IN THE MATTER OF THE GUN PERMIT APPEAL OF A.A.R. FROM THE DENIAL OF A FIREARMS PURCHASER ID CARD BY LAW ENFORCEMENT.	SUPREME COURT OF NEW JERSEY DOCKET NO: 092287 ON PETITION FOR CERTIFICATION FROM JUDGMENT ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION ON JUNE 18, 2026 App. Div. No. A-003192-24 SAT BELOW: APPELLATE DIVISION: Hon. Katie A. Gummer Hon. James R. Paganelli Hon. Christine M. Vanek

[PROPOSED] BRIEF OF SECOND AMENDMENT FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT-PETITIONER A.A.R.

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INTEREST OF *AMICUS CURIAE*

Second Amendment Foundation ("SAF") is a nonprofit membership organization founded in 1974 with over 720,000 members and supporters in every state of the Union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in several Second Amendment-related lawsuits and thus has great interest in the outcome of this case.

STATEMENT OF PROCEDURAL AND FACTUAL HISTORY

Amicus relies on, and incorporates by reference, the Procedural History and Facts contained in Petitioner's Appellate Division briefing.

PRELIMINARY STATEMENT

The Petitioner in this case has undoubtedly said some reprehensible things. His racist and sexist views are despicable, and if that speech leads him into social ostracism, perhaps it would be deserved. But from a constitutional perspective, what is more disturbing than anything the Petitioner has *said* is what the courts below have *ruled*, which is that speech that is protected by the First Amendment can be grounds to deny someone their constitutional right to keep and bear arms. That must not be allowed to stand. And because N.J.S.A. 2C:58-3(c)(5) enables exactly this result through its open-ended grant of subjective

decision-making power to licensing authorities, it is facially unconstitutional in addition to being unconstitutional as applied to Petitioner.

Of late, the aphorism "bad facts make bad law" often applies in the Second Amendment context. This Court should grant this petition to prevent the bad facts present here from leading to the adoption of bad law. It would be far from the first time courts have reached sound constitutional conclusions in cases with extremely unsympathetic parties attached to them. Cases like *Miranda v. Arizona*, *National Socialist Party v. Skokie*, and *Snyder v. Phelps* all established important principles despite the unfavorable individuals involved in them. The trial court and appellate rulings in this case essentially stand for the unprincipled idea that the government cannot punish the deeply offensive (but protected) speech of the Westboro Baptist Church in *Snyder* or the neo-Nazis in *Skokie*, but it *can* deny them their Second Amendment rights based on that same protected speech. That is flatly and obviously incorrect and should be reversed.

Just recently, in *United States v. Hemani*, the United States Supreme Court dealt with a similarly controversial criminal defendant in the Second Amendment context. Ali Danial Hemani had expressed support for Iran's Islamic Revolutionary Guard Corps, a designated terrorist organization. Those unfavorable facts did not stop the Supreme Court from ruling that his recreational marijuana use — the only crime he was charged with — was not

grounds to disarm him, because marijuana users are not "categorically and unusually dangerous." *United States v. Hemani*, 146 S. Ct. 1677, 1693 (2026).

Here, the Petitioner has not been charged with any crime. Quite the opposite; he has ten carry permits issued by other states, including by states known for their strict gun laws like Connecticut, Rhode Island, Massachusetts, and Maryland. New Jersey, by contrast, has denied him a mere Firearms Purchaser Identification Card ("FPIC"). That outlier denial is, in and of itself, proof of the subjectivity inherent to N.J.S.A. 2C:58-3(c)(5). Due to that subjectivity, the law is automatically unconstitutional under *Bruen*, and this Court can decide this case on that basis alone. But if this Court is inclined to proceed into a historical analysis, this brief will also cover why New Jersey has failed to point to any history justifying the denial of Petitioner's FPIC.

ARGUMENT

I. *BRUEN* ALREADY DETERMINED THAT CARRY PERMIT ISSUANCE LAWS THAT RELY ON SUBJECTIVE DETERMINATIONS ARE FACIALLY UNCONSTITUTIONAL.

N.J.S.A. 2C:58-3(c) lists a number of appropriately objective reasons to deny someone an FPIC, such as conviction of a felony, present confinement for a mental disorder, being subject to a restraining order, being under 18 years of age, and more. But also included in this list of otherwise objective criteria is the highly subjective provision that an applicant may be denied an FPIC "where the issuance would not be in the interest of the public health, safety or welfare

because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm." N.J.S.A. 2C:58-3(c)(5).

The licensing authority is thus empowered to examine the applicant's history and determine if they think the applicant lacks the proper "character" or "temperament." It's hard to imagine a statute more expressly written to run afoul of *Bruen*'s ninth footnote, which states:

> [I]t appears that these shall-issue regimes … appear to contain only "narrow, objective, and definite standards" guiding licensing officials, *Shuttlesworth* v. *Birmingham*, 394 U. S. 147, 151, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969), **rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion,"** *Cantwell* v. *Connecticut*, 310 U. S. 296, 305 (1940)—features that typify proper-cause standards like New York's.

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 38 n.9 (2022) (bold added).

A "narrow, objective, and definite" standard is one that cabins the official to yes-or-no facts with no room for his own subjective opinions. This might include, for example, a licensing authority checking to see if the applicant is a prohibited person, if they have been involuntarily committed, or if they are otherwise barred from possessing firearms. The licensing authority can also check to confirm the applicant completed a training course and shooting qualification, and any other objective requirements the government has

imposed.[1] These are binary propositions, and require no "appraisal of facts, the exercise of judgment, [or] the formation of an opinion." *Id*. (quoting *Cantwell*, 310 U.S. at 305). But beyond that ministerial sort of inquiry, a licensing authority should not be trying to determine whether the applicant is "lacking the essential character of temperament necessary to be entrusted with a firearm." That clearly constitutes "the exercise of judgment" that *Bruen* expressly forbade. *Id*.

As the United States District Court for the Eastern District of New York recently explained in a case concerning whether a pistol license could be rescinded following a domestic incident that resulted in no disqualifying criminal convictions or pending charges: "[W]hat happens when a licensing agent disarms someone not so much pursuant to a policy but rather based on the agent's own gut feeling? The Court concludes that arbitrary disarmament lacks historical precedent and violates the Second Amendment." *Guido v. Suffolk Cty.*, No. 2:24-CV-07766 (JMW), 2026 U.S. Dist. LEXIS 190377, at *1 (E.D.N.Y. Aug. 24, 2026). There is just no way for this Court to rule for New Jersey without violating *Bruen*'s clear command as to suitability determinations, as the plain

[1] This is not to say such requirements cannot be unconstitutional for other reasons, such as if they impose lengthy wait times or exorbitant fees. *Bruen*, 597 U.S. at 38 n.9.

language of N.J.S.A. 2C:58-3(c)(5) codifies suitability determinations into state law.

Consider too that ten other states have issued Petitioner carry permits, including states that have long had strict gun laws like Massachusetts, Maryland, Connecticut, and Rhode Island.[2] Pet. 2. Petitioner has owned firearms for years and maintained and renewed those carry permits without issue. *Id*. If those ten other states opted to honor Petitioner's Second Amendment rights, then unless New Jersey can point to evidence that they somehow *all* overlooked some crime he committed or other similar disqualifier, then it can only be impermissible subjective determinations that led to Petitioner's FPIC being denied.[3] *See Guido*, 2026 U.S. Dist. LEXIS 190377, at *51 (discretionary decision-making by issuing authorities must be "limited to applications of objective, defined criteria

[2] These states are ranked #3, # 8, #5, and #13 respectively in terms of the strength of their gun control laws by the anti-gun organization Everytown for Gun Safety. *See* Everytown for Gun Safety Support Fund, *Gun Safety Policies Save Lives*, Everytown Rsch. & Pol'y, https://everytownresearch.org/rankings/ (last visited Aug. 26, 2026). For example, for Massachusetts, Everytown says the state has "among the strongest gun laws in the country." Everytown for Gun Safety Support Fund, *Gun Laws in Massachusetts*, Everytown Rsch. & Pol'y, https://everytownresearch.org/rankings/state/massachusetts/ (last visited Aug. 26, 2026).

[3] To the extent the State argues that those other states simply were not aware of all of the offensive things Petitioner has said online and elsewhere, that would only further underscore that Petitioner was denied an FPIC because of his protected speech.

to the facts presented, and those criteria themselves must demonstrate how a licensee has become a danger to themselves or others.").

The statute would be on firmer footing, at least as to *Bruen*'s footnote 9, if it spelled out *specifically* what other things would trigger a denial. To illustrate, suppose the statute stated that an applicant would be denied if he had used specific racial slurs, or been the subject of a failed school expulsion petition. Those would at least be objective criteria that do not leave a forbidden suitability determination up to the subjective judgment of a licensing authority. It would also have the benefit of putting an individual on notice of the potential consequences of their actions.[4] *See United States v. Debrow*, No. 25-30380, slip op. at 6 (5th Cir. July 23, 2026) (noting that disarmament for a past nonviolent felony is an injustice because of its "failure of notice to Americans who have already completed their sentence for a predicate felony, potentially decades prior, and who now try to obey the law"). By leaving all of that up to the licensing authority's discretion, the statute cannot be squared with *Bruen*'s footnote 9 and is thus unconstitutional both on its face and as applied to Petitioner.

[4] To be clear, this is not to say that disarmament for protected First Amendment activity accords with historical tradition, and such an FPIC denial would still thus be unconstitutional for other reasons. But if that objective standard were spelled out, it would at least no longer constitute the sort of subjective suitability determination expressly prohibited by *Bruen*'s footnote 9.

That calls for a brief word on facial challenges. On that topic, this Court should keep in mind the Supreme Court's guidance that the facial vs. as-applied distinction need not always be so clear cut:

> The claim is "as applied" in the sense that it does not seek to strike the PRA in all its applications, but only to the extent it covers referendum petitions. The claim is "facial" in that it is not limited to plaintiffs' particular case, but challenges application of the law more broadly to all referendum petitions. **The label is not what matters. The important point is that plaintiffs' claim and the relief that would follow … reach beyond the particular circumstances of these plaintiffs.** They must therefore satisfy our standards for a facial challenge to the extent of that reach.

Doe v. Reed, 561 U.S. 186, 194 (2010) (bold added). Here, the "extent of the reach" as to Petitioner's facial challenge is every other individual similarly denied based *only* on a licensing authority's subjective determination that they are unsuitable because they are "lacking the essential character of temperament necessary to be entrusted with a firearm." N.J.S.A. 2C:58-3(c)(5). The reach would thus not extend to an applicant denied under N.J.S.A. 2C:58-3(c)'s more objective criteria for a denial found in the other subsections (e.g., being a prohibited person).

Such an approach is also necessary in the Second Amendment context because otherwise, facial challenges would never be available. That's because any gun law is "facially constitutional" if one simply inserts a convicted violent felon into the hypothetical. For example, the law at issue here, which allows

forbidden suitability determinations, could still permissibly deny a violent felon without violating the Second Amendment. That alone cannot immunize it from facial invalidity. Were that the case, then *Bruen* would have gone the other way, with the Supreme Court declaring New York's good cause standard was at least *facially* constitutional (because a hypothetical permit applicant who is a felon could be constitutionally denied). And of course, in *Heller* the Supreme Court facially struck down Washington D.C.'s handgun ban, even as they acknowledged bans on felons having guns are presumptively lawful. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

In sum, "[a] court cannot simply posit that a hypothetical narrower restriction would have been constitutional or that a subset of the regulated activity is regulable and deem the challenged law facially valid." Peter A. Patterson, *Facial Confusion: Lower Court Misapplication of the Facial/As-Applied Distinction in Second Amendment Cases*, HARV. J.L. & PUB. POL'Y: PER CURIAM, Fall 2025, at 7.

II. N.J.S.A. 2C:58-3(c)(5) FINDS NO SUPPORT IN OUR HISTORICAL TRADITION OF FIREARM REGULATION.

As argued above, *Bruen*'s footnote 9 decides this case. N.J.S.A. 2C:58-3(c)(5) allows for the very sort of suitability determinations the Supreme Court rejected in that case, and this Court should stop there, and reverse erroneous appellate precedent suggesting otherwise. *See, e.g., Matter of M.U.'s*

Application for a Handgun Purchase Permit, 475 N.J. Super. 148 (App. Div. 2023). In this matter, the lower courts[5] barely grappled with *Bruen*'s historical analysis at all, except to briefly reiterate the erroneous analysis of *M.U.* without engaging in any further historical inquiry. *In re Gun Permit Appeal of A.A.R.*, No. A-3192-24, slip op. at 13 (N.J. Super. Ct. App. Div. June 18, 2026). That is another reason why this Court should grant the petition, and reverse based on *Bruen* footnote 9 alone. Alternatively, this Court could grant the long-pending *M.U.* petition, decide these issues there, and then remand this petition for further proceedings afterwards.

But for the sake of argument, Amicus also will engage in a "fresh" *Bruen* analysis to show why denying Petitioner an FPIC is unconstitutional. And to do that, we begin with the plain text of the Second Amendment.

A. The plain text of the Second Amendment is implicated by N.J.S.A. 2C:58-3(c)(5).

"When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and the

[5] While the opinion below is not published, in New Jersey state courts unpublished rulings are still citable by parties, forming a sort of "soft" precedent that must not be allowed to become infected with unsound rulings that are treated as persuasive authority. N.J. Ct. R. 1:36-3. In contrast, a few states do not allow unpublished rulings to be cited at all, except in very limited circumstances. *See, e.g.,* Cal. Rules of Court, rule 8.1115(a) (unpublished decision may not be cited by a court or a party in any other action in California courts, with only very limited exceptions).

"government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

A challenger must show at *Bruen*'s first step that the Second Amendment right to keep and bear arms is at least implicated by their proposed course of conduct. 597 U.S. at 17. As Justice Thomas later explained, "[a] challenger need only show that 'the plain text' of the Second Amendment covers his conduct. (citation omitted) This burden is met if the law at issue 'regulates' Americans' 'arms-bearing conduct.'" *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from denial of certiorari). If a law applies to "the people," or concerns any form of "arms," or places any restrictions on either keeping or bearing of arms, then the plain text is implicated. *Wolford v. Lopez,* 146 S. Ct. 2032, 2043 (2026).

The conduct at issue in this case is the exact same as that in *Heller*: possessing firearms for self-defense. After all, by having his FPIC denied due to the licensing authority's subjective enforcement of N.J.S.A. 2C:58-3(c)(5), Petitioner's Second Amendment right is entirely extinguished, at least when he is in New Jersey.[6] *See Guido*, No. 2026 U.S. Dist. LEXIS 190377, at *32 ("A

[6] As discussed, Amicus contends the law is also facially unconstitutional, but for the purposes of the historical analysis (and limited space) it will focus only

decision by the county to deny a pistol license to a plaintiff constitutes 'a substantial burden' on the plaintiff's Second Amendment rights.").

His request is also a modest one given he only seeks an FPIC. The Supreme Court has already held that the Second Amendment extends beyond the mere right to possess firearms Petitioner is seeking to exercise: "the plain text of the Second Amendment protects . . . carrying handguns publicly for self-defense." *Bruen*, 597 U.S. at 32. Therefore, the Second Amendment's plain text covers the conduct at issue, and the State must justify its restriction on public carrying "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

B. New Jersey fails to meet its historical burden.

1. Rahimi allows for only temporary disarmament of non-convicted individuals who are allegedly dangerous.

While Second Amendment jurisprudence is still developing, the Supreme Court has twice now confirmed that dangerous people can be disarmed. But that power is limited because "affording the government that kind of 'broad power to designate any group as dangerous and thereby disqualify its members from having a gun' would risk allowing it to 'quickly swallow' the Second

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on Petitioner's circumstances. Largely the same analysis would apply to many others facing similar circumstances.

Amendment." *Hemani*, 146 S. Ct. at 1693 (quoting *Kanter* v. *Barr*, 919 F. 3d 437, 465 (7th. Cir. 2019) (Barrett, J., dissenting)).

Besides his offensive speech, the other main pillar of the State's argument for denying an FPIC is the Petitioner's past alleged psychological issues when he was a minor. In that respect, a major problem for the State's position, historically speaking, is *temporal*. If it were still the year 2017, and Petitioner had just visited a psychiatrist because his parents felt he was becoming a threat to himself, *see A.A.R.*, slip op. at 4, perhaps New Jersey could argue that, aside from being a minor, he also falls into *Rahimi*'s confirmation that "[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *United States v. Rahimi*, 602 U.S. 680, 698 (2024).

But it is not 2017, it is 2026. Petitioner has owned firearms for years, and as noted, has ten carry permits issued by other states. The Supreme Court emphasized that one of the reasons Zackey Rahimi could be disarmed was because "like surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant 'is' subject to a restraining order. § 922(g)(8). In Rahimi's case that is one to two years after his release from prison…." *Id.* at 699. "One or two years" is far short of the much longer span of time at issue here.

This temporal limitation on disarmament also finds support in a recent federal ruling looking at the mental illness disqualifier of 18 U.S.C. §922(g)(4). There, the Seventh Circuit rejected the government's argument "that §922(g)(4) is valid even with respect to persons who were never dangerous or who have recovered." *United States v. Rose*, No. 24-1086, 2026 U.S. App. LEXIS 19493, at *3 (7th Cir. July 2, 2026). As that court explained in summarizing the relevant Supreme Court precedent,

> *Rahimi* rejected a challenge to 18 U.S.C. §922(g)(8) by stressing the significance of the defendant's current danger to others and the fact that the finding of danger had a time limit. And *Hemani* holds §922(g)(3) invalid as applied to a casual drug user who has not been shown to be currently dangerous (or addicted in a way that implies inability to control one's actions).

Id. at *3. The Seventh Circuit ultimately concluded that "§922(g)(4) is problematic as applied to someone who is now mentally healthy, seems likely to stay mentally healthy, and therefore does not 'present a credible threat to the physical safety of others.'" *Id.* at *5. That is exactly applicable here, given Petitioner was cleared as "not currently a danger to himself and/or others" back in 2021. *A.A.R.*, slip op. at 6 (quoting outpatient counseling services provider Jordan Faiman).

In contrast, here there is no such temporal limitation. The State appears to be arguing it can deny Petitioner his Second Amendment rights *forever*, without any objective reason like a felony conviction to justify it. New Jersey also

proposes no way that Petitioner might cure the issues and then be granted an FPIC on a subsequent application. That finds no support in either our historical tradition, or in Supreme Court precedent.

Even other states that are traditionally hostile to the Second Amendment have not adopted such a maximalist position. For example, Massachusetts recently conceded in a similar case that historically, "disarmed individuals could take affirmative steps to demonstrate that they no longer posed a threat to public safety, and if they did so, they could have their arms rights restored." Brief for Intervener-Appellee Commonwealth at 35–36, *Pratt, Chief of Holyoke Police Dep't, as Licensing Auth. v. Westbrook*, No. SJC-13822 (Mass.), https://www.ma-appellatecourts.org/pdf/SJC-13822/SJC13822_06_Intervener-Appellee_Commonwealth_Brief.pdf. New Jersey's position is thus extreme even relative to likeminded states with similarly strict gun laws.

2. *M.U. was wrongly decided and its analysis has since been abrogated by the United States Supreme Court, but Petitioner prevails even under its erroneous standard.*

The lower court's cursory historical analysis primarily relied on *M.U.*, and that case's conclusion that historical status-based restrictions were "not limited to individuals who demonstrated a propensity for violence" but "also applied to entire categories of people due to the perceived threat they posed to an orderly society." *Matter of M.U.*, 475 N.J. Super. at 189. But the history the *M.U.* court

relied on primarily concerned the disarmament of people who were not loyal to the United States. *See id.* at 187 ("Many of the newly independent states enacted laws that required individuals, as a condition of keeping their firearms, to pledge to the social compact by swearing fidelity to the revolutionary regime."). Or, it concerned temporarily disarming people who had just committed a misdemeanor crime. *See id.* at 189 (describing laws that allowed for seizure of firearms from poachers.).[7]

The *M.U.* court summarized this history by proclaiming that "legislatures had the authority and discretion to exclude even non-violent offenders from 'the people' entitled to keep and bear arms." *Matter of M.U.*, 475 N.J. Super. At 188. That overly broad conclusion was never correct, but it has now been clearly abrogated by the United States Supreme Court in *Hemani*, which reaffirmed that objective dangerousness is the only appropriate grounds for disarmament. The Supreme Court declined to give the government the "'broad power to designate any group as dangerous and thereby disqualify its members from having a gun', [which] would risk allowing it to 'quickly swallow' the Second Amendment." *Hemani*, 146 S. Ct. at 1693 (quoting *Kanter* v. *Barr*, 919 F. 3d 437, 465 (7th.

[7] The *M.U.* court also relied on certain discriminatory laws that applied to Native Americans, African Americans, and others. *Matter of M.U.*, 475 N.J. Super. at 186. Such history is no longer appropriate to rely on. *See Wolford*, 146 S. Ct. at 2053 ("Hawaii's claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously.").

Cir. 2019) (Barrett, J., dissenting)). While class-based disarmament is acceptable in some circumstances, it must be confined in its "reach to those who are categorically and unusually dangerous." *Id.* at 1692.

M.U. went even further than the federal government's argument in *Hemani*, allowing disarmament not just for crimes or dangerousness, but of "entire categories of people due to the perceived threat they posed to an orderly society and compliance with legal norms." *Matter of M.U.*, 475 N.J. Super. At 189. That sweeping conclusion cannot coexist with *Hemani* and must be reversed. It is also inconsistent with Third Circuit precedent, which does not allow disarmament even for certain nonviolent *felonies*. *See, e.g., Range v. AG United States*, 124 F.4th 218, 230 (3d Cir. 2024) (Rejecting government's effort "to stretch dangerousness to cover all felonies and even misdemeanors that federal law equates with felonies.").

All of that said, assuming *M.U.* is somehow allowed to stand despite its inconsistency with recent Supreme Court precedent, Petitioner prevails even under its erroneous standard. Remember, the Petitioner here is not even *accused* of having committed any crime, unlike M.U., who was allegedly involved in (but never convicted of) vandalism, criminal mischief, road rage, and theft. *Matter of M.U.*, 475 N.J. Super. at 164. Petitioner's denial of an FPIC comes down solely to the licensing authority's subjective opinion of him and his

offensive speech. That finds no support even in *M.U.*'s flawed accounting of our historical tradition. Even if it is permissible to permanently disarm non-violent criminal offenders, or those deemed disloyal to the United States, or members of groups that were discriminated against, all of that "does nothing to prove that [Petitioner] is part of a similar group today." *Range*, 124 F.4th at 229. Put another way, New Jersey is arguing that because some misdemeanor offenders were temporarily disarmed in the founding era, Petitioner may be disarmed based on his offensive speech today. "To state the analogy is to expose its deficiency." *Hemani*, 146 S. Ct. at 1689.

Finally, the Court below dismissed Petitioner's arguments related to protected speech, writing that "[b]y applying for an FPIC, petitioner subjected himself to investigation by the NJSP and the consequences of that investigation, consistent with our jurisprudence." *A.A.R.*, slip op. at 14. The issue, though, is not so much that an investigation was conducted, but rather that the resulting denial impermissibly relied on protected speech. There is no history that justifies disarmament based on First Amendment activity, certainly none that New Jersey or the court below cited. In fact, there is longstanding case law firmly saying the opposite: "If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States

may thus be manipulated out of existence." *Frost & Frost Trucking Co. v. R.R. Com. of Cal.*, 271 U.S. 583, 594 (1926); *see also Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited."); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 604 (2013) ("We have said in a variety of contexts that "the government may not deny a benefit to a person because he exercises a constitutional right").

More generally, Amicus has a hard time believing that New Jersey courts would tolerate similar treatment of any other constitutional right. For example, if voter registration were conditioned on the government's review of protected speech, a denial based on the offensiveness of that speech would not be treated with the dismissiveness the court below treated Petitioner's arguments related to his FPIC denial. This petition should also therefore be granted so this Court can confirm that the Second Amendment is not a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause." *McDonald v. City of Chi.*, 561 U.S. 742, 780 (2010).

CONCLUSION

Amicus can understand why Petitioner's FPIC application was denied. He certainly has done nothing to make himself sympathetic given his vile views. But ultimately, that denial violates the Second Amendment. By enabling such a subjective determination, N.J.S.A. 2C:58-3(c)(5) is unconstitutional facially, and as applied to Petitioner. The petition should be granted.[8] Failing that, this Court should grant the pending *M.U.* petition and hold this case for remand pending that ruling.

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[8] If it is, Amicus will submit a similar but expanded brief on the merits, and would be open to appearing at oral argument if this Court would consider its participation helpful to its eventual ruling.