
**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

**No. 25-1229
UNITED STATES OF AMERICA,
Appellant,**

v.

**DAVID WORSTER; ALEXZANDRIA CARL,
Defendants-Appellees.**

**No. 25-1398
UNITED STATES OF AMERICA,
Appellant,**

V.

**ALEXZANDRIA CARL,
Defendant-Appellee.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND
Hon. John J. McConnell, Jr., Chief Judge**

**SUPPLEMENTAL APPENDIX FOR
APPELLEE, DAVID WORSTER**

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND

DECLARATION OF CLAYTON E. CRAMER

IN SUPPORT OF THE BRIEF OF APPELLEE, DAVID WORSTER

I, **Clayton E. Cramer**, declare as follows:

1. Identity and Qualifications

I am a historian and author specializing in the history of firearms regulation in the United States, with particular emphasis on the Founding Era and the nineteenth century. I have written and published numerous scholarly works on American legal and cultural history, including studies of historical firearms laws, militia practices, and social regulation of intoxicants. My curriculum vitae, attached hereto and incorporated by reference as **Exhibit A**, sets forth my qualifications, publications, and experience in detail.

2. Purpose and Scope

I submit this declaration in support of Appellee **David Worster's Reply Brief** for inclusion in the Supplemental Appendix. This declaration is intended to assist the Court by summarizing the historical record relevant to the constitutionality of 18 U.S.C. § 922(g)(3) as applied to Mr. Worster. My opinions are based on my training and experience as a historian and on my review of primary and secondary sources concerning early American firearms regulation, intoxicant use, and disarmament practices.

3. Materials Considered

In forming the opinions expressed below, I considered founding-era statutes and treatises; colonial and early state laws; nineteenth-century legislative materials; militia regulations and contemporaneous accounts; and modern historical scholarship addressing arms regulation, intoxicants, and disarmament practices. Citations to representative sources appear in the discussion below.

4. Summary of Historical Conclusions

Based on my research, I have reached the following conclusions:

- a. There is no evidence of any colonial, founding-era, or Reconstruction-era statute that categorically disarmed individuals based solely on their use of intoxicating substances.
- b. Historical regulations concerning intoxicants were narrowly tailored to conduct — typically prohibiting carrying firearms *while actively intoxicated* — and did not extend to status-based disarmament.
- c. Cannabis, opium, and alcohol were widely used in early America, including among militia-eligible citizens, without any legal rule disqualifying such users from possessing arms.

d. The historical record shows that disarmament was reserved for those adjudged dangerous through their conduct — such as insurrectionists, violent offenders, or those under judicial surety orders — not for individuals engaged in otherwise lawful, non-dangerous activity.

e. Federal restrictions that disarm individuals based on generalized “status,” including substance-use status, are twentieth-century innovations and do not reflect the historical tradition at the time of the Second Amendment’s ratification (1791) or incorporation (1868).

5. Historical Evidence and Analysis

The following section is reserved for my complete historical narrative, analysis, and supporting citations.

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1. My M.A. in History is from Sonoma State University in California. I teach history at the College of Western Idaho. I have nine published books, mostly scholarly histories of weapons regulation. My 18 published articles (mostly in law reviews) have been cited in *D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Jones v. Bonta*, 34 F.4th 704 (9th Cir. 2022) vacated by *Jones v. Bonta*, 47 F.4th 1124 (9th Cir. 2022)(remanded to the district court for further proceedings consistent with *Bruen*); *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021) cert, granted by *Young v. Hawaii*, 142 S.Ct. 2895 (judgment vacated and case remanded to the Ninth Circuit for further consideration in light of *Bruen*); *State v. Sieyes*, 168 Wash.2d 276 (Wash. 2010); *Senna v. Florimont*, 196 N.J. 469 (N.J. 2008); *Mosby v. Devine*, 851 A.2d 1031 (R.I. 2004). A comprehensive list of my scholarly works and citations can be found at <https://claytoncramer.com/scholarly/journals.htm>.

2. In several cases, my work has been cited in defense of laws limiting firearms ownership: *State v. Roundtree* (Wisc. 2021), *State v. Christen* (Wisc. 2021), *King v. Sessions* (E.D.Penn. 2018); *United States of America v. Heriberto Carbajal-Flores*, No. 24-1534 (7th Cir. 2025) (upholding 18 U.S.C. § 922(g)(5)(A) which prohibits illegal aliens from possessing firearms). My work was also cited in the *McDonald v. Chicago* (2010) dissent.¹

¹ *McDonald v. Chicago*, 130 S.Ct. 3022, 3132 (Breyer, J. diss.)

3. I am being compensated for services performed in the above-entitled case at an hourly rate of \$150 for expert declarations. My compensation is not contingent on the results of my analysis or the substance of any testimony.

I. Not an Endorsement

4. This declaration points to practices common during the period before 1868 that were likely foolish back then and are foolish today. Intoxicants and guns are usually a bad combination, just like intoxicants and motor vehicles, intoxicants and power tools, intoxicants and ladders, are all generally poor ideas.

5. Some of the controlled substances mentioned below remain bad ideas to use, even in the absence of dangerous devices. Sadly, governments across America have decided to remove legal discouragements for these formerly controlled substances. The correlation of heavy marijuana use in young people to later development of schizophrenia is strong and appears in multiple studies from

multiple nations.² Marijuana use sometimes induces schizophrenia, which plays a major role in murder in general³ and mass murder.⁴

6. There were no Founding Era laws regulating use of what today are considered “controlled substances” and firearms. Even the few laws regulating intoxication and firearms in the period before the 14th Amendment were limitations only on being *currently* intoxicated and armed. None were lifetime prohibitions on firearms ownership because of past intoxication or addiction.

7. If there were laws seeking to solve problems back then that are analogous to similar problems today, there might be an interesting discussion of their

² A brief sampling of recent research (there is way more available): Carsten Hjorthøj, Wilson Compton, Marie Starzer, Dorte Nordholm, Emily Einstein, Annette Erlangsen, Merete Nordentoft, Nora D. Volkow and Beth Han, *Association Between Cannabis Use Disorder And Schizophrenia Stronger In Young Males Than In Females*, PSYCHOLOGICAL MEDICINE, FIRST VIEW, 1–7 (May 4, 2023); A. Eden Evins, Alan I. Green, John M. Kane, Robin M. Murray, *The Effect of Marijuana Use on the Risk for Schizophrenia*, JOURNAL OF CLINICAL PSYCHOLOGY (Nov. 15, 2012), <https://www.psychiatrist.com/jcp/schizophrenia/commentary-effect-marijuana-risk-schizophrenia-cme/>, last accessed October 13, 2023; Justine Renard, Walter J. Rushlow, Steven R. Laviolette, *Effects of Adolescent THC Exposure on the Prefrontal GABAergic System: Implications for Schizophrenia-Related Psychopathology*, 9 FRONTIERS IN. PSYCHIATRY (2018), <https://www.frontiersin.org/articles/10.3389/fpsy.2018.00281/full>, last accessed October 13, 2023; Mary E. Kelley, Claire Ramsay Wan, Beth Broussard c, Anthony Crisafio, Sarah Cristofaro, Stephanie Johnson, Thomas A. Reed, Patrick Amar, Nadine J. Kaslow, Elaine F. Walker, Michael T. Compton, *Marijuana use in the immediate 5-year premorbid period is associated with increased risk of onset of schizophrenia and related psychotic disorders*, 171 SCHIZOPHRENIA RESEARCH 62–67 (Mar. 2016), <https://www.sciencedirect.com/science/article/abs/pii/S0920996416300159?via%3Dihub>, last accessed October 13, 2023; O. E. Onwuameze, K. W. Nam, E. A. Epping, T. H. Wassink, S. Ziebell, N. C. Andreasen and B.-C. Ho, *MAPK14 and CNR1 gene variant interactions: effects on brain volume deficits in schizophrenia patients with marijuana misuse*, 43:3 PSYCHOLOGICAL MEDICINE (JUL. 2012), <https://www.cambridge.org/core/journals/psychological-medicine/article/abs/mapk14-and-cnr1-gene-variant-interactions-effects-on-brain-volume-deficits-in-schizophrenia-patients-with-marijuana-misuse/3A8E29CA8AE4FAAFB29E44F7A470FC>, last accessed October 13, 2023.

³ Jason Matejkowski, Sara Cullen & Phyllis Solomon, *Characteristics of persons with severe mental illness who have been incarcerated for murder*, 36 JOURNAL OF AMERICAN ACADEMY OF PSYCHIATRY & THE LAW 74 (2008) (out of 518 homicide offenders, 95 had severe mental illness; of the mentally ill for whom the treatment history was known, 43 percent had never been treated, or had only been treated once), *Characteristics of persons with severe mental illness who have been incarcerated for murder* - PubMed (nih.gov), last accessed October 14, 2023; see also D.E. Wilcox, *The relationship of mental illness to homicide*, 6 AMERICAN JOURNAL OF FORENSIC PSYCHIATRY 3 (1985) (Of 71 persons convicted of non-vehicular homicides in Contra Costa County, California, in 1978–80, study finding 10 percent of homicides perpetrated by persons with schizophrenia, 49 had serious mental disorders which affected the crime), *The relationship of mental illness to homicide*. (apa.org), last accessed October 14, 2023; E. Fuller Torrey, *THE INSANITY OFFENSE: HOW AMERICA’S FAILURE TO TREAT THE SERIOUSLY MENTALLY ILL ENDANGERS ITS CITIZENS* 145, 213–218 (2008).

⁴ See Clayton E. Cramer, *Mental Illness and the Second Amendment*, 46 CONN. L.R. 4:1301 (2014) for an examination of this problem and Clayton E. Cramer, MY BROTHER RON: A PERSONAL AND SOCIAL HISTORY OF THE DEINSTITUTIONALIZATION OF THE MENTALLY ILL (2012) for how we got here.

relevance to modern laws. There are no laws that I have found in that era seeking to solve similar problems to modern use of intoxicants and firearms use.

II. Controlled Substances & Firearms

8. As we will cover later, there were very few controlled substances (drugs) in the U.S. before 1868 except alcohol.

A. Alcohol

1) Drinking While Armed

9. From a historical standpoint, Colonial and early Republic practice shows that drinking while armed was widespread, even if unwise.

We met people coming from a militia muster, drunk, and staggering along the lanes and paths; these unhappy souls have had their camp-meeting, and shout forth the praises of the god of strong drink: glory be to God, we have our camp-meetings too of longer continuance, and more and louder shouting of glory, and honour, and praises to the God of the armies of the earth.⁵ [emphasis added]

10. Other accounts show evidence of widespread use of alcohol while armed:

There is no space for a detailed examination of the charges against the courage of the Virginians of the seventeenth century and of the poor quality of the militia. There were only a few occasions when the militia was called out prior to the French and Indian War, but the service was in each case as satisfactory as a militia is apt to be. Had Mr. Wertenbaker been a reader of Dryden he would have remembered that

⁵ Francis Asbury, 3 THE JOURNAL OF THE REV. FRANCIS ASBURY, BISHOP OF THE METHODIST EPISCOPAL... 135 (1821), https://www.google.com/books/edition/From_January_1_1801_to_December_7_1815/0FMmAQAAIAAJ?hl=en&gbpv=1&dq=%22%22We%20met%20people%20coming%20from%20a%20militia%20muster%2C%20drunk%2C%20and%20staggering%20along%20the%20lanes%20and%20paths%22&pg=PA135&printsec=frontcover, last accessed August 15, 2025.

the poet said that *the chief object of militia-muster in England in his day, was to get drunk*.⁶ [emphasis added]

11. Describing an 1840 muster:

The ringing of a steamboat bell at the head of the column filled up the ranks, and the Racine Militia gallantly trained til noon, when they adjourned to the Fulton House for dinner, where they all got so drunk they couldn't muster at all in the evening.⁷ [emphasis added]

12. Another account of a militia muster:

MILITIA MUSTER DAYS. On the second Saturday of October each year there was a general muster at each county seat, when the various companies drilled in battalion or regimental formation; and each separate company met on its local muster grounds quarterly, and on the fourth of July the commanding officers met at the court house to drill. The Big Musters called most of the people together, and there was much fun and many rough games to beguile the time. Cider and ginger cakes were sold, and many men got drunk.⁸ [emphasis added]

13. It is unclear to what years this MILITIA MUSTER DAYS report refers, but the other parts of the chapter refer to the antebellum period.

14. William Cullen Bryant's memoirs are also evidence. The year is not clear, but it is in a chapter titled "Mr. Bryant's Early Life"; Bryant was born in 1797:

At that time there was in each township at least one company of militia, which was required to hold several meetings in the course of the year, and at these the minister

⁶ Philip Alexander Bruce and William Glover Stanard, 18 VIRGINIA MAGAZINE OF HISTORY AND BIOGRAPHY 347 (1910), https://www.google.com/books/edition/The_Virginia_Magazine_of_History_and_Bio/KAk1AAAAIAAJ?hl=en&gbpv=1&dq=%22There%20is%20no%20space%20for%20a%20detailed%20examination%20of%20the%20charges%20against%20the%20cour%20age%20of%20the%20Virginians%20of%20the%20seventeenth%20century%20and%20of%20the%20poor%20quality%20of%20the%20militia%22&pg=PA347&printsec=frontcover, last accessed August 15, 2025.

⁷ Old Settlers' Society (Racine, County of, Wisconsin), OFFICIAL RECORD OF THE OLD SETTLERS SOCIETY OF RACINE COUNTY, WISCONSIN 43 (1871), https://www.google.com/books/edition/Official_Record_of_the_Old_Settlers_Soci/XkrCiVOtFT8C?hl=en&gbpv=1&dq=The%20Oringing%20of%20a%20steamboat%20bell%20at%20the%20head%20of%20the%20column%20filled%20up%20the%20ranks%20C%20and%20the%20Racine%20Militia%20gallantly%20trained%20til%20noon&pg=PA43&printsec=frontcover, last accessed August 15, 2025.

⁸ John Preston Arthur, WESTERN NORTH CAROLINA: A HISTORY (1730-1913) 284 (1914), https://www.google.com/books/edition/Western_North_Carolina/zX98AAAAMAAJ?hl=en&gbpv=1&dq=%22WESTERN%20NORTH%20CAROLINA%3A%20A%20HISTORY%20%22&pg=PA284&printsec=frontcover, last accessed August 15, 2025.

was always present. The military parade, with the drums and fifes and other musical instruments, was a powerful attraction for the boys, who came from all parts of the neighborhood to the place at which the militia mustered. But on these occasions there was one respect in which the minister's presence proved but a slight restraint upon excess. There were then no temperance societies, no temperance lecturers held forth, no temperance tracts were ever distributed, nor temperance pledges given. It was, to be sure, esteemed a shame to get drunk; but, as long as they stopped short of this, people, almost without exception, drank grog and punch freely with out much fear of a reproach from any quarter. Drunkenness, however, in that demure population, was not obstreperous, and the man who was overtaken by it was generally glad to slink out of sight. I remember an instance of this kind. There had been a muster of a militia company on the church green for the election of one of its officers, and the person elected had treated the members of the company and all who were present to sweetened rum and water, carried to the green in pailfuls, with a tin cup to each pail for the convenience of drinking.

The afternoon was far spent, and I was going home with other boys, when we overtook a young man who had taken too much of the election toddy, and, in endeavoring to go quietly home, had got but a little way from the green, when he fell in a miry place, and was surrounded by three or four persons, who assisted in getting him on his legs again. The poor fellow seemed in great distress, and his new nankeen pantaloons, daubed with the mire of the road, and his dang ling limbs, gave him a most wretched appearance. It was, I think, the first time I had ever seen a drunken man. As I approached to pass him by, some of the older boys said to "Do not go too near him, for if you smell a drunken man it will make you drunk."⁹ [emphasis added]

15. "At that time, it was less thought of, since it was the universal custom, in all regiments of the militia, with which I had any acquaintance, for the officers, *on every muster day, to get gloriously drunk in their country's service.*"¹⁰ [emphasis added] The date is unclear but certainly before the publication date of 1832!

At that period, in the region where the conversation occurred, the officers were in the habit of distributing large quantities of rum to the soldiers. The soldiers, on their part, were in the habit of wasting much powder to honor the officers who treated them so liberally. The Colonel readily acceded to most of the opinions of the

⁹ William Cullen Bryant, 1 LIFE AND WORKS OF WILLIAM CULLEN BRYANT 16-17 (1883), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015064857710&seq=38>, last accessed August 15, 2025.

¹⁰ 3 NEW-ENGLAND MAGAZINE 111 (1832), https://www.google.com/books/edition/The_New_England_Magazine/NdwXAQAAIAAJ?hl=en&gbpv=1&dq=%22At%20that%20time%2C%20it%20was%20less%20thought%20of%2C%20since%20it%20was%20the%20universal%20custom%2C%20in%20all%20regiments%20of%20the%20militia%22&pg=PA111&printsec=frontcover, last accessed August 15, 2025..

Minister, but said he did not see how such a reform could be effected. In speaking of treating the soldiers with ardent spirits, and honoring officers by the discharge of muskets near their heads or their feet, he said he had thought his life in about as much danger on a muster day, as it would be in a field of battle; especially so after the soldiers had become inflamed by rum.¹¹ [emphasis added]

16. Americans had a drinking problem before 1840:

A brief survey of American alcohol consumption from the colonial period to the present will help us put the early nineteenth century in proper perspective. As Chart 1.1 shows, during the colonial period, the annual per capita consumption of hard liquor, mostly rum, reached 3.7 gallons.¹²

17. Chart 1.2 in Rorabaugh's shows that annual consumption of alcohol in *all* alcoholic beverages per capita in the colonial and Revolutionary era was at least twice the rate of consumption of 1970.¹³ While some visitors described a nation with many people who were drunk, others suggested that Americans were often intoxicated but sufficiently used to drinking that drunkenness was not the norm.¹⁴ This widespread drinking of alcohol was in part because alcoholic beverages were often the only safe way to drink water.

¹¹ Philo Pacificus [Noah Worcester], 4 FRIEND OF PEACE 379 (1827), https://www.google.com/books/edition/The_Friend_of_Peace/-fgvAAAAIAAJ?hl=en&gbpv=1&dq=At%20that%20period%2C%20in%20the%20region%20where%20the%20conversation%20occurred%2C%20the%20officers%20were%20in%20the%20habit%20of%20distributing%20large%20quantities%20of%20rum%20to%20the%20soldiers&pg=PA379&printsec=frontcover, last accessed August 15, 2025..

¹² W.J. Rorabaugh, THE ALCOHOLIC REPUBLIC: AN AMERICAN TRADITION 7-9 (1979), https://www.google.com/books/edition/The_Alcoholic_Republic/2AUH0vchHRIC?hl=en&gbpv=1&dq=%22A%20brief%20survey%20of%20American%20alcohol%20consumption%20from%20the%20colonial%20period%20to%20the%20present%20will%20help%20us%20put%20the%20early%20nineteenth%20century%20in%20proper%20perspective%22&pg=PA7&printsec=frontcover, last accessed August 15, 2025..

¹³ Id., at 9.

¹⁴ Id., at 6-7.

2) Regulation of Alcohol Sales

18. *Sale* of alcoholic beverages was certainly regulated although not in any manner comparable to current regulation of controlled substances.¹⁵ Connecticut limited the time a tavern could serve alcohol. A licensed tavernkeeper could not allow a customer “to continue there drinking and tippling above the space of one hour, at one and the same time...”¹⁶ Early Massachusetts laws regulated beer as to quality, requiring sale of “Strong Wholesome Beer, of four Bushels of Malt (at the least) to a Hogshead, which he shall sell not sell at above two pence the Ale quart...” Along with regulating quality and price, Massachusetts also directed that licensed tavern-keepers shall not “suffer any to be Drunk, or to Drink Excessively, viz., above half a pint of wine for one person at a time, or to continue tippling above the space of half an hour.”¹⁷

¹⁵ 1786 Mass. Acts ch. 49 at 138-139, https://www.google.com/books/edition/Acts_and_Laws_of_the_Commonwealth_of_Mas/n4AQAAAAIAAJ?hl=en&gbpv=1&dq=%E2%80%9Ctaverner%2C%20innholder%2C%20or%20retailer%20of%20any%20spirituous%20liquor.%E2%80%9D&pg=PA138&printsec=frontcover, last accessed August 15, 2025. (imposing license fees on any “taverner, innholder, or retailer of any spirituous liquor.”)

¹⁶ Samuel Whiting, CONNECTICUT TOWN OFFICER 201 (1814), https://www.google.com/books/edition/The_Connecticut_Town_officer/848SAAAAIAAJ?hl=en&gbpv=1&dq=to%20continue%20there%20drinking%20and%20tippling%20above%20the%20space%20of%20one%20hour%2C%20at%20one%20and%20the%20same%20time&pg=PA201&printsec=frontcover, last accessed August 15, 2025.

¹⁷ LAWS AND LIBERTIES OF MASSACHUSETTS 30 (1929), https://www.google.com/books/edition/The_Laws_and_Liberties_of_Massachusetts/6bYLAQAIAAJ?hl=en&gbpv=1&dq=General%20laws%20of%20massachusetts%20suffer%20any%20to%20be%20Drunk%2C%20or%20to%20Drink%20Excessively&pg=PA30&printsec=frontcover. last accessed August 23, 2025. See Gallus Thomann, LIQUOR LAWS OF THE UNITED STATES: THEIR SPIRIT AND EFFECT (1885), <https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t3tt4rz6d&seq=7>, last accessed August 15, 2025. for an overview of colonial alcohol regulation.

3) Possession While Intoxicated

a. Colonial & Framing Era

19. Laws regulating being armed while intoxicated were simply not there.

“Expert” supporters of restrictive gun laws have cited a variety of laws in other cases that do not say what they represent them to be. A 1679 Rhode Island statute decreed:

And bee it further enacted by the authority aforesaid, That any person or persons shall presume to sport, game or play at any manner of game or games, or shooting on the first day of the weeke as aforesaid, or shall sit tippling and drinking in any tavern, ale-house, ordinary or victualling house on the first day of the weeke, more than necessity requireth;¹⁸ [emphasis added]

20. This was a Sabbath-keeping law that prohibited sports of all sorts or drinking “more than necessity requireth” on Sundays. It did not prohibit being armed while drinking or drunk, or shooting while drinking or drunk.

21. A 1663 Massachusetts law tortured by advocates pretending to be historians:

Sect. 4. Be it also enacted by the authority of this court, that no masters of ships, or seamen, having their vessels riding within any of our harbours in this jurisdiction, shall presume to drink healths, or suffer any healths to be drunk within their vessels by day or night, or to shoot off any gun after the daylight is past, or on the sabbath day, on penalty for every health twenty shillings, and for every gun so shot twenty shillings.¹⁹ [emphases added]

¹⁸ RECORDS OF THE COLONY OF RHODE ISLAND, AND PROVIDENCE PLANTATIONS, IN NEW ENGLAND 3:31 (1858), https://www.google.com/books/edition/Records_of_the_Colony_of_Rhode_Island_an/ehxPAQAAMAAJ?hl=en&gbpv=1&dq=That%20any%20person%20or%20persons%20shall%20presume%20to%20sport%2C%20game%20or%20play%20at%20any%20manner%20of%20game%20or%20games&pg=PA31&printsec=frontcover, last accessed June 6, 2025.

¹⁹ CHARTER AND GENERAL LAWS OF THE COLONY AND PROVINCE OF MASSACHUSETTS BAY Ch. 91 at 140 (1814), https://www.google.com/books/edition/The_Colonial_Laws_of_Massachusetts/Vzno-EGGVcoC?hl=en&gbpv=1&dq=%22Be%20it%20also%20enacted%20by%20the%20authority%20of%20this%20court%2C%20%20that%20no%20masters%20%22&pg=PA140&printsec=frontcover, last accessed June 4, 2025.

22. This law banned *drinking healths*, not being drunk. A *separate* offense was shooting “after the daylight is past, or on the sabbath day...”

23. A complexity that demonstrates the need for a historian when evaluating the meaning of antique laws is that “drinking healths” was not a prohibition on drinking but something a bit more subtle in both its prohibition and intent:

When the tide had turned in the Civil War and Royalists began to see their cause crumble, the drinking of health turned political. A health to the King (or Queen) had long been one of the most common toasts, but to continue the practice at this point in history carried an utterly different meaning. In the 1640s and, '50s, toasting the monarch was a public declaration of partisanship; to many eyes it was seditious, even treasonous.²⁰

24. This 1663 law makes perfect sense. Massachusetts was a colony deeply committed to Puritanism, the loser in the English Civil War. They passed this law three years after the Restoration of the monarchy. It was not a restriction on intoxication but of Royalist rituals.

25. Complicating understanding this law, the term “gun” in this period often meant cannon, not small arms. As an example of a similar statute more clearly referring to cannon, Georgia in 1759 made it unlawful to fire “any great gun or shall arm in the town or harbour of Savannah after Sun Set without leave or permission. from the Governor.” The “shall arm” appears to be a typo for “small arm”; the

²⁰ Ruth Goodman, *HOW TO BEHAVE BADLY IN RENAISSANCE BRITAIN* 264 (2020).

marginal description is “person firing any great Guns or small arms...”²¹ Small arms were thus distinguished from a “great gun” or cannon.

26. A similar statute limiting such firing can be found in Pennsylvania, and again it seems limited to cannon: “And that no master or commander of any merchant ship or vessel shall fire, or suffer to be fired, on board his vessel, any ordnance or other gun after eight o'clock in the evening, nor before daylight in the morning....”²² That these laws are specific to ships supports this reading of “guns” as cannon.

4) Later Laws Before the 14th Amendment

27. I have seen only *one* law limiting possession of a firearm *while* intoxicated adopted before the 14th Amendment:

Any person who is not engaged in any legitimate business, any person under the influence of intoxicating drink, and any person who has ever borne arms against the government of the United States, who shall be found within the limits of this state, carrying on his person a pistol, bowie-knife, dirk or other deadly weapon, shall be subject to arrest upon the charge of misdemeanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, at the discretion of the court.²³
[emphasis added]

²¹ Chandler, 18 THE STATE RECORDS OF THE COLONY OF GEORGIA 294-5 (1910), https://www.google.com/books/edition/Statutes_Enacted_by_the_Royal_Legislatur/VjQTAAAYAAJ?hl=en&gbpv=1&dq=%22%E2%80%99Cany%20great%20gun%20or%20shall%20arm%20in%20the%20town%20or%20harbour%22&pg=PA294&printsec=frontcover, last accessed June 4, 2025.

²² Mitchell and Flanders, 2 STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801 420 (1896), https://www.google.com/books/edition/The_Statutes_at_Large_of_Pennsylvania/fr/OoA0AQAAMAAJ?hl=en&gbpv=1&dq=%22that%20no%20master%20or%20commander%20of%20any%20merchant%20ship%20or%20vessel%20shall%20fire%20C%20or%20suffer%20to%20be%20fired%22&pg=PA420&printsec=frontcover, last accessed June 4, 2025.

²³ GENERAL STATUTES OF THE STATE OF KANSAS, § 282 at 378 (1868), <https://babel.hathitrust.org/cgi/pt?id=iau.31858018293658&seq=396&q1=intoxicating>, last accessed August 15, 2025.

B. Marijuana

The hemp plant was cultivated in the United States for centuries, apparently without general knowledge of its intoxicating properties (Grinspoon, 1971: 10). Cannabis was an often used medicine in the United States in the 19th century. It was easily available without a prescription and was also widely prescribed by physicians (Snyder, 1970: 26). Hemp was used by the pioneers to cover their wagons. The plant was a major crop in Kentucky, Virginia, Wisconsin and Indiana, and was one of the more important southern agricultural products, after cotton.

It is still used to make rope, twine and textiles, while the seed is used as bird food (Geller and Boas, 1969: 16). Marihuana use as an intoxicant in the United States began slowly in the early part of this century. Puerto Rican soldiers, and then Americans who were stationed in the Panama Canal Zone, are reported to have been using it by 1916. American soldiers fighting Pancho Villa circa 1916 also learned to use it. This follows the first reported use in Mexico in the 1880's (Blum and Associates, 1969, I:69-70). Intoxicant use in the United States is also traced to the large influx of Mexican laborers in the 1910's and 1920's (Geller and Boas, 1969: 14).²⁴ [emphasis added]

28. Federal law first prohibited marijuana in 1937.²⁵ Two states, Utah and California, adopted marijuana prohibitions starting in 1915.²⁶ This is well after the 1868 incorporation of the Second Amendment through the Fourteenth Amendment. Marijuana appears in ads as a medicine and promoted in general as a cure-all before 1868.²⁷

²⁴ National Commission on Marihuana and Drug Abuse, 1 MARIHUANA, SIGNAL OF MISUNDERSTANDING: APPENDIX TO THE TECHNICAL PAPERS OF THE FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE 12 (Mar. 1972), https://www.google.com/books/edition/Marihuana_Signal_of_Misunderstanding/ChtIAQAAMAAJ?hl=en&gbpv=1&dq=%22MARIHUANA%2C%20SIGNAL%20OF%20MISUNDERSTANDING%22&pg=PA12&printsec=frontcover, last accessed August 15, 2025.

²⁵ Id., at 8, https://www.google.com/books/edition/Marihuana_Signal_of_Misunderstanding/ChtIAQAAMAAJ?hl=en&gbpv=1&dq=federal&pg=PA8&printsec=frontcover, last accessed August 23, 2025.

²⁶ R J Bonnie and C H Whitebread, MARIHUANA CONVICTION - A HISTORY OF MARIHUANA PROHIBITION IN THE UNITED STATES (abstract) (1974), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/marihuana-conviction-history-marihuana-prohibition-united-states>, last accessed August 15, 2025..

²⁷ A few examples: Dr. R.H. James' *Cannabis Indica*, *Baltimore Sun*, Mar. 2, 1861, 2, <https://www.newspapers.com/image/372497767/?match=1&terms=cannabis>, last accessed August 16, 2025; "*Cannabis Indica*," or "*East India Hemp?*" *A Poem*, *Hartford Courant*, Jun. 1, 1858, 2, <https://www.newspapers.com/image/369035651/?match=1&terms=cannabis>, last accessed August 16, 2025; *Hasheesh* in

C. Opiates and Cocaine

29. Other drugs brought under the controlled substances regulatory process include opiates and cocaine; both came under federal regulation with the Harrison Narcotics Act (1914).²⁸ Before this date, laudanum, a tincture of opium, was widely used to treat medical conditions. Some of these treatments, such as for cholera, seem medically questionable today but were not unlawful. References to laudanum's use appear repeatedly in newspapers before 1868.²⁹ Some are suicides;³⁰ others were for medically necessary uses;³¹ sometimes to treat cholera. All of these assume that it was available for purchase.³²

III. Summary

A. Regulation of Controlled Substances

30. Certainly, the laws with respect to alcohol were not totally *laissez-faire*, but neither were they anywhere close to the severity of modern laws regulating controlled substances. There are no colonial equivalents to these modern laws. The

Hydrophobia, New-York Tribune, May 30, 1855, 7, <https://www.newspapers.com/image/74256871/?match=1&terms=cannabis>, last accessed August 16, 2025.

²⁸ Gerald J McKenna, *The Current Status of Medical Marijuana in the United States*, HAWAII JOURNAL OF MEDICINE AND PUBLIC HEALTH. 105–108 (Apr. 2014).

²⁹ Newspapers.com, <https://www.newspapers.com/search/results/?date-end=1913&date-start=1690&keyword=laudanum>, last accessed August 16, 2025.

³⁰ *Drank Laudanum*, Buffalo Courier, Apr. 23, 1907, 1, <https://www.newspapers.com/image/370281996/?article=051316b2-2c1c-4c4e-85fb-370bc0f3451a&terms=laudanum>, last accessed August 16, 2025; *Dies of Laudanum*, San Francisco Examiner, Jan. 24, 1910, 1, <https://www.newspapers.com/image/458136912/?article=6316dd3b-3459-41d0-b546-173d960b1810&terms=laudanum>, last accessed August 16, 2025.

³¹ *Laudanum Caused His Death*, Green Bay Press-Gazette, Oct. 26, 1899, 1, <https://www.newspapers.com/image/187346475/?article=675eb048-44a1-4a74-ae37-5921f975afef&terms=laudanum>, last accessed August 16, 2025; *Whiskey and laudanum*, Vincennes Sun-Commercial, Jun. 26, 1883, 1, <https://www.newspapers.com/image/1054171133/?article=c6015434-d8b3-47c4-85d2-87e2a5745678&terms=laudanum>, last accessed August 16, 2025; *Mrs. Gillette Wanted Drug For Cook's Rheumatism*, Tampa Tribune, Nov. 30, 1907, 1, <https://www.newspapers.com/image/325528650/?match=1&terms=laudanum>, last accessed August 16, 2025.

³² *Treatment of Cholera*, VANDALIA WHIG AND ILLINOIS INTELLIGENCER, Nov. 21, 1832, 2-3, <https://www.newspapers.com/image/903565662/?terms=Treatment%20of%20Cholera>, last accessed August 16, 2025..

other controlled substances of today were not regulated at all back then. To claim that modern laws regulating such sales have any equivalent in the period before 1791 is false.

B. Regulation of Arms Possession *While* Intoxicated

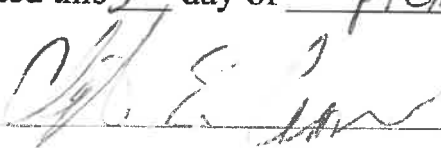
No laws regulated *possession* of arms while intoxicated. At most, one Kansas law regulated *carrying* of arms while intoxicated. No laws regulated possession of arms by people who had been intoxicated in the past, even if such intoxication was known to be regular or incapacitating.

6. Conclusion

It is my professional opinion, based on the foregoing research and analysis, that the American historical tradition of firearms regulation does **not** include categorical, status-based disarmament of individuals on the basis of intoxicant use. Rather, the tradition reflects **narrow, situational** constraints tied to **dangerous conduct** and **individualized findings**, not broad status prohibitions like 18 U.S.C. § 922(g)(3).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 30 day of September, 2025, at Caldwell, Idaho.



Clayton E. Cramer

Exhibit A: Curriculum Vitae of Clayton E. Cramer (attached and incorporated by reference)

Clayton E. Cramer

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EDUCATION:

June, 1998	Sonoma State University, Rohnert Park, California M.A. in History <i>Master's Thesis: "Concealed Weapon Laws of the Early Republic"</i>
June, 1994	B.A. in History <i>Honors: cum laude and With Distinction</i>

AWARDS:

1993	Association for Education in Journalism and Mass Communication Ethics Prize First Place, Undergraduate Division
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TEACHING EXPERIENCE:

Fall, 2017 – present	<i>Adjunct Faculty:</i> College of Western Idaho, Nampa, teaching Western Civilization I, U.S. History I.
Fall, 2014 – Spring, 2017	Recovering from stroke
Spring, 2010 – Spring, 2014	<i>Adjunct Faculty:</i> College of Western Idaho, Nampa, teaching Western Civilization I, U.S. History I.
Fall, 2009 – Summer 2010	<i>Adjunct Faculty:</i> ITT Technical Institute, Boise, teaching State and Local Government and Introduction to Computers.
Fall, 2003	<i>Adjunct Faculty:</i> Boise State University, teaching U.S. Constitutional History and at George Fox University (Boise Center), teaching America and the World.

1996 **Teaching Assistant:** Assisted Professor Peter Mellini in his course “Twentieth Century World.” I graded quizzes, exams, and answered weekly written questions from students. I also prepared and lectured about the rise of totalitarianism in the period between the world wars.

BOOKS:

Lock, Stock, and Barrel: The Origins of America Gun Culture
Praeger Press, 2018

Social Conservatism in An Age of Revolution: Legislating Christian Morality in Revolutionary America
CreateSpace, 2016

Historical Evidence Concerning Climate Change: Archaeological and Historical Evidence That Man Is Not the Cause
CreateSpace, 2016

My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill
CreateSpace, 2012

Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie
Nelson Current, 2006

Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform
Praeger Press, 1999

Black Demographic Data, 1790-1860: A Sourcebook
Greenwood Press, 1997

Firing Back: Defending Your Right to Keep and Bear Arms
Krause Publishing, 1995

For The Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms
Praeger Press, 1994

By The Dim and Flaring Lamps: The Civil War Diary of Samuel McIlvaine, editor
Library Research Associates, Inc., 1990

SELECTED PUBLICATIONS:

“Bellesiles’ Arming America Redux: Does the Gunning of America Rewrite American History to Suit Modern Sensibilities?” *Southern Illinois University Law Journal* Spring 2017 Forthcoming

“Assault Weapon Bans: Can They Survive Rational Basis Scrutiny?” *University of Akron ConLawNow* 8:1, article 1.

Co-authored with David B. Kopel and Joseph Olson, "Knives and the Second Amendment," *University of Michigan Journal of Legal Reform*, 47:1 167-215 (2013).

“Mental Illness and the Second Amendment,” 46 *Conn. Law Review* 4:1301 (2014).

Co-authored with David B. Kopel, “State Court Standards of Review for the Right to Keep and Bear Arms,” 50 *Santa Clara Law Review* 101-208 (2010).

Co-authored with David B. Kopel, "The Keystone of the Second Amendment: Quakers, the Pennsylvania Constitution, and the Questionable Scholarship of Nathan Kozuskanich," 19 *Widener Law Journal* 277-320 (2010).

Co-authored with Nicholas J. Johnson and George A. Mocsary, “This Right is Not Allowed by Governments that are Afraid of the People’: The Public Meaning of the Second Amendment When the Fourteenth Amendment was Ratified,” 17 *George Mason Law Review* 3:823-862 (2010).

Co-authored with Don B. Kates, “Second Amendment Limitations and Criminological Considerations,” 61 *Hastings Law Journal* 1339-1370 (2009).

Co-authored with Joseph Edward Olson, “Gun Control: Political Fears Trump Crime Control,” *Maine Law Review*, 61:1 [2009] 57-81

Co-authored with Joseph Edward Olson, "What Did "Bear Arms" Mean in the Second Amendment?" *Georgetown Journal of Law & Public Policy*, 6:2 [2008]

Co-authored with Joseph Edward Olson, "Pistols, Crime, and Public Safety in Early America." *Willamette Law Review*, 44, [2008]

“Why Footnotes Matter: Checking *Arming America's* Claims.” *Plagiary* 2006 1 (11): 1-31 [29 September 2006]

“Michael Bellesiles and Guns in the Early Republic.” *Ideas on Liberty* 52:9 [September, 2002] 17-22.

“The Peaceable Kingdom?” *Books & Culture: A Christian Review*, July/August 2002, 29.

“Confiscating Guns From America’s Past.” *Ideas on Liberty* 51:1 [January, 2001] 23-27.

“Disarming Errors.” *National Review*, October 9, 2000, 54-55.

“An American Coup d'Etat?” *History Today* [November, 1995].

“A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts.” *Temple Law Review* 68:3 [Fall, 1995] 1178-1241. Co-authored with David Kopel and Scott Hatstrup.

“‘Shall Issue’: The New Wave of Concealed Handgun Permit Laws.” *Tennessee Law Review* 62:3 [Spring, 1995] 679-757.

“The Racist Roots of Gun Control.” *Kansas Journal of Law & Public Policy* 4:2 [Winter, 1995] 17-25.

“Ethical Problems of Mass Murder Coverage in the Mass Media.” *Journal of Mass Media Ethics* 9:1 [Winter, 1993-94] 26-42.

A comprehensive list of popular magazine articles would run to many pages; for a complete list see <http://www.claytoncramer.com/popular/popularmagazines.htm>.

CONFERENCES & EXPERT TESTIMONY:

Ohio State Senate Judiciary Committee, March 22, 1995.

Michigan House of Representatives Judiciary Committee, December 5, 1995

American Society of Criminology, San Diego, Cal., November, 1997. “Fear And Loathing In Whitehall: Bolshevism And The Firearms Act Of 1920.”

American Society of Criminology, Chicago, Ill., November, 2002. “The Duty to be Armed in Colonial America.”

Assisted in research and writing of Respondent's Brief and Academics for the Second Amendment and Claremont Institute amicus briefs for *D.C. v. Heller* (2008).

Panelist on "Up in Arms: The Second Amendment in the Modern Republic" University of Connecticut School of Law, November 15, 2013.

Expert declarations or testimony in

- *Association Of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin* (D.N.J. 2023);
- *Arizona v. Bolin* (Ariz.Sup. 2023);
- *Arizona v. Coleman* (Ariz.Sup. 2023);
- *Baird v. Bonta* (E.D.Cal. 2023);
- *Boland v. Bonta* (C.D.Cal. 2023);
- *Brumbeck v. Ferguson* (E.D.Wash. 2024);
- *Gates v. Polis* (D.Colo. 2023);
- *City of Columbus v. Ohio* (O.Ct.Com.Pleas 2023);
- *California Rifle & Pistol Association, Inc. v. Los Angeles County Sheriff's Department* (C.D.Cal. 2024);
- *Delaware State Sportsmen's Association, Inc. v. Delaware Department Of Safety And Homeland Security* (D.Del. 2023);
- *Georgia v. Nichols* (Ga.Sup. 2023);
- *National Association For Gun Rights v. Lopez* (D.Haw. 2023);
- *Wolford v. Lopez* (D.Haw. 2023);
- *National Association For Gun Rights v. City of Highland Park* (E.D.Ill. 2023);
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- *National Association For Gun Rights v. City Of Naperville* (E.D.Ill. 2023);
- *State of Ohio v. City of Columbus* (Ct.Com.Pleas 2023);
- *Oregon Firearms Federation v. Kotek* (D.Ore. 2023);
- *Palmer v. Dept. of Environmental Management* (R.I.Sup. 2023);
- *Rhode Island v. Ortiz* (R.I.Sup. 2023);
- *Rhode v. Bonta* (S.D.Cal. 2024);
- *Rocky Mountain Gun Owners v. Polis* (D.Colo. 2023);
- *Rupp v. Bonta* (C.D.Cal. 2022);
- *Siegel v. Platkin* (D.N.J. 2023);
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- *U.S. v. Fowler* (E.D.Va. 2023);
- *U.S. v. Bailey* (E.D.Tenn. 2023);
- *U.S.A. v. Kazmende* (N.D.Ga. 2023).

WORKS CITED IN COURT DECISIONS:

United States of America v. Heriberto Carbajal-Flores, No. 24-1534 (7th Cir. 2025) citing Clayton E. Cramer, Colonial Firearm Regulation, 16 J. ON FIREARMS & PUB. POL'Y 1, 21 (2004)

“‘Shall Issue’: The New Wave of Concealed Handgun Permit Laws,” cited in *Pagel v. Franscell*, 57 P.3d 1226, 1234 (Wyo. 2002); *Moody v. ARC of Howard County, Inc.*, Civil No. JKB-09-3228 (D.Md. 2011).

“‘This Right is Not Allowed by Governments that are Afraid of the People’,” cited in *McDonald v. Chicago* (2010); *Ezell v. City of Chicago* (7th Cir. 2011).

“Second Amendment Limitations and Criminological Considerations” cited in *U.S. v. Yancey*, 09-1138 (7th Cir. 2010); *U.S. v. Chester*, 628 F.3d 673 (4th Cir. 2010); *U.S. v. Skoien*, 587 F.3d 803 (7th Cir. 2009).

“What Did ‘Bear Arms’ Mean in the Second Amendment?”, cited in *D.C. v. Heller* (2008). In addition, significant parts of Justice Scalia’s opinion are derived from amicus briefs that I helped to research and write.

For the Defense of Themselves and the State, cited in *Mosby v. Devine*, 851 A.2d 1031, 1052 (RI 2004) (Flanders, J., dissenting); *U.S. v. Emerson*, 46 F.Supp.2d 598 (N.D.Texas 1999); *State v. Sieyes* 225 P. 3d 995 (Wash. 2010).

“A Tale of Three Cities,” cited in *State v. Mendoza*, 920 P.2d 357, 360 n. 4 (Hawaii 1996).

Concealed Weapon Laws of the Early Republic, cited in *Senna v. Florimont*, 958 A.2d 427, 433 (N.J. 2008).

“Mental Illness and the Second Amendment,” cited in *In Rec EC* (N.J.App. 2015).

A comprehensive and up to date list can be found at <http://claytoncramer.com/scholarly/journals.htm#citations>.

LANGUAGES:

Very basic reading competence in German.

OTHER SKILLS:

I have 35 years of experience as a computer software engineer, including embedded telecommunications equipment development, web page creation and maintenance. I also have an unusually detailed knowledge of the physical sciences (for an historian), a deep interest in the history of science and technology, and how both influence society.