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S.C. SUPREME COURT

VIA ELECTRONIC FILING (supctfilings@sccourts.org) ONLY

The Honorable Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

RE: *The State of South Carolian v. Benjamin Allen Wemp*
Appellate Case No.: 2025-002334

Dear Madam Clerk:

Please accept this letter, along with its attachments, as supplemental citations pursuant to Rule 208(b)(7), *SCACR*. Appellant served and filed his Initial Brief on April 2, 2026. As the Court is aware, Appellant is appealing his conviction for Possession of a Firearm on School Property in violation of S.C. Code Ann. § 16-23-420. Appellant appealed directly to this Court pursuant to S.C. Code Ann. § 14-8-200(b)(3) and Rule 203 (d)(1)(A)(ii), *SCACR*, as Appellant has challenged the constitutionality of § 16-23-420 on both federal and state grounds. In particular, Appellant has raised a challenge to his conviction as being in violation of the Second Amendment to the United States Constitution.

In June of 2026 the Supreme Court of these United States issued two (2) opinions concerning the Second Amendment. These were *United States v. Hemani*, 608 U.S. ___, 146 S.Ct. 1677 (June 18, 2026) and *Wolford v. Lopez*, 609 U.S. ___, 2026 WL 1825723¹ (June 25, 2026). A copy of *Hemani* and *Wolford* are attached hereto as Appellant's "**Attachments 1 and 2,**" respectively. These cases were pending at the time Appellant filed his Initial Brief, but decisions were not issued until after Appellant's Initial Brief in April of this year.

As noted in Appellant's Initial Brief, Second Amendment challenges are analyzed under the *Bruen*² test. This is a two (2) step test. "At the first step of this framework, courts look to 'the

¹ Neither case has been officially published in the *United States Reports*. However, *Hemani* has been published in the *Supreme Court Reporter* published by Thomson Reuters. *Wolford* has not been published in the *Supreme Court Reporter*. Accordingly, any citations to *Hemani* are to the *Supreme Court Reporter* while citations to *Wolford* are to the online Westlaw system.

² *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

text of the Second Amendment to see if it encompasses the desired conduct at issue.’ ” *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 218 (4th Cir. 2024) (citations omitted). “If the text does cover the conduct at issue, the burden shifts to the government to justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 219 (cleaned up & citations omitted). Both *Hemani* and *Wolford* further elucidated the test set forth in *Bruen*.

In *Hemani* the Respondent was convicted for violating 18 U.S.C. § 922(g)(3) in that he possessed a firearm which had been shipped or transported in interstate, or foreign, commerce while being an unlawful user of a controlled substance, *i.e.*, marijuana. 146 S.Ct. at 1684-85. In *Hemani* the Supreme Court re-affirmed that “the government bears the burden of showing its regulatory efforts are ‘consistent with the Nation’s historical tradition of firearm regulation.’ ” *Id.* at 1685 (quoting *Bruen*, 597 U.S. at 24). The High Court further affirmed that challenges decided under *Bruen* must be based upon the historical record and arguments complied by the parties to the appeal. *Hemani*, 146 S.Ct. at 1687. In affirming the dismissal of the charges against Hemani, the Supreme Court noted that the government had failed to meet its burden. “The historical laws on which [the government] relies targeted different kinds of people, did so for different reasons, and operated in different ways. And faced with all these shortcomings in the government’s submission, we cannot say it has carried its conceded burden of showing its prosecution of Mr. Hemani complies with the Second Amendment.” *Id.* at 1694.

The decision in *Hemani* was unanimous.³ Justice Thomas concurred in Court’s decision while discussing matters relating to the Commerce Clause of the United States Constitution. *Id.* at 1694-98. Justices Jackson and Sotomayor concurred while expressing skepticism of the test set forth in *Bruen*. *Id.* at 1698-1700. Justices Alito and Kagan concurred in the judgment as they reached the same conclusion as the majority, but on substantially narrower grounds.

In *Wolford* the petitioners challenged a Hawaii statute which made it unlawful for any person to carry a firearm onto private property without the express consent of the property’s owner. 2026 WL 1825723 at *3. In the Court’s opinion it traced the history of the Court’s modern jurisprudence surrounding the Second Amendment. *Id.* at *4-7. The Court clarified the standard set forth in *Bruen* by noting the different factors relevant to each step of the test. As to step one, which asks whether the statute in question clashes with the plain text of the Second Amendment, there are three (3) discrete parts; (1) does the statute apply to “the people”, *i.e.*, all members of the political community; (2) does the statute concern any type of “Arms,” *i.e.*, weapons which are customarily used for offensive or defensive purposes; and (3) does the law place any type of restrictions on the possession of arms? *Id.* at *6.

The Court reiterated that “[i]f a challenged law falls within the plain text of the Second Amendment, it is presumptively unconstitutional.” *Id.* However, “the relevant government—federal, state, or local—may be able to show that its challenged law did not infringe the historical understanding of the codified right.” *Id.* The Court noted that multiple sources, including scholarship, may be used, but the best evidence are historical analogues. The Court clarified that when a court examines a historical analogue there are three (3) important inquiries. *Id.* These

³ Justice Gorsuch wrote for the Court and was joined in full by Chief Justice Roberts and Justices Thomas, Sotomayor, Kavanaugh, Barrett, and Jackson.

inquiries are: (1) the number of jurisdictions in which the historical analogues were adopted; (2) the extent to which historical analogues were well accepted either expressly, as through judicial decisions acknowledging their legality, or implicitly when the restriction was open, widespread, and unchallenged; and (3) whether the analogues are relevantly similar to the modern law being challenged. *Wolford*, 2026 WL 1825723 at *6.

Under the third part Court's are to employ the "how" and "why" reasoning endorsed in *Bruen*, i.e., examine whether the analogue restricted the Second Amendment in a manner similar to the challenged law and if the rationale for the adoption of the analogue was similar to the law being challenged. *Id.* The "how" and "why" "must be close enough to enable a court to say: 'Because this historical law was understood to be compatible with the right codified by the Second Amendment, we can infer that the restriction imposed by the moder law is likewise consistent with that right.'" *Id.*

In deciding the merits of *Wolford*, the Court clarified that historical materials are not to be considered at *Bruen*'s first step, but solely whether the challenged law falls within the Second Amendment's plain text. *Id.* at *10. The Court found that Hawaii's statute fell within the plain text of the Second Amendment as it restricted the right of the Petitioner's to carry a firearm outside of the home for self-defense. *Id.* at *9-10. Finally, the Court found that Hawaii's proposed analogous did not pass the "how" or "why" test under *Bruen*. *Id.* at 12-14. Additionally, in examining once proposed analogue the Court remarked that "a lone statute adopted nearly a century after the adoption of the Second Amendment and well after the adoption of the Fourteenth Amendment sheds little if any light on the meaning of the Second Amendment right." *Id.* at 13.

The Court's decision in *Wolford* was decided 6 to 3. Justice Alito delivered the Court's opinion and was joined in fully by Chief Justice Roberts and Justices Thomas, Gorsuch, Kavanaugh, and Barrett. Justice Barrett additionally filed a concurring opinion, which was joined only as to Part II-B by Justices Thomas and Gorsuch, which further examined the "how" and "why" of Hawaii's proffered analogues. *Id.* at 14-20 (Barrett, J., concurring). Justice Kagan authored a short dissent on the grounds that Hawaii's proffered analogues adequately met *Bruen*'s "how" and "why." *Id.* at *20. Justice Jackson, joined by Justice Sotomayor, also dissented by arguing: (1) *Bruen* was incorrectly decided; (2) the petitioner's conduct did not meet *Bruen*'s first step; and (3) even if petitioner's conduct did pass the first step, Hawaii had demonstrated sufficient historical analogues to justify its restriction. *Id.* at 20-35.

Appellant respectfully submits that both *Hemani* and *Wolford* pertain to Appellant's first issue on appeal, "Did the trial court err in finding the Appellant's conduct was not constitutionally protected under the second amendment to the United States Constitution?" In particular, Appellant submits that both of these decisions clarify the *Bruen* standard used to adjudicate Second Amendment challenges. Accordingly, Appellant respectfully submits both *Hemani* and *Wolford* as supplemental citations pursuant to Rule 208(b)(7). As noted above, both of these decisions are attached to this letter for the Court's convenience.

Should the Court require anything further please do not hesitate to contact me. As always I remain,

Respectfully Yours,



Willie H. McAbee III
Attorney for the Appellant

Attachments

CC: Client (via e-mail only w/out attachments)
Brian H. Gibbs, Esq., Assistant Attorney General (via e-mail only w/attachments)
Samuel B. Tooker, Esq. (via e-mail only w/out attachments)