock*, 679 F. Supp. 3d 501, 534 (S.D. Miss. 2023), *rev’d and*

The U.S. Supreme Court has characterized the *Bruen* test as a “commonplace task” involving normal “tools of the trade for an American judge interpreting the American Constitution.”⁹⁰ But “lower courts are struggling.”⁹¹ And the Court’s recent Second Amendment decisions refining *Bruen* have not led to more certainty in its application.⁹² We must apply *Bruen* to Second Amendment challenges brought

remanded, 123 F.4th 183 (5th Cir. 2024) (raising methodological questions “in hopes that future judges and justices can answer them with enough detail to enable trial courts to perform their duties”); *Fraser v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 672 F. Supp. 3d 118, 137, n.20 (E.D. Va. 2023), *rev’d and remanded sub nom. McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568 (4th Cir. 2025) (“The Court is staffed by lawyers who are neither trained nor experienced in making the nuanced historical analyses called for by *Bruen* The analytical construct specified by *Bruen* is thus a difficult one for non-historians.”); *United States v. Jackson*, 661 F. Supp. 3d 392, 406 (D. Md. 2023) (noting “the challenges created by *Bruen*’s assignment”); *United States v. Love*, 647 F. Supp. 3d 664, 670 (N.D. Ind. 2022) (“By . . . announcing an inconsistent and amorphous standard, the Supreme Court has created mountains of work for district courts that must now deal with *Bruen*-related arguments in nearly every criminal case in which a firearm is found.”).

Id. at 742 n.1 (citations modified).

⁹⁰ *Id.* at 692 (majority opinion) (quoting *Bruen*, 597 U.S. at 28); *id.* at 736 (Kavanaugh, J., concurring).

⁹¹ *Id.* at 741 (Jackson, J., concurring).

⁹² *See, e.g., United States v. Holbert*, 764 F. Supp. 3d 309, 319 (E.D. Va. 2025) (noting its continued post-*Rahimi* “concern that the *Bruen* analysis is unworkable for a United States District Court”; declining to repeat a “litany of observations” on “the problem it faced” applying *Bruen*; and criticizing several aspects of *Bruen* not alleviated, or even exacerbated by *Rahimi*); *United States v. Brown*, 764 F. Supp. 3d 456, 465 (S.D. Miss. 2025) (in a post-*Rahimi* decision, observing *Bruen* “has itself been deemed untrustworthy by actual historians” and expressing concern that the court’s application of *Bruen* may be “erroneous”); *United States v. Duque-Ramirez*, 2024 WL 4508582, at *2 (W.D. Okla. Oct. 16, 2024), *aff’d*, 161 F.4th 1237 (10th Cir. 2025) (“While [*Rahimi*] offered some clarification on the Government’s burden under *Bruen*, . . . *Rahimi* did not change the overall framework for a Second Amendment challenge.” (internal citations omitted)).

in the Delaware state courts. But we will continue to employ intermediate scrutiny to Section 20 challenges under the Delaware Constitution.

IV.

A.

Turning to the merits, the State argues that the Superior Court erred by holding that H.B. 451 violates Article I, Section 20 of the Delaware Constitution. We start with the presumption that “statutes are constitutional unless there is clear and convincing evidence of unconstitutionality.”⁹³

“A law can be challenged as ‘facially’ unconstitutional, meaning that it ‘cannot be valid under any set of circumstances.’”⁹⁴ It “can also be challenged ‘as applied,’ meaning that the law as applied to a specific circumstance results in a constitutional violation.”⁹⁵ It is difficult to succeed in a facial challenge because “[i]f there are any circumstances in which a statute can be applied constitutionally, then a facial constitutional challenge will fail.”⁹⁶ In other words, the Court must

⁹³ *Schnell v. Dep’t of Servs. for Child., Youth & their Fams.*, 338 A.3d 1279, 1286 (Del. 2025) (quoting *Sierra v. Dep’t of Servs. for Child., Youth & their Fams.*, 238 A.3d 142, 155-56 (Del. 2020)).

⁹⁴ *Newark Prop. Ass’n*, 2025 WL 3157392, at *4 (quoting *Republican State Comm. of Del. v. Dep’t of Elections*, 250 A.3d 911, 916 (Del. Ch. 2020)).

⁹⁵ *Id.* (quoting *Del. Bd. of Med. Licensure & Discipline v. Grossinger*, 224 A.3d 939, 942 (Del. 2020)).

⁹⁶ *Id.* (citing *Grossinger*, 224 A.3d at 956).

show “deference to legislative judgment in matters ‘fairly debatable.’”⁹⁷ “[A]ll reasonable doubts as to the validity of a law must be resolved in favor of the constitutionality of the legislation.”⁹⁸

The plaintiffs say that their challenge is both facial and as-applied.⁹⁹ But the only individual plaintiff who could assert an as-applied challenge, Birney, lacks standing because he aged out of the affected class and, without informing his counsel, secured a concealed carry permit.¹⁰⁰ And the plaintiffs’ challenge focuses on H.B. 451’s impact on young adults at large, rather than on a specific individual.¹⁰¹ When prompted for clarification about the subject of their “as applied” challenge, the plaintiffs pointed to their unnamed members.¹⁰² But they did not explain how H.B. 451 affects the organizations’ members as distinct from the entire affected population of under twenty-one-year-olds. Because the plaintiffs provided an insufficient record to conduct “an onerous and fact-specific inquiry to determine

⁹⁷ *Higgin*, 295 A.3d at 1089 (quoting *Helman v. State*, 784 A.2d 1058, 1068 (Del. 2001)).

⁹⁸ *Id.* (quoting *Hoover v. State*, 958 A.2d 816, 821 (Del. 2008)).

⁹⁹ Cross-Reply Br. 17 n.4.

¹⁰⁰ Ex. B to Mot. to Remand 6-8.

¹⁰¹ *E.g.*, Answering Br. 40-43, 46 (articulating H.B. 451’s burden on “an entire class of law-abiding adults,” “law-abiding citizens,” “Young Adults,” “ordinary citizens,” and similar groups of people).

¹⁰² Oral Argument at 19:27-44.

whether [their members'] particular circumstances make this presumably constitutional provision unconstitutional when applied to [their members'] unique and personal background[s],” we review their challenge facially.¹⁰³

B.

As noted above, Section 20 protects “the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.” We held in *Bridgeville* that, although the right to bear arms is “a core right,” it is “not absolute.”¹⁰⁴ When a statute burdens a plaintiff’s Section 20 rights, we apply a means-scrutiny analysis to assess what limits on this right our state constitution permits.¹⁰⁵

Typically, Delaware courts apply intermediate scrutiny to firearm regulation challenges under Section 20.¹⁰⁶ In *Bridgeville*, however, we noted that our precedent could be read to suggest that, like federal courts at that time, we might raise or lower the level of scrutiny depending on how severely a regulation restricts the right to

¹⁰³ *Johns v. State*, 351 A.3d 974, 1000 (Del. 2025).

¹⁰⁴ *See* 176 A.3d at 636, 652.

¹⁰⁵ *See Doe*, 88 A.3d at 666-67 (“The General Assembly that enacted Article I, Section 20 left in place a series of statutes affecting the right to keep and bear arms in Delaware The General Assembly’s careful and nuanced approach supports an intermediate scrutiny analysis that allows a court to consider public safety and other important government interests.”).

¹⁰⁶ *See, e.g., id.* at 665 (“Intermediate Scrutiny Applies”).

bear arms.¹⁰⁷ Then-operative Third Circuit decisions held that a law “prohibiting the possession of any class of firearms” attracted strict scrutiny, while “a regulation of the manner in which persons may lawfully exercise their Second Amendment rights” garnered intermediate scrutiny.¹⁰⁸ We ultimately left the issue unsettled, and in *Bridgeville* proceeded “assuming intermediate scrutiny applie[d].”¹⁰⁹

Here, even if we followed the path that *Bridgeville* suggested, intermediate scrutiny would still apply. H.B. 451 regulates rather than prohibits an individual’s right to bear arms. It allows for supervised use and has carveouts for individuals in their first three years of adulthood to obtain non-exempt firearms by permit. Thus, it is not the sort of “total ban” or severe restriction “destroy[ing]” Section 20 rights for which we have considered enhancing the level of scrutiny.¹¹⁰

C.

Under *Bridgeville*, to satisfy intermediate scrutiny, the government must:

[*F*]irst, articulate their important governmental objectives in enacting the Regulations; *second*, demonstrate that the Regulations are substantially related to achieving those objectives; and, *third*, show that [it] ha[s] not burdened the fundamental right to bear arms in self-defense more than is reasonably necessary to ensure that the asserted

¹⁰⁷ 176 A.3d at 655-56.

¹⁰⁸ *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010).

¹⁰⁹ 176 A.3d at 656.

¹¹⁰ *Id.*

governmental objectives are met. [It is] required to show more than a general safety concern.¹¹¹

The Superior Court found that the State met its burden under the first two requirements. As it held, the General Assembly articulated important governmental objectives for enacting H.B. 451 and demonstrated that the bill was substantially related to achieving those objectives.¹¹² It bears emphasis that, on appeal the plaintiffs do not dispute that, when enacting H.B. 451, the State articulated an important and specific government interest – protecting “the safety of those under the age of 21 years old and the safety of their communities.”¹¹³ And the plaintiffs do not dispute that the State demonstrated “that preventing 18-to-20-year-olds from purchasing or possessing a firearm would necessarily relate to preventing them from committing firearm-related offenses.”¹¹⁴ Thus, the State has met the first two elements of the intermediate scrutiny analysis.¹¹⁵ That leaves us with the third

¹¹¹ *Id.*

¹¹² *Op.* at 1058-61.

¹¹³ *Id.* at 1058.

¹¹⁴ *Id.* at 1060.

¹¹⁵ *See also* Answering Br. 40-53 (discussing burden on gunowners’ rights by H.B. 451, rather than importance of H.B. 451’s objectives or its substantial relation to those objectives). In the statement of facts section, the plaintiffs claimed that the General Assembly passed H.B. 451 with only “generalized concerns,” *id.* at 8, but did not pursue it as an argument for reversal. The argument is waived. Del. Supr. Ct. R. 14(b)(vi)(A)(3) (“The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal.”). In any event, for the reasons articulated by the Superior Court, we would find this requirement satisfied. *See Op.* at 1058-59.

requirement – that the government has burdened the right to self-defense no more than reasonably necessary to meet the government’s objectives.

1.

The General Assembly enacted H.B. 451 to lower gun violence committed by and perpetrated on young people. It based this specific goal on statistics, research, and current trends. And it took steps to ensure that H.B. 451 did not burden the right to self-defense more than necessary by providing alternative pathways to exercise Section 20 rights.

Specifically, H.B. 451 (1) tailored the affected class to minors and individuals in their first three years of adulthood, consistent with what the State claimed was over 60 years of legislation banning eighteen-to-twenty-year-olds from possessing firearms;¹¹⁶ (2) carved out what it deemed to be lower-risk firearms; (3) excluded individuals employed in public safety professions; (4) excluded individuals who undergo screening and pass a firearm safety course to obtain a concealed carry

¹¹⁶ Even a court applying the purportedly more stringent *Bruen* standard noted the limited effect of age restrictions on individual firearm rights. In *Escher v. Noble*, the U.S. District Court for the District of Massachusetts upheld a Massachusetts law prohibiting eighteen-to-twenty-year-olds from carrying certain firearms, including handguns. No. 25-10389-GAO (D. Mass. Aug. 21, 2026). The law allowed those within the age group to carry other firearms. *Id.* at 2. The court characterized the restriction as a “narrow, objective, and definite standard” under the *Bruen* framework and explained that the law “does not broadly restrict arms use by the public generally.” *Id.* at 21 (quoting *Bruen*, 597 U.S. at 39 n.9 (first quotation); *Rahimi*, 602 U.S. at 698 (second quotation)). Like H.B. 451, the law was tailored to individuals from a certain age group that carried certain firearms. *Id.*

permit; and (5) allowed those under twenty one to use firearms during justifiable self-defense or defense of others.¹¹⁷ In sum, H.B. 451 only restricts handgun and rifle access to children and young adults who are not in a public safety profession and cannot satisfy concealed carry requirements, a small percentage of individuals. It therefore imposes a reasonable burden on the right to bear arms in self-defense relative to its important objectives.

This result is consistent with our prior interpretation of Section 20. In 1991, we upheld a statute prohibiting felons from possessing a deadly weapon.¹¹⁸ In 2005, we held Section 20 “did not alter the then-existing law pertaining to the crime of carrying a concealed deadly weapon without a license and the statutory privilege to carry a concealed deadly weapon with a license.”¹¹⁹ Finally, in 2009, “we affirmed a conviction for carrying a concealed weapon without a license outside of the home.”¹²⁰

¹¹⁷ The Bill carves out “a person under the age of 21 [who] possesses or uses a firearm or projectile weapon during the use of force upon or towards another person if such use of force is justifiable pursuant to § 464 [self-defense], § 465 [defense of others], § 466 [defense of property], or § 469 [defense of dwelling].”

¹¹⁸ *Short v. State*, 586 A.2d 1203, 1991 WL 12101, at *1-2 (Del. 1991) (TABLE).

¹¹⁹ *Doe*, 88 A.3d at 664 (citing *Smith v. State*, 882 A.2d 762, 2005 WL 2149410, at *3 (Del. 2005) (TABLE)).

¹²⁰ *Id.* (citing *Dickerson v. State*, 975 A.2d 791, 795-96 (Del. 2009)).

Griffin v. State is also consistent.¹²¹ In that decision we reviewed an as-applied challenge to a law making it illegal to carry a concealed deadly weapon without a license in one's home. We applied a form of intermediate scrutiny, later refined in *Doe*, weighing the State's public safety interest against an individual's ability to exercise their Section 20 rights in a reasonable alternative manner.¹²² We held that Section 20 protected the individual right to concealed carry within the home unless or until police enter the dwelling.¹²³ There, too, we balanced the legislative goals against the burden it placed on individual firearm rights.

2.

The Superior Court erred in holding that H.B. 451 unreasonably burdened the plaintiffs' right to keep and bear arms for self-defense. The court found that the carveouts for shotguns and muzzle-loading rifles protected the "right to keep and bear arms . . . for hunting and recreational use."¹²⁴ But it reasoned that the carveouts were immaterial for self-defense rights because H.B. 451 still restricted access to handguns, which the court described as "the quintessential self-defense weapon."¹²⁵

¹²¹ 47 A.3d 487 (Del. 2012).

¹²² *Id.* at 490-91 (adopting test from *State v. Hamdan*, 665 N.W.2d 785 (Wis. 2003)).

¹²³ *Id.* at 491 ("At that point, the balance between his interest in carrying a concealed weapon in his home and the State's interest in public safety shifted in favor of the State.").

¹²⁴ *See Op.* at 1063.

¹²⁵ *Op.* at 1064 (quoting *Heller*, 554 U.S. at 628).

The concealed carry carveout did not provide a reasonable available outlet for accessing handguns because, according to the court, the permit process (a) gave the Superior Court absolute discretion to grant or deny a permit, (b) contained vague requirements, and (c) did not permit appellate review.

We disagree with each of these conclusions. First, the court erred when it held that, as a matter of law, “a constitutionally-protected right cannot be reliant on a discretionary licensing procedure.”¹²⁶ The court cited no authority for the proposition, and we have not found any. Nor are we convinced such a rule would be workable.¹²⁷ When applying intermediate scrutiny, the court must weigh a law’s burden on a constitutional right, including by assessing carveouts from that burden. If everyone can access a carveout, the law’s burden is minimal. If few can, or if it is applied inconsistently, then a burden is greater. The court should have considered H.B. 451’s burden relative to its objectives by considering the availability of the concealed carry carveout.

Because the plaintiffs have not identified any individual adversely affected by H.B. 451, and the law has a generally available carveout, that alone is sufficient for

¹²⁶ *Id.* at 1066.

¹²⁷ *See Bruen*, 597 U.S. at 99 (Breyer, J., dissenting) (“In drawing a line between ‘may issue’ and ‘shall issue’ licensing regimes, the Court ignores the degree of variation within and across these categories. Not all ‘may issue’ regimes are necessarily alike, nor are all ‘shall issue’ regimes . . . that line depends at least in part on how statutory discretion is applied in practice.”).

the State to defeat the plaintiffs’ facial challenge. H.B. 451 is constitutional as to individuals able to obtain a concealed carry permit, and “to rebut a facial challenge, the State need only show that a statute is constitutional in some of its applications.”¹²⁸ Birney obtained a permit in sixty-five days.¹²⁹ H.B. 451 did not unreasonably burden his right to self-defense.¹³⁰

It is also worth noting that concealed carry permits are easily obtainable in Delaware.¹³¹ The U.S. Supreme Court calculated Delaware’s 2021 permit application approval percentage as above 98% and also characterized it as a *de facto* mandatory concealed carry permitting scheme.¹³² This regime is less restrictive than those struck down by the Seventh and Ninth Circuits under which “not a single

¹²⁸ *Johns*, 351 A.3d at 997.

¹²⁹ Ex. B to Mot. to Remand 6.

¹³⁰ *See also Rahimi*, 602 U.S. at 693 (explaining that “to prevail [in a facial challenge], the Government need only demonstrate that [the challenged legislation] is constitutional in some of its applications.”); *State v. Fields*, 359 A.3d 739, 750 (Md. App. Ct. 2026) (explaining that “to succeed in a facial constitutional challenge, a plaintiff confronts a much more difficult task, namely, to establish that there is ‘no set of circumstances’ under which the law would be valid.” (quoting *Rahimi*, 602 U.S. at 693)).

¹³¹ Under 11 *Del. C.* § 1441, an applicant must be “a person of full age and good moral character.” They must file “a certificate of 5 respectable citizens” to attest as such, and to confirm their “sobriety” and “good reputation for peace and good order in the community” and that the permit “is necessary for the protection of the applicant or the applicant’s property, or both.” The applicant also must complete a firearm safety course and pay a \$65 fee. Once they do, the Superior Court will consider the application and “may, or may not, in its discretion, approve [the] application.”

¹³² *Bruen*, 597 U.S. at 13 n.1 (including Delaware in list of states “have discretionary criteria but appear to operate like ‘shall issue’ jurisdictions” and observing at that point in 2022 Delaware had “thus far processed 5,680 license applications and . . . denied only 112.”); *see also* Ex. B to Mot. to Remand 5 (stating that high permit approval rates persist).

unrestricted license for public carriage had ever been issued” or “did not give the slightest recognition” to individuals that may need to carry firearms.¹³³ The Superior Court also expressed concern that certain requirements for obtaining a permit – like “good moral character”; “respectable citizens”; and “good reputation for peace and good order” – are vague.¹³⁴ But as the permit application’s approval percentage reveals, these terms carry ordinary, common-sense meanings and pose no significant obstacle for applicants. Nor does the requirement that a permit be “necessary for the protection” of an applicant amount to a “special need” looked down-upon by courts.¹³⁵ It simply requires that an applicant seek a permit to exercise their right to bear arms for self-defense or another lawful purpose set forth in Section 20.

Finally, the court erred by concluding that the concealed carry permit process lacks appellate review. The plaintiffs admit as much.¹³⁶ If the Superior Court denies

¹³³ *Gould v. Morgan*, 907 F.3d 659, 674 (1st Cir. 2018) (citing *Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir. 2012); *Young v. Hawaii*, 896 F.3d 1044, 1071 n.21 (9th Cir. 2018), *on reh’g en banc*, 992 F.3d 765 (9th Cir. 2021), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022)). Rather, the Delaware licensing regime is more akin to the *de jure* “shall-issue” permitting scheme that served as a basis for the Florida Supreme Court’s holding that a law restricting the open-carry of firearms in that state survived intermediate scrutiny. *See Norman v. State*, 215 So.3d 18, 37, 41 (Fla. 2017).

¹³⁴ Op. at 1065 (quoting 11 *Del. C.* § 1441(a)).

¹³⁵ *Bruen*, 597 U.S. at 11.

¹³⁶ Answering Br. 52 (confronted with the State’s argument at Opening Br. 44 that the Superior Court erred by finding that “an applicant who receives a denial has no appellate options”; the plaintiffs respond only that “[w]hether denials for a request for a [concealed carry] permit may be appealed is irrelevant to issues in this appeal.”).

a permit application, an applicant “may file a written request for a hearing no later than 10 days after notification of the contested action. Upon receipt of a request for a hearing, the Court shall notify the applicant and the Attorney General of the date and time of the hearing.”¹³⁷

Our Colleague in dissent, in typical respectful fashion, offers views on issues that “were either ignored or raised with a light touch by the plaintiffs in the trial court and before this Court.”¹³⁸ Straying from the case as presented, although not unheard of, runs contrary to “the nature of the judicial process that we decide only the case before us.”¹³⁹ The appealing party “select[s] and frame[s] the issues” for appeal.¹⁴⁰ When a court departs from the issues raised, it effectively displaces a party’s control over their case and the strategic decisions about what arguments to advance on appeal. It also raises fairness concerns. Here, the State did not have the opportunity to answer the dissent’s criticisms of the legislative justifications behind H.B. 451.

¹³⁷ Del. Super. Ct. R. 7, App. & Admin. of 11 *Del. C.* § 1441, available at: <https://courts.delaware.gov/superior/weapons.aspx> (last visited Sept. 6, 2026).

¹³⁸ Dissent at 43.

¹³⁹ *Paramount Comm. Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51 (Del. 1994); *see also Greenlaw v. United States*, 554 U.S. 237, 244 (2008) (“[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.” (alteration in original) (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987))).

¹⁴⁰ *Flamer v. State*, 953 A.2d 130, 134 (Del. 2008) (citing *Murphy v. State*, 632 A.2d 1150, 1152 (Del.1993)).

Which leads us to two more points. First, the dissent takes issue with some of the General Assembly’s findings and questions the basis for the legislation. But even if those findings are flawed in some way, it has long been a bedrock principle of the Delaware judiciary that we stay in our lane. In other words:

it is the province of the legislature and not of the courts to pass upon matters of policy. The legislative hand is free except as the constitution restrains; and courts are bound by a most solemn sense of responsibility to sustain the legislative will in the appropriate field of its exercise, even though in the opinion of the judges as individuals the legislature had acted in an unwise manner.¹⁴¹

And second, even if the dissent is “less sanguine about the availability of concealed-carry permits”¹⁴² and takes issue with discretionary aspects of the permitting process, it is important not to lose sight of the fact that the plaintiffs have brought a facial challenge to H.B. 451. As explained earlier, for a facial challenge, the presumption of constitutionality is at its highest point. It is not enough to speculate, as the dissent does, about how the concealed-carry carveout *might* be applied unconstitutionally. What matters is whether “there are any circumstances in which a statute can be applied constitutionally.”¹⁴³ As Chief Justice Roberts wrote in *Rahimi*, “to prevail [in a facial challenge], the Government need only demonstrate

¹⁴¹ *State ex rel. Craven v. Schorr*, 131 A.2d 158, 161 (Del. 1957) (quoting Chancellor Wolcott in *Collison v. State ex rel. Green*, 2 A.2d 97, 108 (Del. 1938)).

¹⁴² Dissent at 47.

¹⁴³ *Newark Prop. Ass’n*, 2025 WL 3157392, at *4 (citing *Grossinger*, 224 A.3d at 956).

that [the challenged legislation] is constitutional in some of its applications.”¹⁴⁴ We offered a real-life example of a constitutional application of H.B. 451 to one of the plaintiffs here. Birney secured a concealed carry permit in a reasonable time.

V.

H.B. 451 does not violate Article I, Section 20 of the Delaware Constitution. The judgment of the Superior Court is reversed, and the motion to remand is denied as moot. Jurisdiction is not retained.

¹⁴⁴ *Rahimi*, 602 U.S. at 693; *see also Johns*, 351 A.3d at 989 (“Our Court has held that a facial challenge fails when a single constitutional application of a statute exists, even if the statute may not be constitutional in all of its applications.” (citing *Rahimi*, 602 U.S. at 693)).

TRAYNOR, J. dissenting.

I agree with the majority’s application of intermediate scrutiny to the plaintiffs’ Article I, §20 claim, instead of the test—often referred to as the *Bruen* text, history, and tradition test—the United States Supreme Court now applies in Second Amendment cases. I agree too that the issues that prompt me to dissent were either ignored or raised with a light touch by the plaintiffs in the trial court and before this Court. Even so, I am impelled to dissent by various considerations that, though perhaps not central to the plaintiffs’ arguments, cause me to question the constitutionality of HB 451.

I

Unlike the Second Amendment to the United States Constitution, the meaning of which has been the subject of spirited debate throughout our history, the text of Article I, § 20 of the Delaware Constitution is crystal clear about the purposes served by a citizen’s right to bear arms. Among those purposes, self-defense is paramount. Section 20 states:

A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.

Despite this explicit linkage of our citizens’ right to bear arms to the right of self-defense, H.B. 451, now embedded in 11 *Del. C.* § 1448, imposes a near-categorical ban on the ability of law-abiding adult citizens ages 18, 19, and 20—in

this dissent, “18-20-year-olds”—to possess handguns, weapons that have been recognized as the “quintessential defense weapon.”¹⁴⁵

The State seeks to justify this incursion into the right so clearly enumerated in Article I, § 20 in three ways. First, the State argues that H.B. 451’s purported self-defense carveout, now found in § 1448(a)(5)(d), preserves the rights of 18-20-year-olds to bear arms in self-defense. Second the State contends that “H.B.451 . . . protects the right of self-defense by granting [18-20-year-olds] unfettered access to shotguns and other deadly weapons”¹⁴⁶ Third, the State contends—and the majority agrees—that, by including a statutory exemption from H.B. 451’s prohibitions for 18-20-year-olds who successfully apply for a CCDW license under 11 *Del. C.* § 1441, the statute sufficiently preserves the right of 18-20-year olds to bear arms in self-defense. Although the majority—understandably, in my view—does not ground its conclusion that H.B. 451 does not violate Article I, § 20 on the State’s invocation of the first two of these exemptions, because the State led with them, it is fitting that they be addressed.

¹⁴⁵ *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

¹⁴⁶ Opening Br. at 26.

A

The State’s contention that the exception in § 1448(a)(5)d “*explicitly protects*”¹⁴⁷ an 18-20-year-old’s right to “possess any weapon, including [handguns], . . .”¹⁴⁸ in self-defense, does not, for me, pass the blush test. That subsection reads:

It is not a violation of paragraph (a)(5) of this section if a person under the age of 21 possesses or uses a firearm during the use of force upon or towards another person if such use of force is justifiable pursuant to § 464, § 465, § 466, or §469 of Title 11.¹⁴⁹

What does this mean when read together with H.B. 451’s prohibitory sections? As best I can tell, in its simplest terms it means that, to be prepared to defend himself¹⁵⁰ or others by possessing a handgun, an 18-20-year-old must first commit the felonious act of possessing a handgun. Never mind that the felonious act carries a sentence of

¹⁴⁷ Opening Br. at 23 (emphasis in original).

¹⁴⁸ *Id.* at 24.

¹⁴⁹ *Id.* at 23.

¹⁵⁰ Although it has become customary to avoid the use of masculine pronouns unless writing only about men, in this instance, given that virtually all reported shootings in the statistical analysis the General Assembly relied upon were by males, it seems appropriate to use masculine pronouns here even when touching upon generalities. Of 32 shooting suspects by individuals in the 18-21 age range in 2018, 31 were male; in 2019, for the same age range, all 29 shooting suspects were male; and, in 2020 48 of 52 were male. Jim Salt, *Delaware Shootings 2020: An Analysis of Incidents, Suspects, and Victims*, DEL. STAT. ANALYSIS CTR. 14 (Dec. 2021), <https://sac.delaware.gov/wp-content/uploads/sites/64/2022/01/2020-Shootings-final-report.pdf> [hereinafter *2020 Analysis*]; Jim Salt, *Delaware Shootings 2019: An Analysis of Incidents, Suspects, and Victims*, DEL. STAT. ANALYSIS CTR. 11 (Nov. 2020), <https://sac.delaware.gov/wp-content/uploads/sites/64/2020/12/2019-Shoot-report-final-revision-122120.pdf>; Jim Salt, *Delaware Shootings 2018: An Analysis of Incidents, Suspects, and Victims*, DEL. STAT. ANALYSIS CTR. 11 (Nov. 2019), <https://sac.delaware.gov/wp-content/uploads/sites/64/2020/01/2018-Shootings-report-final-121719.pdf>.

up to eight years in prison. But, the State points out, that potential consequence evaporates upon the 18-20-year-old's use of the gun in self-defense. That is small consolation for the 18-20-year-old who possesses a handgun for self-defense but is not required to use it for that purpose; if found in possession of the handgun before that unhappy event occurs, he is, in all likelihood, off to prison for a substantial part of his young adult life. Inviting an 18-20-year-old to break the law as a condition to the use of a handgun in self-defense is, in my view, ill-conceived and does not, as a practical matter, preserve the right of self-defense.

B

Turning to the State's contention that 18-20-year-olds' "unfettered access to shotguns and other deadly weapons" adequately preserves their right to bear arms for self-defense, we need look no further than the United States Supreme Court's landmark decision in *District of Columbia v. Heller*. In that case, the Supreme Court discounted the availability of long guns as a justification for banning the possession of handguns. To be sure, *Heller* addressed a different issue than is before us now and applied a different review standard. But the *Heller* majority's observations are yet on point:

It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: it is easier to store in

a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.¹⁵¹

I share this outlook on the mismatch between handguns and, as in this case, shotguns. In consequence, I reject the State’s contention that shotguns are adequate substitutes for handguns when it comes to self-defense.

C

As mentioned, the majority did not address the State’s contentions that the 1448 (a)(5)d self-defense exemption and the availability of shotguns sufficiently protect the right of 18-to-20-year-olds to bear arms in self-defense. Instead, the majority concluded that the “concealed-carry” licensing process provided sufficient relief from the burden HB 451 places on the right of 18-20-year olds to bear arms for self-defense purposes. The majority’s logic, as I understand it, is that concealed-carry permits are “easily obtainable”¹⁵² by all Delawareans and that, if everyone can successfully obtain a permit, H.B. 451’s apparent burden is adequately mitigated.

I am less sanguine about the availability of concealed-carry permits than is the majority. True, the United States Supreme Court looked at Delaware’s 2021

¹⁵¹ *Heller*, 554 U.S. at 629.

¹⁵² Majority Opinion at 38.

concealed-carry permit application (98%) and characterized it as a *de facto* mandatory scheme; but that does not change the fact that the scheme is *de jure* discretionary.

A concealed-carry application to the Superior Court under 11 *Del. C.* §1441 must be made in writing and must be accompanied by

a certificate of 5 respectable citizens of the county in which the applicant resides . . . [, which] shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both.¹⁵³

Before a license is issued, the applicant must file a notarized certificate signed by an instructor or other authorized person certifying that the applicant has completed an approved firearms training course. Also before a license is issued, the Superior Court “may receive remonstrances and hear evidence and arguments for and against [the application].”¹⁵⁴ Then—and only then—“[t]he Court *may or may not, in its discretion*, approve [the] application.”¹⁵⁵

This scheme, it seems to me, is not intended to create an easy and stress-free path to concealed-carry licensure. And well it shouldn't. After all, it is not designed

¹⁵³ 11 *Del. C.* § 1441(a)(2).

¹⁵⁴ 11 *Del. C.* § 1441(d).

¹⁵⁵ *Id.* (emphasis added).

to determine whether an individual is qualified to possess a handgun in a home or unconcealed elsewhere; its focus is on whether a person should be permitted to carry a concealed deadly weapon outside the home.¹⁵⁶ And it explicitly authorizes the Superior Court judge in its discretion to deny an application. Put another way, the licensing scheme's design does not contemplate that all applicants, even those of good moral character, will receive a concealed carry license. I am not comfortable allowing this licensure scheme, discretionary by its plain terms and itself laden with evidentiary and procedural burdens, to stand in for the constitutional right to bear arms for self-defense embodied in Article I, §20.

To summarize, the majority appears to accept that H.B. 451's prohibitory reach, without adequate carve-outs and exemptions, would burden Article I, § 20's core right to bear arms more than is reasonably necessary. The majority has concluded, however, that the concealed-carry licensure carveout is adequate. I conclude otherwise as to the licensure carveout and the other exemptions the State has invoked.

II

I also find, when I scratch beneath the surface of the General Assembly's stated justifications for enacting H.B. 451, that they are manifestly unreasonable.

¹⁵⁶ See *Griffin*, 47 A.3d at 491 (recognizing that Article I, § 20 authorized the defendant to carry a concealed deadly weapon in his home.)

Particularly problematic when put in the appropriate context are the following three justifications, all of which appear in the bill’s preamble.

- “[T]here is conclusive scientific research that shows the human brain is still developing in young adults . . . which impacts their decision making, self-control, aggressive impulses, and risk-taking behaviors;”
- “[T]he Statistical Analysis Center’s Delaware Shootings reports for the previous 3 years shows that the most common age for shooters was between 18 to 21 which represents 33% of all shooters in 2020, 29% in 2019, and 32% in 2018[.]”
- “[T]he age to purchase any alcohol and tobacco products in Delaware is 21 years old.”¹⁵⁷

A

I do not quibble with the General Assembly’s observation that “scientific research . . . shows the human brain is still developing in young adults aged 18 to 21” and that, in consequence, persons within that age range are vulnerable to risk-taking behaviors. I merely note that the more commonly accepted thinking on this issue extends the age range susceptible to this phenomenon well past the age of 20. Most put the age of pre-frontal cortex maturation at 25,¹⁵⁸ and some posit that brain development, especially in the frontal lobe, does not come to a halt at age 25, but

¹⁵⁷ H.B. 451 at 1.

¹⁵⁸ See Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 451 (2013) (“It is well established that the brain undergoes a ‘rewiring’ process that is not complete until approximately 25 years of age.”); see also *Nat’l Rifle Ass’n v. Bondi*, 133 F.4th 1108, 1150 (11th Cir. 2025) (en banc) (Rosenbaum, J., concurring).

continues into our 30's.¹⁵⁹ Under the General Assembly's logic, there is no reason why it should not extend H.B. 451's prohibitions to a much larger cohort—to, say, 18-25 or 18-30. At oral argument, the Department conceded as much.¹⁶⁰ I find the slickness of this slope unsettling.

B

Turning to the General Assembly's reliance on the Statistical Analysis Center's shooting statistics, I recognize that we give deference to legislative findings if they are reasonable. For several reasons, I find the General Assembly's reliance on the shooting statistics to be unreasonable.

First of all, the age cohorts referred to in H.B. 451's preamble sweep more broadly than the age cohort affected by the bill. More specifically, the preamble recites statistics that identify the number of shooting suspects in an age cohort ranging from 18 years of age through and including 21 years of age. This sweeps in a group—21-year-olds—whose firearm ownership is not restricted by H.B. 451.

¹⁵⁹ See Alexa Mousley et al., *Topological Turning Points Across the Human Lifespan*, 16 NATURE COMM'NS 1, 9 (2025) ("Our findings suggest that in Western countries (i.e., the United Kingdom and United States of America), adolescent topological development extends to around 32 years old, before brain networks begin a new trajectory of topological development."). Relevant to this point, I note that the November 2020 Statistical Analysis Center's Delaware Shootings Report identified 29 shooters aged 20 in 2019 and a like number—27—shooters aged 21 in that same year.

¹⁶⁰ Oral Argument at 40:50–42:43, Del. Dep't of Safety & Homeland Sec. v. Birney (No. 412, 2025), <https://vimeo.com/1198145926?fl=pl&fe=vl>.

This, in my view, renders the statistical evidence misleading by increasing the size of the relevant age cohort by 33%.

More than that, without any context, the references to the Statistical Analysis Center's ("SAC") Delaware Shootings reports are virtually meaningless. A review of the reports themselves proves this point. According to the 2021 report, in 2020, there were 52 shooting suspects¹⁶¹ in the 18 to 21 year old age range. We can extrapolate from 2020 data published by the Delaware Division of Public Health that there were 35,759 18-20 year olds residing in Delaware in 2020.¹⁶² According to SAC's Shootings Report, there were 52 "shooting suspects" within the 18-21 age range. If we assume that 18-20 year olds compose 75% of that number, then there were 39 shooting suspects in that age range. This means that only .145% of the 18-20-year-old cohort were considered shooting suspects. Yet H.B. 451 restricts the gun rights of the remaining 99.855%. Put in equally stark terms, because of the 39

¹⁶¹ "Shooting suspect" is defined as "unique individuals who appear likely to have been involved in a shooting incident in a direct or accessory role but for whom the threshold for being classified as an identified suspect was not reached." *2020 Analysis* at 14.

¹⁶² To be clear, these figures represent estimates based on the *Delaware Vital Statistics Annual Report, 2020* ("2020 Vital Statistics Report") published by the Delaware Department of Health and Social Services, Division of Public Health. DEL. HEALTH STAT. CTR., DEL. DEP'T OF HEALTH & SOC. SERVS., DIV. OF PUB. HEALTH, *Delaware Vital Statistics Annual Report* (2023), <https://dhss.delaware.gov/dph/wp-content/uploads/sites/12/dph/pdf/files%20population20.pdf>. According to estimates in that report, in 2020, Delaware's population stood at 982,746. Of that number 119,197 individuals were age 15-24. *Id.* Assuming an equal distribution among years of age, the 18-20-year-old group would consist of 35,759 individuals. *See id.*

shooting suspects, the General Assembly has restricted the rights of nearly 36,000 adult Delawareans to possess handguns.

Beyond the statistical evidence of shootings involving 18-20 year olds, the Department points to the General Assembly’s findings that “suicides make up more than 50% of firearm deaths in Delaware, that 90% of suicide attempts with a gun are fatal, and that the suicide rate in recent years increased more among young people than any other group.”¹⁶³ This all may be true, but it elides important facts: firearm suicide rates are highest among adults aged 75 and older,¹⁶⁴ and “[m]ore than half (51%) of all [Delaware] gun suicide deaths in 2024 were over the age of 54.”¹⁶⁵ If the propensity of an age cohort to use firearms in a dangerous manner is sufficient to justify the deprivation of constitutional right—the premise underlying the majority opinion—then presumably a restriction such as was adopted via H.B. 451 applicable to adults aged 75 and older would pass constitutional muster.

¹⁶³ Opening Br. at 9.

¹⁶⁴ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *Fast Facts: Firearm Injury and Death*, <https://www.cdc.gov/firearm-violence/data-research/facts-stats/index.html> (last visited Aug. 20, 2026).

¹⁶⁵ JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH CTR. FOR GUN VIOLENCE SOLS., *Gun Violence in Delaware: 2024 Factsheet* (2026), <https://publichealth.jhu.edu/sites/default/files/2026-07/Gun-Violence-in-Delaware-2024-factsheet.pdf>.

C

Finally, the preamble observes that “the age to purchase any alcohol and tobacco products in Delaware is 21 years old.” Given that our constitution does not recognize a right to purchase alcohol or tobacco, the relevance of this observation is dubious.

III

To sum up, in my opinion, H.B. 451 rests on a shaky factual foundation and places an unreasonable burden on the right of 18-20-year olds to possess handguns for self-defense. Hence, I would affirm the Superior Court’s judgment.