responsible citizens,'" and the systems "do not require applicants to show an atypical need for armed self-defense." Id. at 2138 n.9. Justice Kavanaugh, joined by Justice Roberts, similarly explained that it was the *combination* of discretion and a proper cause requirement that caused the pre-CCIA version of New York's law to run afoul of the Second Amendment. See id. at 2161 (Kavanaugh, J. concurring) (finding the previous law "constitutionally problematic because it grants open-ended discretion to licensing officials *and* authorizes licenses only for those applicants who can show some special need apart from self-defense" (emphasis added)).

The CCIA fixes this problem, removing the proper cause requirement struck down in Bruen and cabining the discretion of licensing officials in a manner equivalent to a host of other states whose criteria the Bruen majority specifically endorsed. Although the Plaintiffs insinuate that there will be "a host of abuses, unequal enforcement, arbitrary and capricious[] actions," Compl. ¶ 58, they offer no actual evidence that New York licensing officials will operate in bad faith. Meanwhile, the Second Circuit previously found that the prior, broader standard's "repeated use for decades, without evidence of mischief or misunderstanding" was strong evidence of its constitutionality. Libertarian Party, 970 F.3d at 126-27. If such hypothetical "abuses" were in fact to take place, they would be a proper subject for an as-applied challenge to rectify the misapplication of the law, see Bruen, 142 S.Ct. at 2162 (Kavanaugh, J., concurring), not a facial challenge such as this one seeking to strike it entirely.

2. New York's Good Moral Character Requirement Is Relevantly Similar To A Long Tradition Of Anglo-American History And Doctrine

New York's good moral character requirement is consistent with the long history in both England and America of disarming those whose associations, reputation, or conduct suggested they posed a danger to others or to the public order. "Constitutional rights are enshrined with the

scope they were understood to have when the people adopted them." Heller, 554 U.S. at 634-35. "[F]rom time immemorial, various jurisdictions recognizing a right to arms have nevertheless taken the step of forbidding suspect groups from having arms." Don B. Kates & Clayton E. Cramer, Second Amendment Limitations and Criminological Considerations, 60 Hastings L.J. 1339, 1360 & nn.121-23 (2009); see also id. ("American legislators at the time of the Bill of Rights seem to have been aware of this tradition of excluding . . . suspect persons from the right to arms.").[8] In the period between the establishment of colonies in America and the Revolutionary War, both the colonial governments and the monarchy from which their legal traditions originated did not hesitate to disarm persons based on a finding that they were potentially dangerous.[9]

From the early days of English settlement in America, the colonies sought to prevent Native American tribes from acquiring firearms, passing laws forbidding the sale and trading of arms to Indigenous people. See Order of Mass. General Court of 1648, *reprinted in* The Laws and Liberties of Massachusetts 28 (Harvard Univ. Press 1929), TD Ex. 3; An Act to Prohibit the Selling of Guns, Gunpowder or Other Warlike Stores to the Indians (1763), *in* 6 The Statutes at Large of Pennsylvania From 1682 to 1801, at 319-20 (WM Stanley Ray 1899), TD Ex. 4; Act XXIII (1642), 1 William Waller Hening, The Statutes at Large: Being a Collection of All the Laws of Virginia From the First Session of the Legislature, in the Year 1619, at 255 (1823), TD Ex. 5; An Act for

[8] To the extent that any of the reports or scholarly articles cited in this memorandum may be considered hearsay under Federal Rule of Evidence 801, "hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction." Mullins v. City of N.Y., 626 F.3d 47, 52 (2d Cir. 2010).

[9] See Binderup v. Attorney General, 836 F.3d 336, 368 (3d Cir. 2016) (Hardiman, J., concurring in part) ("Debates from the Pennsylvania, Massachusetts and New Hampshire ratifying conventions, which were considered 'highly influential' by the Supreme Court in Heller ... confirm that the common law right to keep and bear arms did not extend to those who were likely to commit violent offenses.")

Regulating the Indian Trade and Making It Safe to the Publick, No. 269, § 4 (1707), *in* 2 The Statutes at Large of South Carolina 309, 310 (Thomas Cooper ed. 1837), TD Ex. 6. Colonial governments also directly regulated gun ownership of individuals believed to be unfit. The Massachusetts Bay Colony, for instance, issued an order in 1637 disarming the followers of a dissident preacher named John Wheelwright because there was "just cause of suspition that they . . . may, upon some revelation, make some suddaine irruption upon those that differ from them in judgment." 1 Records of Mass. 1628-1641, at 211-12 (Nathaniel B. Shurtleff, ed. 1853), TD Ex. 7. Likewise, King Charles II of England passed the Militia Act of 1662, which authorized royal officials, called Lord Lieutenants, to "search for and seize all arms in the custody or possession of any person or persons whom the said Lieutenant or two or more of their deputies shall judge dangerous to the peace of the Kingdom." Militia Act of 1662, 13 & 14 Car. 2, c. 3 § 13 (1662), TD Ex. 8.[10] Based only on a person's reputation for supposed dangerousness, as known to one English official or two of his deputies, the person could be disarmed to protect public safety.

And even after the English Bill of Rights established a right of the people to arm themselves, the right was only given to Protestants, based on a continued belief that Catholics were likely to engage in conduct that would harm themselves or others and upset the peace.[11] See An

[10] Although the Supreme Court cautioned in Bruen that "English common law 'is not to be taken in all respects to be that of America,'" 142 S. Ct. at 2138 (quoting Van Ness v. Pacard, 2 Pet. 137, 144, 27 U.S. 137 (1829)), the Court also stated that it considers English history "between the Stuart Restoration in 1660 and the Glorious Revolution in 1688 to be particularly instructive" of the founders' views on the Second Amendment, id. at 2140 (cleaned up) (quoting Heller, 554 U.S. at 592).

[11] Although these laws reflect the broad pre- and post-Founding understanding that gun possession could be restricted in cases where a person was dangerous or unfit, they (and others in the historical analysis discussed in this section) are based on racial or religious animus that is repugnant to a modern understanding of the Constitution. Cf. Pena-Rodriguez v. Colorado, 137 S.Ct. 855, 867 (2017) ("It must become the heritage of our Nation to rise above the racial classifications that are

Act for the Better Securing the Government by Disarming Papists and Reputed Papists, 1 William & Mary, c. 15 (1688), TD Ex. 9. Virginia followed this example, passing an act in 1756 that ordered the disarmament of all Catholics or "reputed Papists" who refused to take an oath of loyalty to the colonial government. An Act for Disarming Papists, and Reputed Papisits, Refusing to Take the Oaths to the Government (1756), in 7 William W. Hening, The Statutes at Large, Being a Collection of all the Laws of Virginia 35-36 (Richmond: Franklin Press, 1809), TD Ex. 10.[12] It was thus commonly understood at the time of the Second Amendment's ratification that if authorities believed an individual threatened the public by virtue of that person's associations or reputation, authorities could strip that person of his right to bear arms. See United States v. Carpio-Leon, 701 F.3d 974, 980 (4th Cir. 2012) ("Colonial governments often barred 'potential subversives' from owning firearms." (citing Joyce Lee Malcolm, To Keep and Bear Arms: The Origins of an Anglo-American Right 140-41 (1994)).

In the Revolutionary era, colonies frequently disarmed individuals based on their reputation for being disloyal or hostile to the new American nation. Massachusetts, for instance, had a law "disarming such person as are notoriously disaffected to the cause of America." Act of March 14, 1776, in 1775-1776 Mass. Acts & Laws 31, TD Ex. 11. Once an individual had been deemed disaffected to the cause of America, he could often only regain his right to bear arms by appearing in person before an official to swear an oath of loyalty. In a Pennsylvania law passed

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so inconsistent with our commitment to the equal dignity of all persons."). A clear-eyed look at American history and doctrine will necessarily reveal episodes that are shameful but nonetheless relevant, as the Bruen opinion teaches us. See 142 S.Ct. at 2150-51. Of course, if a modern instance were to arise where gun licensing requirements were applied in a discriminatory manner, it could, should, and would be struck down as unconstitutional.

[12] As with its English analogues, Virginia's Act deemed someone a "reputed Papist" if two or more justices of the peace knew or suspected that person was Catholic. Id. at 36.