No. 18-280

In the Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., *et al.*,
Petitioners,

v.

CITY OF NEW YORK, NEW YORK, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF LOUISIANA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, INDIANA, KANSAS, THE COMMONWEALTH OF KENTUCKY BY AND THROUGH GOVERNOR MATT BEVIN, GOVERNOR PHIL BRYANT OF THE STATE OF MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the City's ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause, and the constitutional right to travel.

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INTEREST OF *AMICI CURIAE*

As chief legal and executive officers of our states, *amici* protect the rights of our citizens, enforce laws, provide opinions on state and local legal matters, and offer guidance to our legislatures. *Amici* have an interest in providing accurate legal advice to state and local officers in our states as well as protecting our citizens and commerce. It is important to *amici* to be able to provide clear and accurate guidance. *Amici also* have a profound interest in protecting the fundamental constitutional rights of our citizens. The Second and Fourteenth Amendments create a right that "is exercised individually and belongs to all Americans." *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). This is a fundamental guarantee afforded by the federal Constitution. But in the gap created by the Court's silence over the past ten years, a patchwork of conflicting opinions and burdensome local ordinances and state regulatory schemes continue to choke meaningful protection of the right. *Amici* support and advocate for our states' right to experiment with different policy choices, but "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller,* 554 U.S. at 636.

New York City's ordinance is a triple threat to constitutional rights. In addition to infringing upon the rights of the citizens of New York City, when municipalities like New York City are allowed to criminalize traveling with a personal handgun safely stored inside a vehicle, they threaten the rights of all citizens to travel throughout the United States without being subject to arrest and prosecution. By forbidding its citizens to leave the state with their firearms, New York City's regulations — blessed by the Second Circuit—threaten not only the Second Amendment right but also free trade under the Commerce Clause. Wildlife tourism, which includes hunting, practicing, and competitive shooting, is a multibillion-dollar industry in the United States. If New York's regulatory scheme is allowed to stand and is copied by cities around the United States, it would undercut the ability of individuals to travel with their individual rights intact and also threaten state economies dependent upon tourism dollars.

SUMMARY OF ARGUMENT

New York City requires its citizens to possess a license to own a gun, and the only license available to most New York City residents is a "premises permit." With few exceptions, this permit severely restricts people from carrying their handgun outside of their home. Pet'r's App. 88-90. This Court has recognized that the "right to keep and bear arms" is a fundamental right, a core purpose of which is self-defense. It has also recognized that, at the time of the founding of the country, a gun was also used for providing sustenance for self and family, as well as recreation. Several circuit

courts have held that self-defense "is as important outside the home as inside." *See e.g., Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012). *Amici* agree. But the Second Circuit determined that a rule only implicates the core of the Second Amendment's protections when it extends into the home.

Although this Court has not explicitly stated what level of scrutiny should be applied to an alleged infringement of the "right to keep and bear arms," it has made clear that it is not "rational basis." The Second Circuit claimed to apply "some form of heightened scrutiny" when evaluating New York City Rule § 5-23, but it really did no such thing. It opted, instead, for a tortured test that resembles but is not quite rational basis scrutiny—requiring little evidence from the city of a substantial interest and no evidence of how the regulation relates to that interest. This cursory analysis renders the term "heightened scrutiny" virtually meaningless.

When a municipality restricts its citizens' Second and Fourteenth Amendment fundamental rights, it should be based on the Constitution's text and on history and tradition. If the Court is to apply tiers of scrutiny, such scrutiny should be heightened. Each element of New York City's rule should have been subjected to this heightened scrutiny. New York City could not possibly meet such scrutiny here.

New York's regulatory scheme discriminates against interstate commerce because it "deprives out-of-state businesses of access to a local market" by forbidding its citizens from hunting and patronizing ranges outside the state with their own guns. *C & A Carbone v. Town of Clarkstown*, 511 U.S. 383, 409 (1994). "[I]f not one but many or every State adopted similar legislation," *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989), the result could gut the right and significantly impact states whose economies depend on hunting and associated tourism involving the use of personal handguns.

Furthermore, taken together with New York State's restrictive gun possession laws, the New York City ordinance restricts individuals in New York and throughout the United States from traveling with their rights intact. It is impossible to get to six states by public roadways without passing through New York. Thus, citizens on either side of New York cannot travel to the other states while possessing a firearm — whether for self-defense, to hunt or to use recreationally, and even if its unloaded and locked away — without running the risk of arrest and prosecution for illegal possession of the gun. Should restrictions such as those in New York be upheld, and adopted in other jurisdictions, protected and safe interstate travel is in jeopardy.

ARGUMENT

I. NEW YORK CITY'S REGULATION VIOLATES THE INHERENT RIGHT TO KEEP AND BEAR ARMS FOR PRESERVATION OF SELF, FAMILY, AND COMMUNITY.

A. The Second and Fourteenth Amendments Protect the Right to Use a Firearm in Defense of Self and Family.

This Court's opinions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) leave no doubt that every American possesses an individual right to possess a gun for the purposes of defending himself, his family, and his property pursuant to the Second Amendment and the Due Process Clause of the Fourteenth Amendment. This "natural right of resistance and self-preservation," 1 Sir William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 144 (1753), has been described as the "first law of nature" and "the true palladium of liberty." St. George Tucker, VIEW OF THE CONSTITUTION OF THE UNITED STATES WITH SELECTED WRITINGS 238 (Clyde N. Wilson ed. 1999). Americans have long understood this right of self-preservation as permitting a citizen to "repe[l] force by force" when "the intervention of society in his behalf, may be too late to prevent an injury." *Id.* at 145–146, n. 42 (1803).[1] Undoubtedly it also included the ability to

[1] Other than occasional "night watchmen," most major American cities did not have any form of formalized police force until the 1880s. Gary Potter, *The History of Policing in the United States, Part I*, E. Kentucky University, Police Studies Online, https://tinyurl.com/y9t9553v.

use a firearm to provide sustenance and an economic livelihood for the family. *See Heller,* 554 U.S. at 599.

The right to use a firearm in defense of one's self and family remains an important valued right today. Violent crime remains a serious societal concern.[2] In 2017 alone, an estimated 1,247,321 violent crimes occurred nationwide. U.S. Department of Justice, F.B.I., *Crime in the United States, 2017* (2018), https://tinyurl.com/y9ftjkn8. And, although the rate has decreased over the past few years, "when considering 5- and 10-year trends, the 2017 estimated violent crime total was 6.8 percent above the 2013 level." *Id*.

Perhaps because of this, "[d]efensive use of guns by crime victims is a common occurrence … with estimates of annual uses ranging from about 500,000 to more than 3 million per year." Center for Disease Control, *Priorities for Research to Reduce the Threat of Firearm-Related Violence*, Washington, DC: The National Academies Press, 15 (2013) (hereinafter "CDC Report"), https://tinyurl.com/ y54xmeem. Furthermore, studies have "found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies." *Id*. at 16.

Americans also continue to value hunting as a self-reliant and meaningful means of providing sustenance and a livelihood for their families. Use of firearms for hunting is robust. According to the most recent federal data from 2016, 11.5 million people, 5% of the U.S. population 16 years old and older, went hunting. *See*

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[2] *See* F.B.I., *Preliminary Semiannual Uniform Crime Report*, January–June, 2018 (February 2019), https://tinyurl.com/yydchla7.

U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau, *2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* 24 (October 2018) (hereinafter Hunting Survey) https://tinyurl.com/y4jdzjmz. In fact, according to the National Conference of State Legislatures, twenty-one states guarantee the right to hunt and fish in their constitutions with two more states recognizing the right in their statutes.[3] If there is any doubt that Americans throughout the United States continue to need firearms, including handguns,[4] to provide food or income to their families, the proliferation of television shows covering various forms of hunting should quickly dash that doubt. In fact, there is a complete television

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[3] See National Center for State Legislatures, *State Constitutional Right to Hunt and Fish* (April 2017) https://tinyurl.com/nt59eku ("While Vermont's language dates back to 1777, the rest of these constitutional provisions—in Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Wisconsin and Wyoming—have passed since 1996. Florida and New Hampshire statutorily recognize the right to hunt and fish.".

[4] Although the first weapon that comes to mind when one thinks of hunting may be a rifle, handguns have been used for hunting since medieval times. Tom McIntyre, *Field and Stream Picks the Twenty-five Best Handguns for Hunters*, Field and Stream Magazine (June 15, 2010) https://tinyurl.com/y2vfglvt. Although the use of handguns declined as improvements to the rifle, cartridges, and scopes were made, there was a resurgence in the use of handguns in the mid-twentieth century. *Id*. Handguns are even recommended for use alongside rifles while hunting – for defense from large animals. *Id*. (*see, e.g.,* the discussion of *The Taurus Model 444*).

channel that broadcasts nothing but such shows. *See* The Hunt Channel, https://tinyurl.com/y6mmpecc, listing 160 such shows.

This inherent natural right to use a firearm for the dual purposes of defending and providing sustenance for self and family is one historically protected against federal infringement by the Second Amendment, one historically protected against state infringement by the constitutions of most of the colonies and states, and one that is guaranteed today as a fundamental right protected by the Fourteenth Amendment.

B. Self-Preservation Includes the Right to Protect One's Self and Family Outside of One's Home.

The inherent right to possess and carry a firearm, though, has never been limited to the home. Although the explicit holdings in *Heller* and *McDonald* spoke only of the home, the state statutes at issue in those cases had only restricted the use of firearms in the home. The logic and language of *Heller,* however, extend to carriage outside of the home. *See Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *Palmer v. D.C.*, 59 F. Supp. 3d 173 (D.D.C. 2014) (noting that recent Supreme Court decisions mandated such a finding). As noted in both opinions, the natural right to carry a firearm included numerous uses outside of the home. The state court decisions cited in *Heller* and *McDonald* included the right to open carry outside of the home. And even historical restrictions on gun possession infer the right to carry outside of the home.

Additionally, according to *Heller*, the scope of the Second Amendment is determined by its plain language and historical origins. *Heller*, 554 U.S. at 595. Nothing in the text of the Second Amendment restricts the right to carry a firearm exclusively to the home. Although at the time of the founding the word "keep" may have meant possessing firearms in one's home, as Justice Scalia pointed out in *Heller*, to "bear" meant to "carry." *Id*. at 584. Indeed, as Justice Ginsburg has observed, the "most familiar meaning [of the term] indicate[s]: 'wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.'" *Muscarello v. United States,* 524 U.S. 125, 143 (1998) (dissenting opinion) (quoting Black's Law Dictionary 214 (6th ed.1990). Nothing about that definition conjures up an image of a person walking around exclusively inside their home with a gun in their pocket – although they certainly should have the right to do so if they wished.

Limiting citizens only to "keeping and bearing arms" in their home is both inconsistent with history and unreasonable. Carrying arms outside of the home, historically, was a vital component of self-defense. Notarangelo, *Carrying the Second Amendment Outside of the Home: A Critique of the Third Circuit's Decision in* Drake v. Filko, 64 Cath. U.L. Rev. 235, 241 (2014). Use of guns for hunting and sport was also commonly accepted by the Founders. Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 228-229 (1983). Both Washington and Jefferson maintained large collections of firearms and Jefferson once advised his nephew, "As

to the species of exercises, I advise the gun. While this gives a moderate exercise to the Body, it gives boldness, enterprise and independence to the mind. … Let your gun therefore be the constant companion of your walks." *Id.* at 229, citing THE JEFFERSONIAN CYCLOPEDIA 318 (Foley ed., reissued 1967). Another nephew tells us that Jefferson believed every boy should be given a gun at the age of ten, as Jefferson had been. T. Jefferson Randolph, NOTES ON THE LIFE OF THOMAS JEFFERSON (Edgehill Randolph Collection 1879).

The Founders would be shocked by government restrictions on law-abiding citizens that exist today. The New York City premises permit possessed by Petitioners allows them to transport their guns outside of their home only for the limited purpose of practice, and then only *within* New York City, unloaded, in a locked container, and with the ammunition carried separately. *See* 38 R.C.N.Y. § 5-03. New York City completely bans carrying handguns openly, *see Kachalsky v. City of Westchester*, 701 F.3d 81, 86 (2d Cir. 2012), and strictly controls who may obtain a concealed carry permit. To have a concealed carry permit, one must show a need for self-defense greater than the average person's need. *Id.* at 86–87. These restrictions gut Second Amendment rights in the City.[5]

[5] New York State courts have interpreted many of the restrictions in New York City to apply throughout the state. Because these severely limiting laws apply not only to New York City, numerous other counties throughout New York state passed resolutions resolving to adopt the arguments made by *amici See, e.g.*, Resolution No. 109-2019 adopted by St. Lawrence County on April 1, 2019, attached as App. A. Other counties have adopted

The Second Circuit speculated that Petitioners could have obtained a "carry permit," but did not further explain that New York City has special requirements to obtain such a permit that exceed New York state law. Pet'r's App. 13-14 n. 7; *see* 38 R.C.N.Y. § 5-03; N. Y. Penal Law § 400.00(2). An applicant must prove she has "proper cause" for the permit. A "generalized desire to carry a concealed weapon to protect one's person and property does not constitute 'proper cause.'" *Kachalsky*, 701 F.3d at 86 (cleaned up). Proper cause has been defined under the local law and New York law to include only exposure by reason of employment to "extraordinary personal danger" or "documented by proof of recurrent threats to life or safety." *Id.* This power of the licensing authority to issue a pistol license has been held not only to be the power to determine "proper cause" but also to restrict the use of the license and the ability to travel with the license solely to the purposes that justified its issuance. *See Matter of O'Brien v. Keegan*, 87 N.Y. 2d 436 (1996); *Matter of O'Connor v. Scarpino*, 83 N.Y. 2d 919 (1994).

These restrictions do more than burden a fundament right – they render its exercise entirely inaccessible for many historically meaningful purposes that are quite relevant today. The primary need for self-defense, unquestionably protected by the Second and Fourteenth Amendments, is typically not in the

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similar resolutions. *See*, *e.g.* Cortland County Resolution No. 132-19 (March 28, 2019), Lewis County Resolution No. 93-2019 (April 2, 2019), Schoharie County Resolution No. 43 (April 19, 2019), Schuyler County Resolution No. 108 (April 8, 2019), and Montgomery County Resolution No. 110 (April 23, 2019). Certified copies are on file with undersigned.

home but outside of the home. The U.S. Office of Justice reports that 17 – 22% of violent crime occurs in the home which means that 78 – 83% occurs *outside*. U.S. Office of Justice, Bureau of Justice Statistics, *Crime Type, Location* (2004-2008) https://tinyurl.com/y5od63s2. According to the report, 18% occurs in open areas, 16% occurs near but outside the home, 12% occurs at commercial places, 13% at schools, 9% at friends, neighbors, or relatives' homes, and 7% in parking lots/garages. *Id.* And, although we don't know what percentage of violent crimes happen in or near a vehicle, statistics show startling increases in carjackings in the last few years. Carjackings are up 86% in Memphis, 224% in Baltimore, 42% in Chicago, and 12% in Houston, and parts of Detroit have come to be known as "Carjack City."[6] Ninety percent of these carjackings involved the use of weapons.[7] Although the primary recommendation by safety experts is to turn

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[6] *See* Siobhan Riley, *FOX13 Investigates: Drastic Rise in Carjackings across Memphis* (Oct 30, 2018), https://tinyurl.com/y4xww229; Justin George, *Carjacking Becoming a Youth 'Sport' as Numbers Climb*, The Baltimore Sun (Feb. 11, 2017), https://tinyurl.com/y53ozfsk; Jeremy Garner, *Carjackings Skyrocket in Chicago in 2017 — to Highest Level in at Least 10 Years*, Chicago Tribune (December 29, 2017), https://tinyurl.com/y3l3p36k; *Percentage of Houston Carjackings Up: 528 Reported Since January, 2013,* Click2Houston, (August 01, 2013), https://tinyurl.com/ y22p748y; Corey Williams, Associated Press, *CARJACK CITY: Detroit Criminals Are Targeting Gas Stations*, Business Insider (May 23, 2014), https://tinyurl.com/yyld2bxy (Detroit police reported 720 carjackings in the city of fewer than 700,000 people.).

[7] Lew Rockwell, *How to Survive (and Prevent) a Carjacking* (April 5, 2019), https://tinyurl.com/y3m7m9e4.

over your vehicle, it is also recommended that you carry a gun.[8]

C. New York Cannot Justify This Severe Restriction.

The Court's cases interpreting the Second Amendment, do not call for the application of tiers of scrutiny *at all*. To the contrary, some members of the Court have expressed the view that "*Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny." *Heller v. District of Columbia*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J., dissenting); *see also Silvester v. Becerra*, 138 S. Ct. 945, 947 (2018) (Thomas, J., dissenting from denial of certiorari).

But if the Court is to apply tiers of scrutiny, it must involve some form of heightened scrutiny. Certainly, as this Court has clearly said, rational basis review cannot be the level of scrutiny "used to evaluate the extent to which a legislature may regulate a specific, enumerated right," such as the right to "keep and bear arms." *Heller*, 554 U.S. at 628 n. 27.

In this case, the Second Circuit, while claiming to apply intermediate scrutiny, actually applied a watered-down test more resembling rational basis scrutiny. It rubber-stamped New York City's restriction based upon a single affidavit suggesting that "premises

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[8] Eric S., *Lifesaving Tips to Prevent a Carjacking and Not Become a Victim*, Imminent Threat Solutions (Mar 19, 2014), https://tinyurl.com/y4tlu4ts.

license holders 'are just as susceptible as anyone else to stressful situations,' including driving situations that can lead to road rage, 'crowd situations, demonstrations, family disputes,' and other situations." Pet'r's App. 26. This purported reasoning is not only faulty but also misses the point. New York's other unduly restrictive ordinances cannot justify this one if they suffer the same defects.

The affidavit also suggested, without evidence, that the City, "in the past, had difficulty monitoring and enforcing the limits of the premises licenses." *Id*. at 27. Again, it misses the point. New York City's difficulty in enforcing its unduly restrictive limits do not justify adding more challenging restrictions to those it acknowledges it cannot monitor and enforce now. If no more than this illogical and faulty rationale is required to prop up a law restricting a core right of the American people, intermediate scrutiny means very little.

The Second Circuit compounded its error by shifting the burden of proof to Petitioners, who should instead be protected from overreach by placing the burden of justifying such restrictions firmly where it belongs – on the government. But rather than placing the burden on government, the court unreasonably rejected Petitioners' evidence showing that the ordinance burdened their Second Amendment right.

Nothing in this Court's jurisprudence imposes upon a citizen the burden to show *why* he must exercise a fundamental right, nor does it require him to demonstrate why he refuses an alternative to exercising that right. But in discussing Petitioner

Colantone's interest in being able to take his handgun to his own home in Delaware County, the Second Circuit suggested that he should just get an additional gun (and license) to keep at his second home. Pet'r's App. 15. "Colantone presents no evidence" that the cost of obtaining a license or a second gun "would be so high as to be exclusionary or prohibitive." *Id*. As to the remaining plaintiffs, "they offer[ed] no evidence that the burden imposed by having to use a range within the City [was] in any way substantial," because "guns could be rented or borrowed" at "gun ranges or competitions outside New York City." *Id*. at 20-22.

Although *amici* agree that city and state governments have compelling interests in public safety and crime prevention, New York City still must show how its firearm regulations bear a substantial relationship to achieving its goal of improving public safety and preventing crime. The City made *no* such showing. A recent CDC study found that whether gun restrictions reduce firearm-related violence is an unresolved issue. CDC Report, *supra*, at 44. Research results on the impact of right-to-carry laws on firearm violence are also inconsistent and have been debated for a decade. *Id*. at 45. At least one study has found no persuasive evidence from available studies that right-to-carry laws decrease or increase violent crime. *Id*. Furthermore, forty-nine other states and the federal government have laws governing carrying firearms in

vehicles, and not one of them has determined that this level of restriction is necessary.[9]

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[9] Ala. Code § 13A-11-73(a) (unloaded, locked container/ compartment, inaccessible); Ariz. Rev. Stat. Ann. § 4-229 (>18 open carry; >21 concealed); Ark. Code Ann. § 5-73-120 (need carry permit or driving to hunting area); Alaska Stat. § 18.65.800 (open or in locked vehicle if parked); Cal. Penal Code § 25610 (unloaded, locked compartment or container); Colo. Rev. Stat. § 18-12-105(2) (concealed); Conn. Gen. Stat. § 529:29-38 (unloaded, locked container, inaccessible and to/from home, business, repair, competition, or transporting household goods); Del. Crim. Code § 5:1441 (open); Fla. Stat. § 790.251 (not accessible to driver, locked container or trunk); Ga. Code Ann. § 16-11-126 (unloaded, in a case); Haw. Rev. Stat. § 134-26 (unloaded, in container, between home/business and purchase/sale/repair, target range, show/exhibit, training/instruction); Idaho Code §§ 18-3302; 18-3302K (open or unloaded and in locked container); 430 Ill. Comp. Stat. Ann. §§ 65/2, 66/65 (unloaded, locked container, inaccessible); Ind. Code § 35-47-2-1 (unloaded, inaccessible, locked case); Iowa Code § 724.4 (unloaded in locked container or compartment not readily accessible); Kan. Stat. Ann. § 75-7c03 (concealed or open); Ky. Rev. Stat. Ann. § 527.010 (closed container/compartment); La. Rev. Stat. § 32:292.1 (open or concealed carry with permit in locked vehicle); Me. Stat. tit. 12 § 11212 (open or concealed); Md. Code Ann., Crim. Law § 4-203 (to/from purchase/sale, repair, between homes, between home and business if unloaded and in a case/holster); Mass. Ann. Laws ch. 140 § 131C (must have license for loaded, no restriction on unloaded; non-residents can travel through for competition/hunting); Mich. Comp. Laws § 750.227(d) (unloaded, locked container, inaccessible); Minn. Stat. Ann. § 624.714 (unloaded in encasement or in closed trunk); Miss. Code Ann. § 45-9-55 (open or concealed); Mo. Rev. Stat. § 571.215 (unloaded, not readily accessible); Mont. Code Ann. § 45-3-111 (openly or concealed); Neb. Rev. Stat. § 69-2441 (open); Nev. Rev. Stat. § 503.165 (openly or concealed); N.H. Rev. Stat. Ann. §§ 159.4, 159.6 (unloaded, locked container, not readily accessible); N.J. Stat. Ann. §§ 23:4-24.1; 2C:39-6 (unloaded, locked container, locked trunk; without permit, only to & from place of purchase/repair, home, business, shooting range, hunting); N.M.

New York City's regulatory scheme imposes a substantial burden on its citizens and those visiting or passing through it because it eliminates the right to bear arms outside of one's home except in the most limited of circumstances. Under the Second Circuit's test, the right is a privilege granted by government, not a right guaranteed by the Second Amendment.

Stat. Ann. § 30-7-2 (concealed, loaded); N.C. Gen. Stat. § 35:14-269; N.D. Cent. Code §§ 62.1-02-13; 62.1-02-10; 62.1-02-10.1 (openly or concealed, unloaded); Ohio Rev. Code § 2923.16 (if loaded, then inaccessible; unloaded, closed package or in trunk or open sight in holder); Okla. Stat. § 21-1289.13 (open or concealed if unloaded); Or. Rev. Stat. § 166.250 (openly in vehicle, concealed if not readily accessible); Pa. Cons. Stat. § 18-6106 (with permit or unloaded and transporting to and from place of purchase/repair, shooting range, hunting); R.I. Gen. Laws § 11-47-9 (disassembled, unloaded, open, secured in container, to or from purchase/repair, shooting range, moving from one home to another); S.C. Code Ann. § 16-23-20 (glove compartment, console, trunk); S.D. Codified Laws §§ 22-14-10; 22-14-9 (concealed if unloaded in trunk or other closed compartment or container); Tenn. Code Ann. § 39-17-1307 (open or concealed); Tex. Penal Code Ann. § 46.02 (concealed); Utah Code Ann. § 76-10-504 (unloaded, securely encased (including glove box/console), not readily accessible); Vt. Stat. Ann. § 10-4705 (open and concealed); Va. Code Ann. § 18.2-308 (locked container or compartment); Wash. Rev. Code § 9.41.050 (with permit on person, in vehicle with person, or vehicle locked/gun concealed); W. Va. Code § 61-7-7; § 20-2-5 (unloaded, open; sometimes must be in a container); Wis. Stat. § 167.31 (open); Wyo. Stat. Ann. § 6-8-104 (nonresidents required to carry open); D.C. Code § 22–4504.02 (unloaded, inaccessible from passenger compartment or in locked container).

II. NEW YORK CITY'S REGULATORY SCHEME DISCRIMINATES AGAINST INTERSTATE COMMERCE.

It is well settled that state or municipal actions are within the domain of the Commerce Clause if they burden interstate commerce or impede its free flow. *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 31 (1937). Isolating commerce locally, especially when it could occur better, safer, or cheaper elsewhere, "has been declared to be virtually *per se* illegal" because such laws blatantly discriminate against interstate commerce. *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984)*; see also Maine v. Taylor*, 477 U.S. 131, 148 (1986). Blatantly discriminatory ordinances will survive only if the "municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *C & A Carbone*, 511 U.S. 383, 392 (1994)*; see also Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008). Even when exercising "unquestioned power to protect the health and safety of its people," a state may not "erect[] an economic barrier protecting a major, local industry against competition from without the State" if reasonable and nondiscriminatory alternatives exist. *Dean Milk Co. v. Madison*, 340 U.S. 349, 354 (1951). State laws may still be invalid if they have "incidental" effects on interstate commerce. *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970). The Court will uphold such laws unless their burden on interstate commerce is "clearly excessive in relation to [their] putative local benefits." *Id.* The Court does not engage in this balancing, known as the "*Pike* test," when a

state's law is discriminatory and so per se invalid. *See C & A Carbone*, 511 U.S. at 389–90.

Recognizing there is "no clear line separating the category of state regulation that is virtually per se invalid under the Commerce Clause, and the category subject to the *Pike* [test]," the Court has said "the critical consideration is the overall effect of the statute on both local and interstate activity." *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986). To determine "the practical effect" of a statute, the Court in part considers how the statute "may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation." *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989).

In the Gulf States, including Alabama, Florida, Louisiana, Mississippi, and Texas, wildlife tourism—including recreational hunting and sport shooting—annually creates 2.6 million jobs (nearly five times the number of jobs provided by the region's other three largest resource-based industries), generates $5.3 billion in tax revenue, and stimulates $19.4 billion in spending ($5 billion of which can be attributed to hunting).[10] Shawn Stokes & Marcy Lowe, *Wildlife*

[10] Other states also benefit from hunting. For example, 895,000 people hunt annually in Wisconsin contributing to over 34,000 jobs and generating $1 billion in salaries and wages. Yearly spending by hunters in Wisconsin is $2.6 billion which generates $228 million in state taxes and $263 million in federal taxes. *Hunting Is Part of Wisconsin's Culture*, Hunting Works for Wisconsin, (2019), https://tinyurl.com/y3hg9vt8. Big game hunters spent $224 million on equipment, supplies, travel, guides and other services in Wyoming, generating 3,100 jobs, $85.6 million in income and local

Tourism and the Gulf Coast Economy 9, 13, 17, http://tinyurl.com/lkh75es. In 2016, 11.5 million people took 147 million trips to hunt within the United States. *Hunting Survey*, *supra*, at 24. Annually across the United States, more than $27 billion in spending, nearly 200,000 American jobs, and more than $7 billion in American salaries and wages can be attributed to the hunting industry. These activities generate $1.8 billion in federal tax revenue and $1.6 billion in state and local tax revenues. *The Outdoor Recreation Economy*, Outdoor Indus. Ass'n, 18 (2017), https://https;//tinyurl.com/key7kbm. In Louisiana alone, tourists spend $2 billion per year on wildlife tourism, which creates 82,000 jobs and fills the state's coffers with over $200 million in tax revenues. *Id.* at 11, 14, 18. And the hunters are not all residents of the state; for example, approximately 277,000 visitors hunt in Louisiana annually, *id.* at 8, and 37% of Wyoming's 119,000 big game hunters in 2015, were non-residents. Economic Contributions of Big Game Hunting, *supra* n.10.

Hunting includes the use of handguns.[11] Shooting is even an Olympic sport.[12] And although individuals might be able to rent guns, most prefer using their own

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and state tax revenues of $28.2 million. Southwick Associates, *Economic Contributions of Big Game Hunting in Wyoming* 4, (January 2017), https://tinyurl.com/yxq386cq.

[11] *See, e.g.*,Joshua Gillem, *Considerations for Handgun Hunting*, Gun Carrier,https://tinyurl.com/y3s989qm; *see also* Brett Straton, *Delaware: Handgun Hunting Bill Headed to Governor's Desk*, http://tinyurl.com/yybqzdhj.

[12] The webpage for the Olympic shooting sport can be found at https://www.olympic.org/shooting.

firearms. Using one's own gun is recommended for many reasons, but safety is primary among them. *See, e.g.,* Carrie Lightfoot, *The Importance of Practicing with Your Gun,* The Well-Armed Woman, https://tinyurl.com/y4dgpztw. New Yorkers, like Petitioners, desire to use their firearms to hunt, compete, or otherwise engage in the sort of wildlife or recreational tourism that fuels the economy of many states. But New York City forbids the tens of thousands of people with premises permits from removing their firearms from the address to which their guns are assigned.

Recognizing that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use," *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), the City allows those with premises licenses to practice but only at one of the shooting ranges within the City and only if the gun is "unloaded, in a locked container, [and with] the ammunition . . . carried separately." Pet'r's App. 88. Only ranges within the City benefit from the large market of guns artificially tied to the City by this rule. The City does allow people with premises permits to remove their guns from the City to hunt if they secure an *additional* permission but even with the hunting permit, the handguns may not leave the state of New York. *Id*.

New York City's licensing scheme applies to millions of people and regulates tens of thousands of guns. The owners of those guns acquire ammunition and specialized parts for their guns and require ranges to learn to use them. These needs create a market that

affects interstate commerce. *See Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 10 (1928) (adopting an expansive view of interstate commerce that "embraces all the component parts of commercial intercourse among States"). Under the Court's precedent, because the City's ordinance "deprives out-of-state businesses of access to a local market," it falls "within the purview of the Commerce Clause." *C & A Carbone v. Town of Clarkstown*, 511 U.S. 383, 389 (1994).

There is little room for doubt that New York City's ordinance discriminates against interstate commerce both on its face and in practical effect and so is per se invalid. New York City is home to more than eight million people, nearly two and a half percent of all Americans. The City's regulations forbid most of those people from removing their guns from the City. And even those with a hunting license may not leave the state with their guns. Although those wishing to hunt, practice, or compete out of state may theoretically be able to rent firearms, this adds costs, diminishes safety, and discourages these activities in favor of local interests. The market of gun owners desiring to exercise their Second Amendment rights to learn to use and grow proficient in the use of their own firearms is totally restricted to the City or, with an additional authorization, New York State. There can be no dispute that New York City's rule "deprives out-of-state businesses of access to a local market," *C & A Carbone*, 511 U.S. at 389. The damage to interstate commerce and state economies dependent upon wildlife tourism would be great "if not one, but many or every, State" adopted similar legislation. *Healy*, 491 U.S. at 336.

The City claims it implemented its scheme to both "control the presence of firearms in public" and to enhance NYPD's ability to verify a licensee's statement that he is transporting his gun to or from an authorized range. *See* Pet'r's App. 26-27. There are undoubtedly other ways to further these interests. That other safe alternatives exist is clearly evident from the fact that the New York City regulatory scheme is an extreme outlier in the United States. *See* n.10, *supra*. And the existence of other safe possibilities sinks the ordinance under the rigorous scrutiny test. *C & A Carbone*, 511 U.S. at 392.

Even if the Court concluded that the City's ordinance was an even-handed regulation intended to effectuate a legitimate local public interest, the Rule's incidental effects on interstate commerce "clearly are excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142. A rule forbidding people from leaving New York City, and indeed, requiring them to use the City's ranges for practice, will not remove guns from crowded public places, deter road rage, or ameliorate stressful situations. The *Pike* scale tips heavily in favor of allowing commerce to thrive.

III. NEW YORK CITY'S REGULATORY SCHEME INFRINGES ON THE FUNDAMENTAL RIGHT TO TRAVEL.

Whereas the immediate facts of this case involve only residents of New York City wanting to leave their homes with their firearms and travel outside of the city, the Nation is watching. This case will further define the parameters of the right to possess a firearm outside of one's home. It will instruct the other forty-

nine states and countless municipalities on the limits of their ability to regulate gun possession in their state. Enactment of such laws will affect all persons travelling through the United States.

A. The Right to Travel Is a Fundamental Right of National Citizenship Protected by the Fourteenth Amendment.

As of October 2018, there were over four million miles of public roadway throughout the United States, U.S. Department of Transportation, Office of Highway Policy Information, *Highway Statistics 2017*, (Nov. 28, 2018), https://tinyurl.com/y5cqyteq.[13] Vehicles travelled over 3 million miles of that roadway in 2018, with over 2 million miles being in urban areas and close to a million miles in rural areas. *Id.* at https://tinyurl.com/y65jopao. According to the U.S. Travel Association, 2.3 billion Americans took trips within the United States for business or leisure in 2018, four out of five for leisure purposes. The travel industry supports over 15 million American jobs and generates 2.5 trillion in economic output. U.S. Travel Association, *U.S. Travel Answer Sheet* (2018), https://tinyurl.com/yy4w3wav.

New York City reaps enormous benefits from people traveling there for business and leisure, both from highway travel and through its airports. In 2016 alone, New York City had over 47 million visitors. Visitors

[13] New York has twenty-four airports, four major water ports, 3,447 miles of railroads, and seven border ports of entry. "New York Transportation by the Numbers." U.S. Department of Transportation, Bureau of Transportation Statistics (January 2016), https://tinyurl.com/y4vupa3a.

spent over $43 billion in the City, sustaining over 383,000 jobs, generating $1.8 billion in New York State taxes and $4.2 billion in local city tax revenues. NYC & Co., *New York City Travel & Tourism Trend Report* (September 2017), https://tinyurl.com/yxzolqvp.

"The constitutional right to travel from one State to another ... occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."[14] *United States v. Guest,* 383 U.S. 745 (1966). It originally derives from Article IV of the Articles of Confederation which expressly recognized a right of "free ingress and regress to and from any other State." *Zobel v. Williams*, 457 U.S. 55, 79 (1982) (O'Connor, J. concurring). Although the Framers of our Constitution omitted that phrase from our Constitution, Charles Pinckney, who drafted the current version of Article IV, told the Convention that this Article was "formed exactly upon the principles of the 4th Article of the present Confederation." *Id.* citing 3 M. Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, p. 112 (1934). Thus, the right to ingress and egress through every state is a "necessary concomitant of the stronger Union the Constitution created" and has played a crucial "role

[14] While this has been universally recognized, the exact textual "location" of the right has been up for debate. Justice O'Connor has argued that "the right predates the Constitution and was carried forward in the Privileges and Immunities Clause of Art. IV." *Zobel v. Williams*, 457 U.S. 55, 78-81 (1982) (O'Connor, J. concurring). While recognizing this as a "plausible argument," Justice Brennan found it "equally plausible" that the right "resides in the Commerce Clause" or the Privileges and Immunities Clause of the Fourteenth Amendment. *Id.* at 66-67.

in the development of the Nation." *Zobel*, 457 U.S. at 67 (Brennan, J. concurring).

One component of the right to travel is the right of a nonresident of a state "to be treated as a welcome visitor rather than an unfriendly alien when temporarily present" in that state. *Saenz v. Roe,* 526 U.S. 489, 500 (1999). The right to travel embraces at least three different components: (1) the right of a citizen of one state to enter and to leave another state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state; and (3) for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state. *See id.* at 500–01 (citations omitted).

What is at stake in this case is the "national interest in a fluid system of interstate movement." *Zobel*, 457 U.S. at 66, n.1. Because the City's ordinance unreasonably blocks the right to ingress and egress based on possession of an item legal in other states, it interferes with and unconstitutionally burdens the right to travel. *See C & A Carbone*, 511 U.S. 383, 392 (1994). Similar to the solid waste at issue in *Carbone*, firearms are an item which, although legal in other states, New York City wants to be able to exclusively regulate. And, as *Heller* recognized, "[a] statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, [is] clearly unconstitutional." *Heller,* 554 U.S. at 629 (cleaned up).

The onerous restrictions placed on the premises permit neuter rights outside the premises. And in combination with other rules, New York City unconstitutionally disarms its people and exposes visitors to arrest and prosecution for unwittingly violating its restrictive scheme.

B. A Patchwork Quilt of Gun-Regulations Interferes with Both Interstate Commerce and the Right to Travel.

Currently, forty-nine other states have laws in place which protect travelers passing through their states from prosecution for having firearms in their vehicles. *See* n.9, *supra*. While this may protect them while they are inside their vehicles, should they stop during their trip and want to bring their firearm with them for protection, these laws would no longer protect them. *See, e.g. Association of New Jersey Rifle and Pistol Clubs Inc. v. Port Authority of New York and New Jersey,* 730 F.3d 252 (3d Cir. 2013) (holding, for example, that 18 U.S.C. 926A only protects a person while he is inside his vehicle and not when he steps outside).

If a state recognizes a carry permit from another state, a non-resident traveler is protected. New York and New York City, however, are two of nine states and territories which do *not* recognize a carry permit from any other state. *CCW Reciprocity Maps*, Guns to Carry, https://tinyurl.com/y3tw2e8p. Furthermore, in states that do not require a permit to carry, a traveler is free to move through the state without a carry permit, as long as he has a license to legally possess the firearm issued by his state of residence. A large

recent upswing in state legislation supports removing the requirement of having a concealed carry license. In March of this year, Kentucky became the seventeenth state to allow its citizens to carry a concealed handgun without a permit (referred to as "Constitutional Carry."). *Kentucky Becomes 17th State that Allows Concealed Carry Without a Permit in All or Virtually All the State*, Crime Prevention Research Center, (Mar. 12, 2019), https://tinyurl.com/y28knqgz.

The increase in severely restrictive permitting schemes – particularly by local government bodies – dramatically expands the exposure of law-abiding citizens to gun violations that they cannot possibly track when they travel. Thus, even with knowledge of the laws in the various states, it could be impossible to get from one place in this nation to another without risking arrest.

C. Congress has Attempted, at Least Partially, to Resolve This Problem But Its Efforts Have Been Judicially Blocked.

Article I, Section 8 of the Constitution delegates to Congress the authority to regulate interstate commerce. And, as this Court has recognized, "it is settled beyond question that the transportation of persons is 'commerce', within the meaning of that provision." *Edwards v. People of State of California*, 314 U.S. 160, 172–73 (1941). This Court has also recognized, though, that "the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce." *Id*. This does not mean, however,

"that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders." *Edwards*, 314 U.S. at 173.

In 1986, after seven years of debate and revisions, Congress enacted the Firearm Owner's Protection Act, 18 U.S.C. § 926A (FOPA), under its Commerce Clause powers. *See* David T. Hardy, *The Firearm Owners' Protection Act: A Historical and Legal Perspective,* 17 Cumb. L. Rev. 585 (1987). It was enacted as a response to serious abuses of power by the Bureau of Alcohol, Tobacco, and Firearms against law-abiding citizens. *Id.* at 604-609. In particular, the interstate transportation section of the law was enacted "in response to reports of hunters being arrested for firearms law violations while passing through a state with tight controls." *Id.* at 676, citing 132 CONG. REC. H1657 (daily ed. Apr. 9, 1986) (statement of Rep. Marlenee); *id.* at H1693 (statement of Rep. Dingell); *The Firearm Owners Protection Act*, 17 Cumb. L. Rev. at 676-680.

Among other things, FOPA confers the following protection upon those who wish to engage in the interstate transportation of firearms:

> Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter [18 U.S.C. § 921 et seq.] from transporting, shipping, or receiving a firearm shall be entitled

> to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided,* That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

18 U.S.C. § 926A.

Although other provisions of the FOPA have been frequently litigated, the interstate carry provision has only been litigated six times. Three of those courts, not surprisingly all in the New York area, have limited the statute's application by holding that it only applies to vehicles, *Association of New Jersey Rifle and Pistol Clubs Inc.,* 730 F.3d 252, removing sanctions against police officers for ignoring the law, *Torraco v. Port Authority of New York and New Jersey*, 615 F.3d 129 (2d Cir. 2010), and holding that the federal statute did not preempt state restrictive laws, *Coalition of New Jersey Sportsmen v. Florio*, 744 F. Supp. 602 (D.N.J.1990). *See also U.S. v. Sellers*, 897 F. Supp. 2d 754 (N.D. Ind. 2012) (driver had gun in between front seats so was not in compliance with FOPA); *Matter of Two Seized Firearms*, 602 A. 2d 728 (N.J. 1992) (loaded handgun in glove compartment and under seat were

not "inaccessible" and therefore driver was not in compliance with FOPA); *McDaniel v. Arnold*, *D.*, 898 F. Supp. 2d 809 (Md. 2012) (gun locked in trunk of car had ammunition inside it so motorist was not in compliance with FOPA).

These cases cause concern. Although most of them cover situations where the FOPA ultimately did not apply, a few of them evidence lack of respect for federal law and constitutional rights on the part of New York and New Jersey. For example, the police chief of Lebanon Township, New Jersey, has stated:

> I am aware that there is some federal law that provides an exception whereby interstate travellers may travel with an unloaded gun locked in their trunk, but so far as I am aware, that would not make them any less subject to arrest in New Jersey either under the new Act or under previous New Jersey gun laws. If the federal law provides them some sort of defense, that is up to the prosecutor and/or judge in the court in which they are arraigned.

Florio, 744 F. Supp. at 609. The Second Circuit has held that the law is so "vague and amorphous that its enforcement would strain judicial competence" thus failing the *Blessing v. Firestone* criteria giving law enforcement complete immunity for not enforcing the statute. *See Torraco*, 615 F.3d at 136.

Finally, the Third Circuit has held that the statute is limited to automobiles (or, possibly, trains and airplanes) but does not apply to "ambulatory travel," for example walking through the airport with a firearm

to get to your flight. *See Ass'n of New Jersey Rifle & Pistol Clubs Inc.*, 730 F.3d at 255, n.3.

In December 2017, the House of Representatives passed the Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. (2017), which would amend the federal criminal code to allow individuals to carry a concealed handgun into or possess a concealed handgun in another state that allows individuals to carry concealed firearms. *See* William D. Araiza, *Reciprocal Concealed Carry: The Constitutional Issues*, 46 Hastings Const. L.Q. 571 (2019). Thus, if a state has any provision allowing a person to carry a concealed weapon, it would be required to honor the concealed carry permit from any other state. *Id.* This legislation evidences a Congressional intent to protect the rights of citizens to travel this nation carrying a gun for self-protection and for hunting.

New York City unreasonably restricts its residents from carrying a firearm outside of its home for self-protection, hunting, or recreation. Current laws throughout our country create a tattered patchwork quilt of protection which makes it quite impossible for an average citizen to know when she can engage in business or leisure travel carrying her gun for self-protection, hunting, or recreation without risking arrest and prosecution for illegal possession of a firearm. The historic, inherent, inalienable, rights to possess and carry a firearm and to engage in commerce and travel throughout the United States should combine to require this Court to precisely define the parameters of these rights and to provide its highest level of protection for them.

CONCLUSION

The Court should reverse the court of appeals.

Respectfully submitted,

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APPENDIX

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APPENDIX A

April 1, 2019

RESOLUTION NO. 109-2019

ADOPTING THE LEGAL ARGUMENTS OF THE AMICUS BRIEF FILED BY THE STATE OF LOUISIANA ON BEHALF OF NUMEROUS SIMILARLY SITUATED STATES FOR INCLUSION IN AN AMICUS CURIAE BRIEF TO BE FILED IN THE MATTER OF THE NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC. ET. AL V. THE CITY OF THE NEW YORK, STATE OF NEW YORK ET. AL. CURRENTLY PENDING BEFORE THE UNITED STATES SUPREME COURT

By Mr. Acres, Chair, Finance Committee
Co-Sponsored by Mr. Lightfoot, District 3

WHEREAS, on March 18th, 2019, the Board of Legislators directed the County Attorney, as a member of the United States Supreme Court Bar, to review the briefs filed in the matter of *New York State Rifle and Pistol Association, Inc. et. al. v. City of New York, State of New York et. al.* and make a determination whether to file a brief to be considered as amicus or join in the filing of a previously filed amicus brief in the matter of *New York State Rifle and Pistol Association, Inc. et. al. v. City of New York, State of New York et. al.,* currently pending before the United States Supreme Court on grant of petition of certitiorari, and

WHEREAS, the County Attorney has reviewed the petitions of the respective parties, as well as the amicus briefs, filed by the respective amicus curiae, and

WHEREAS, among the briefs reviewed by the County Attorney was a brief filed by the States of Wisconsin, Michigan, Arizona, Texas, Arkansas, Montana, West Virginia, Idaho, Kansas, Oklahoma, South Carolina, Utah, Georgia, Kentucky, Tennessee, Alabama, Mississippi, and Louisiana (hereinafter referred to as the 'States'), as Amicus Curiae, supporting the petition of the New York State Rifle and Pistol Association, Inc. and

WHEREAS, the amicus brief filed by the various States through the State of Louisiana, has asserted several legal arguments, among them: First, that the 2nd Circuit Court of Appeals applied an incorrect standard in denying the relief sought by the New York State Rifle and Pistol Association at the appellate level; and second, that the New York City regulations, stemming from the New York State Penal Law pistol licensing statutes, violates the United States Constitutional Right to Travel, the Constitutional protections afforded Interstate Commerce, and the 21nd Amendment Right to Bear Arms, and

WHEREAS, the arguments posited by the State of Louisiana (on behalf of the various States) are arguments that the constituents of St. Lawrence County share as similar restrictions applied to pistol licenses in New York City are also applied to pistol licenses issued in St. Lawrence County, and

WHEREAS, the restrictions limiting a pistol applicant from traveling anywhere with their pistol or revolver other than designated hunting and firing ranges, is an extension of the legal interpretation of the courts of New York that an individual must seek permission of the State of New York for permission to own a pistol in their home, furthering the practiced belief of the State of New York that ownership and use of a pistol, even within one's own home, is a privilege rather than a right (See attached Exhibit # 1, "Carry Concealed Information Sheet" provided to all Pistol License Applicants in St. Lawrence County justifying the placement of restrictions), and

WHEREAS, based upon its interpretation of New York State law, the Courts of the State of New York have determined that Penal Law § 400.00 et. al. is the "exclusive statutory mechanism for the licensing of firearms in New York State", and

WHEREAS, pursuant to the Penal Law § 400.00(2), "A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a

commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof . . . ", and

WHEREAS, in New York State, a license to carry a firearm must be issued by the local licensing authority which is defined under Penal Law §265.00 (10), "Licensing officer" means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of section 400.01 of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance, and

WHEREAS, the Board of Legislators has long been concerned with the manner in which Pistol Licensing occurs in St. Lawrence County, specifically with respect to the addition of restrictions on travel on licenses, and

WHEREAS, in 2008, the Supreme Court of the United States issued the landmark ruling in *District of Columbia v. Heller,* which announced the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to

use that arm for traditionally lawful purposes, such as self-defense within the home, and

WHEREAS, the *Heller* Court held that the individual right to bear arms, as codified in the Constitution, was a pre-existent right, not dependent on the permission of the government, as that right, through codification, "shall not be infringed," and

WHEREAS, despite the clear language of *Heller* and decision in *McDonald v. City of Chicago, Illinois,* States such as New York have continued to require its citizens to apply for permission to possess a pistol, rather than start from the operative clause presumption, that the right is fundamental and individual, and may not be restricted in that fashion, and

WHEREAS, the State of New York pistol licensing process, as contained in Penal Law §400.00, and as applied by the Licensing Officers listed in Penal Law § 265.00, violates the plain language of *Heller* and of *McDonald,* and

WHEREAS, the St. Lawrence County Board of Legislators, since 2015, has passed a local law and several resolutions seeking to challenge the placement of restrictions by local licensing authorities on the issuance of pistol licenses for pistol license applicants, recognizing the constitutional supremacy of the *Heller* decision over the legal restrictions imposed by the local licensing authority and licensing scheme established by the State of New York, and

WHEREAS, in light of the Supreme Court of the United States' decision to grant certiorari to the *New*

York State Rifle and Pistol Association, Inc. et. al. v. City of New York, State of New York et. al case, the Board of Legislators believes there may be an opportunity to join the action as amicus for the purposes of asserting the rights of the citizen's the Board represents, and

WHEREAS, the Board of Legislators wishes to express its position with respect to the filings of the various States, and

WHEREAS, the privileges and immunities of the citizens of the United States of America and of the State of New York are to be ardently protected and secured by the respective governmental bodies of all such bodies, and

WHEREAS, the due process of law must be provided to each and every such citizen especially to matters of constitutional and ancient rights and liberties, and

WHEREAS, the ancient right and liberty to keep and bear arms is such a right and liberty, as being specifically recognized and duly adopted by the Second Amendment of the Constitution of the United States deserving to be so fully secured and protected, and

WHEREAS, the Second Circuit Court of Appeals of the United States has determined in *New York State Rifle and Pistol Association, Inc. et. al. v. City of New York, State of New York et. al* that the right and liberty to keep and bear arms as set forth under the Second Amendment is subject to the restrictions placed thereupon and in infringement thereto by the Police Department of the City Of New York, State of New

York, being a law enforcement agency and not an elected body of the citizens of any body politic, thereby giving the force of law to said restrictions and infringements, and

WHEREAS, the Supreme Court of the United States has undertaken to review the lawfulness and validity of the recited determination of the Second Circuit and it being the determination of this representative body being a legislature of the People of St. Lawrence County, State of New York the same being created under the Constitution of the State of New York as ratified by the People of the State of New York that the recited determination of the Second Circuit constitutes an unlawful and invalid infringement upon the ancient and constitutional right and liberty of the citizens of the United States to keep and bear arms as announced in the Second Amendment of the Constitution of the United States,

NOW, THEREFORE, BE IT RESOLVED the Board of Legislators adopts the legal arguments of the amicus brief filed by the State of Louisiana on behalf of numerous similarly situated states for inclusion in an Amicus Curiae Brief to be filed in the matter of the New York State Rifle and Pistol Association, Inc. et. al v. the City of New York, State of New York et. al. currently pending before the United States Supreme Court, and

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the State of Louisiana Solicitor General for review and inclusion in the Amicus Curiae Brief to be filed by the State of Louisiana on behalf of the various States, and

BE IT FURTHER RESOLVED that the County Attorney for St. Lawrence County shall render aid, where possible and practicable, to the various States listed as Amicus Curiae in the pending United States Supreme Court case of the New York Rifle and Pistol Association, Inc. et. al. v. City of New York, State of New York et. al.

STATE OF NEW YORK)
) **ss:**
COUNTY OF ST. LAWRENCE)

I, Kelly S. Pearson, Deputy Clerk of the St. Lawrence County Board of Legislators, **DO HEREBY CERTIFY** that I have compared this Resolution No. 109-2019 entitled "Adopting the Legal Arguments of the Amicus Brief Filed by the State of Louisiana on Behalf of Numerous Similarly Situated States for Inclusion in an Amicus Curiae Brief to be Filed in the Matter of the New York State Rifle and Pistol Association, Inc. et. al v. the City of the New York, State of New York et. al. Currently Pending Before the United States Supreme Court", adopted April 1, 2019, with the original record in this office and that the same is a correct transcript thereof and of the whole of said original record.

Kelly S. Pearson
Kelly S. Pearson, Deputy Clerk
St. Lawrence County Board of Legislators
April 2, 2019

App. 9

April 1, 2019

IMPORTANT

Carry Conceal Information Sheet

Penal Law Section 400.00.2(f) sets for the a type of pistol license that allows a licensee to "have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof." "Proper cause" has been held to mean that the license applicant must demonstrate "a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession." Matter of Klenosky v. New York City Police Dept. 75 AD 2d 793 as cited in Matter of Brando v. Sullivan 260 AD 2d 691 at 693 (2002). Also see Matter of Kaplan v. Bratton 249 AD 2d 199 (1998)

In Matter of Kaplan the Court cited police department regulations that set forth the requirements of establishing "proper cause." The Kaplan court at page 201 held the license applicant was require to show "extraordinary personal danger documented by proof of recurrent threats to life or safety." The fact that a license applicant may live or work in high crime area does not establish "proper cause" for a full carry concealed permit.

A general fear for safety without any documented instances of threats, attacks or extraordinary danger will not establish "proper cause." In the Matter of Klenosky, supra, "proper cause" was cited a "such an unusual circumstance as to warrant issuance of a permit to carry a concealed pistol." Id at 793-794

THE BURDEN IS ON THE APPLICANT TO ESTABLISH "PROPER CAUSE" FOR THE ISSUANCE OF A "FULL CARRY" PERMIT UNDER PENAL LAW SECTION 400.00.2 (f). See Matter of Eddy v. Kirk 195 AD 2d 1009 at 1011 (1993).

The power of County Court to issue pistol licenses has been held by higher Courts not only to be the power to determine "proper cause" but also includes the power to restrict the use of a license to the purposes that justified its issuance. See Matter of O'Brien v. Keegan 87 NY 2d 436 at 439 citing Matter of O'Connor v. Scarpino 83 NY 2d 919, 931.

In the Matter of VanVorse v. Teresi 257 AD 2d 938, 939 (1999) the Court sited O'Brien, supra, stating "a licensing officer possesses the extraordinary authority to cancel, revoke, or restrict the license if the license holder has not demonstrated proper cause for continuing the unrestricted license.

A licensing officer (County Court) has broad discretion to determine whether "proper cause" exists to issue a carry-concealed pistol license.

Thus, unrestricted full carry concealed pistol licenses will not be issued unless the applicant/licensee can establish "proper cause". Carry concealed licenses can be issued with restrictions limited to the reasons for the license, i.e. hunting, trapping, target shooting.