No. 19-423

In the
Supreme Court of the United States

BRIAN KIRK MALPASSO and MARYLAND STATE RIFLE AND PISTOL ASSOCIATION, INC.,

Petitioners,

v.

WILLIAM M. PALLOZZI, in his official capacity as Maryland Secretary of State Police,

Respondent.

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

BRIEF OF ALABAMA AND 20 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Second Amendment allows the government to prohibit typical, law-abiding citizens from carrying handguns outside the home for self-defense in any manner.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The *amici* States—Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and West Virginia—have a profound interest in protecting the fundamental right of their citizens to keep and bear arms. That is why they are counted among the 41 States that have enacted shall-issue licensing regimes (or their equivalent), which allow any law-abiding citizen who meets objective criteria to lawfully carry a handgun outside the home.

A handful of States have departed from this nationwide consensus. They limit the exercise of this fundamental right to only the rare citizen who can prove to a bureaucrat's satisfaction that she needs to bear a handgun outside the home. These States rely on concerns about public safety to justify their restrictions. But the *amici* States have the same interest in protecting their citizens, and they do so without extinguishing their citizens' rights.

Moreover, the *amici* States recognize that "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). Even

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[1] Pursuant to Rule 37.6, the undersigned certifies that no parties' counsel authored this brief, and only amici or their offices made a monetary contribution to the brief's preparation or submission. Consistent with Rule 37.2(a), the *amici* States provided notice to the parties' attorneys more than ten days in advance of filing.

so, because of a pronounced circuit split and silence from this Court, it is unclear what policy choices are left on the table—much less what standard courts will use to review those policy choices. The *amici* States thus have an interest in having this Court make clear that laws that preclude law-abiding citizens from bearing arms outside the home violate the Second Amendment.

SUMMARY OF THE ARGUMENT

In *Heller*, 554 U.S. 570, and again in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this Court made two things clear. First, that "individual self-defense" constitutes the "central component" of the Second Amendment's guarantee. *Heller*, 554 U.S. at 599 (emphasis omitted); *see McDonald*, 561 U.S. at 749-50. And second, that courts cannot use an "interest-balancing" approach to evaluate restrictions on the exercise of that right. *See Heller*, 554 U.S. at 634; *McDonald*, 561 U.S. at 785-86.

Courts of Appeals that have faithfully applied these teachings have arrived at a rather unremarkable place: They have concluded that the core of the Second Amendment right to self-defense extends beyond the home. This conclusion makes sense both textually and historically. The word "bear," after all, means "carry," *Heller*, 554 U.S. at 584, so it would be passing strange for that word to be used "to protect little more than carrying a gun from the bedroom to the kitchen." *Peruta v. California*, 137 S. Ct. 1995, 1998 (2017) (Thomas, J., dissenting from denial of certiorari). Instead, as a plethora of historical examples show, and as logic

would dictate, the Second Amendment right to bear arms extends beyond the home because the need for self-defense does too.

Other Courts of Appeals, however, have traveled to a place far more remarkable. They have held that only self-defense *at home* forms the core of the right protected by the Second Amendment, and thus have they upheld regimes that prohibit average citizens from carrying handguns outside the home. Unsurprisingly, these Courts have embraced just the kind of free-floating interest-balancing approach that this Court rejected in *Heller*, and which would never pass constitutional muster if used with any other enumerated right.

As a result of this patchwork, either millions of citizens are being deprived of the fundamental right of self-defense outside the home or some federal courts have wrongfully deprived states of policy options that the Second Amendment never took off the table. *Amici* States submit that it is the former, not the latter. That is one reason why *amici* are among the forty-one States that allow typical, law-abiding citizens to bear handguns outside the home. And while all States seek to promote their citizens' safety, *amici* have found they can do so without depriving their citizens of fundamental rights.

Despite this nearly uniform practice among the States, the courts remain sharply divided. This Court therefore should grant certiorari to provide guidance both about how courts should analyze laws that touch on the Second Amendment's guarantee and about the scope of the guarantee itself.

ARGUMENT

I. The Courts Of Appeals Are Deeply Divided And The States Are In Need Of Guidance From This Court.

Raymond Woollard was at home with his wife, children, and grandchildren on Christmas Eve when an intruder shattered a window and broke into his house. *Woollard v. Gallagher*, 712 F.3d 865, 871 (4th Cir. 2013). It was his son-in-law, high on drugs and in search of a car. Woollard and his son brandished firearms to control the situation until police could arrive—two-and-a-half hours later. *Id.* Afterward, Woollard applied for and received a permit from Maryland to carry a handgun outside his home for self-protection. *Id.* But when he went to renew the permit for the second time, the Handgun Permit Unit denied him a license. In its sole determination, Woollard had "not demonstrated a good and substantial reason to wear, carry, or transport a handgun as a reasonable precaution against apprehended danger," which is what Maryland law requires. *Id.* (quotation marks omitted).

One might think that Maryland's approach to licensing constitutional rights is extreme. After all, the burden is normally on the *State* to demonstrate good cause for infringing on the exercise of a Constitutional right. But in Maryland, it's the other way around: The burden is placed on the *citizen* to demonstrate a "good and substantial reason" for carrying a handgun. Under this scheme, bearing arms in self-defense is not a right, but a privilege granted by the government to the few deemed to be

in dire-enough straits to warrant carrying a handgun. In no other context would a court allow a State to condition the exercise of an enumerated right on the whim of a bureaucrat. *See Staub v. City of Baxley*, 355 U.S. 313, 322 (1958) ("[A]n ordinance which … makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms."). But not only has the Fourth Circuit upheld Maryland's regime, three other Courts of Appeals have upheld similar regimes in other States. *See* App. 3a; *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018); *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012).

In contrast, two Courts of Appeals have firmly held that "good cause" restrictions on carrying firearms outside the home are plainly unconstitutional. *See Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Two panels of the Ninth Circuit have also reached this same result, only to have their decisions vacated by the en banc court. *See Peruta v. County of San Diego*, 742 F.3d 1144, 1167 (9th Cir. 2014), *vacated, rev'd on reh'g en banc*, 824 F.3d 919, 942 (9th Cir. 2016); *Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018), *vacated, reh'g en banc granted*, 915 F.3d 681 (9th Cir. 2019). This deep division sows confusion and warrants review by this Court.

1. The Courts of Appeals fundamentally disagree about how to analyze Second Amendment challenges. To be sure, most courts have held that a two-step approach is appropriate, in which the "first question is whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee" and the second step is "applying an appropriate form of means-end scrutiny." *Woollard*, 712 F.3d at 875 (internal quotation marks omitted); *see GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng'rs*, 788 F.3d 1318, 1322 (11th Cir. 2015); *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 (5th Cir. 2012); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 703-04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010). *But see Wrenn*, 864 F.3d at 665-67 (rejecting two-step approach because D.C.'s "good cause" law was "necessarily a total ban" on most residents' right to carry a gun for ordinary self-defense needs).

But the chaos sets in as soon as courts take the first step—determining whether a challenged law infringes on the Second Amendment's guarantee. By slicing and dicing this Court's decision in *Heller*, the First, Second, Third, and Fourth Circuits have all held that "good cause" restrictions do not impose a significant burden on the exercise of the right to keep and bear arms because "the 'core' protection of the

Second Amendment is the 'right of law-abiding, responsible citizens to use arms *in defense of hearth and home*'"—not to use arms anywhere else. *Kachalsky*, 701 F.3d at 94 (emphasis added) (quoting *Heller*, 554 U.S. at 634-35); *see Gould*, 907 F.3d at 672; *Drake*, 724 F.3d at 431; *Woollard*, 712 F.3d at 874.

By contrast, other circuits have recognized that "[a]t the Second Amendment's core lies the right of responsible citizens to carry firearms for personal self-defense *beyond the home*." *Wrenn*, 864 F.3d at 667 (emphasis added); *see Moore*, 702 F.3d at 942. That the circuits are so deeply divided on so fundamental a question is reason enough for this Court to grant review and provide much-needed guidance. *See* Pet. 8-13.

Moreover, the circuits' disagreement only deepens when they reach the second step of their analysis and begin reviewing the constitutionality of a challenged law. Though most circuits purport to apply some form of "intermediate scrutiny," "the circuits' actual approaches are less neat—and far less consistent—than that." *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 775 F.3d 308, 324 (6th Cir. 2014), *rev'd en banc*, 837 F.3d 678 (6th Cir. 2016); *see also Peruta*, 742 F.3d at 1167-68 (collecting cases demonstrating the "varying sliding-scale and tiered-scrutiny approaches"). In fact, the circuits that have upheld "good cause" licensing regimes have generally done so by embracing just the kind of "judge-empowering 'interest-balancing' inquiry'" that this Court in *Heller* so forcefully rejected. 554 U.S. at 634. There, the Court explained that it would *not* adopt a

test that asks "whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests," *id.* (quoting Breyer, J., dissenting), because it knew of "no other enumerated constitutional right whose core protection has been subject to a freestanding 'interest-balancing' approach." *Id.* Yet that is precisely the test adopted by some of the circuits. *See*, *e.g.*, *Drake*, 724 F.3d at 439 (deferring to New Jersey's judgment that allowing individuals to carry handguns in public creates a "somewhat heightened risk to the public [that] may be outweighed by the potential safety benefit to an individual with a 'justifiable need' to carry a handgun"); *Woollard*, 712 F.3d at 881 (deferring to Maryland's determination "that the good-and-substantial reason requirement strikes an appropriate balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets of Maryland"); *Kachalsky*, 701 F.3d at 100 (deferring to New York's determination "that limiting handgun possession to persons who have an articulable basis for believing they will need the weapon for self-defense is in the best interest of public safety and outweighs the need to have a handgun for an unexpected confrontation").

Circuits on the other side of the split have instead taken this Court at its word and rejected the interest-balancing test used by the majority. *See Wrenn*, 864 F.3d at 666-67 ("[W]e needn't pause to apply tiers of scrutiny, as if strong enough showings

of public benefits could save this destruction of so many commonly situated D.C. residents' constitutional right to bear commons arms for self-defense in any fashion at all."); *Moore*, 702 F.3d at 941 ("[O]ur analysis is not based on degrees of scrutiny, but on Illinois's failure to justify the most restrictive gun law of any of the 50 states."); *see also Heller*, 670 F.3d at 1271 (Kavanaugh, J., dissenting) ("In my view, *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."). These courts properly rely on deep dives into the history of the right to bear arms to determine the standing of modern laws that affect that right. *See Wrenn*, 864 F.3d at 658-61; *Moore*, 702 F.3d at 935-37. This is something the First, Second, Third, and Fourth Circuits simply refuse to do. *See* Pet. for Cert. at 12-13.

In sum, it is impossible for States to make sense of, much less plan for, such varying approaches to how State laws will be reviewed by the judiciary. This Court thus should clarify the proper mode of analysis that applies to the Second Amendment.

2. As a result of the circuits' clashing modes of analysis, the guarantee of the Second Amendment is enforced only in a patchwork fashion throughout the country. But what's good for quilts is not good for fundamental rights. The situation is untenable.

In examining the reasonableness of laws that burden fundamental rights, the Court regularly looks to the views of the several States for guidance.

And while States should generally have the freedom to adopt different laws than their sisters, other States' laws can nonetheless "provide testimony to the unreasonableness" of another State's law "and to the ease with which the State can adopt less burdensome means" to accomplish its objectives. *Hodgson v. Minnesota*, 497 U.S. 417, 455 (1990). Such reasoning is in keeping with the way this Court has evaluated similar constitutional questions. *See Tennessee v. Garner*, 471 U.S. 1, 15 (1985); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966); *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963).

It is instructive, then, that while all States (including the *amici*) share the compelling interest in protecting the health and safety of their citizens, only a few have deemed it necessary to eliminate their citizens' constitutional rights to achieve that interest. Forty-one States have tailored their licensing procedures to both secure the constitutional rights of their citizens and protect safety.[2] These so-

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[2] There are forty "shall issue" States. *See* Ala. Code § 13A-11-75; Alaska Stat. Ann. § 18.65.700; Ariz. Rev. Stat. Ann. § 13-3112; Ark. Code Ann. § 5-73-309; Colo. Rev. Stat. § 18-12-203; Fla. Stat. Ann. § 790.06; Ga. Code Ann. § 16-11-129; Idaho Code Ann. § 18-3302; 430 Ill. Comp. Stat. Ann. 66 / 10; Ind. Code § 35-47-2-3; Iowa Code Ann. § 724.7; Kan. Stat. Ann. § 75-7c05; Ky. Rev. Stat. Ann. § 237.110; La. Stat. Ann. § 40:1379.3; Me. Rev. Stat. Ann. tit. 25, § 2003; Mich. Comp. Laws Ann. § 28.422 (3); Minn. Stat. Ann. § 624.714; Miss. Code Ann. § 45-9-101; Mo. Ann. Stat. § 571.101; Mont. Code Ann. § 45-8-321; Neb. Rev. Stat. Ann. § 69-2430; Nev. Rev. Stat. Ann. § 202.3657; N.H. Rev. Stat. Ann. § 159:6; N.M. Stat. Ann. § 29-19-4; N.C. Gen. Stat. Ann. § 14-415.12; N.D. Cent. Code Ann. § 62.1-04-03; Ohio Rev. Code Ann. § 2923.125; Okla. Stat. Ann. tit. 21, § 1290.5; Or. Rev. Stat. Ann. § 166.291; 18 Pa. Stat. and Cons. Stat. Ann.

called "shall issue" States grant concealed carry licenses to typical law-abiding citizens who can show reasonable proficiency with a firearm. John R. Lott, Jr., *What A Balancing Test Will Show for Right-to-Carry Laws*, 71 Md. L. Rev. 1205, 1207 (2012).

Notably, not one of these States has reverted to a "good cause" licensing system—something one might expect a State to do if public safety really was harmed by allowing law-abiding citizens to carry handguns outside the home. And in fact, the data show that public safety tends to *increase* under objective permitting systems. *See* Br. of Attys. Gen. of Ariz. et al. as *Amici Curiae*, *Rogers v. Grewal*, No. 18-824 (U.S. Jan. 18, 2019). As one scholar put it, "the bottom line is pretty clear: Since permit holders commit virtually no crimes, right-to-carry laws can't increase violent crime rates." John R. Lott, Jr., *Concealed Carry Permit Holders Across the United States: 2017*, Crime Prevention Research Ctr., Jul. 2017, at 23. The laws of these States thus "provide testimony to the unreasonableness" of Maryland's

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§ 6109; S.C. Code Ann. § 23-31-215; S.D. Codified Laws § 23-7-7; Tenn. Code Ann. § 39-17-1351; Tex. Gov't Code Ann. § 411.177; Utah Code Ann. § 53-5-704; Va. Code Ann. §§ 18.2-308.04 (C), 18.2-308.08 (A); Wash. Rev. Code Ann. § 9.41.070; W. Va. Code. Ann. § 61-7-4; Wis. Stat. Ann. § 175.60; Wyo. Stat. Ann. § 6-8-104. Additionally, Vermont does not issue gun permits, because none are required under state law for a citizen to carry a handgun. *Vermont Gun Laws*, NRA-ILA (Nov. 12, 2014), https://www.nraila.org/gun-laws/state-gun-laws/vermont/ (last visited Nov. 5, 2019). Finally, in addition to being a "shall issue" state, Oklahoma recently approved permitless carry for most law-abiding Oklahomans. *See* Okla. Stat. tit. 21, § 1272.

licensing procedure and to "the ease with which" the State "can adopt less burdensome means" to accomplish its ends. *Hodgson*, 497 U.S. at 455.

It is also striking that a resident of Alabama, upon moving to Maryland would find such a stark difference in the treatment of a fundamental right protected by the United States Constitution. Although some differences in the law are expected and welcomed in our federalist system, it offends basic notions of ordered liberty to have a constitutionally enshrined right robustly protected in one jurisdiction—or forty-one of them—and extinguished elsewhere.

II. The Second Amendment's Guarantee Is A Fundamental Right That Extends Beyond The Home.

Another reason this Court should grant review is to correct the erroneous decisions by the First, Second, Third, and Fourth Circuit Courts of Appeals. Those courts got it wrong, and millions of Americans are being denied a fundamental right of citizenship as a result.

A. The Right to Bear Arms is a Fundamental Right of Citizenship.

"[I]t has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *Heller*, 554 U.S. at 592. By the time of the passage of the Bill of Rights, the right to keep and bear arms had long existed as both (1) an extension of the *natural* right to self-defense, and (2) a *civil* right guaranteed

to Englishmen. Blackstone wrote that the Englishmen's guarantee "of having arms for their defence" was a "public allowance, under due restrictions, of the natural right of resistance and self-preservation." 1 William Blackstone, *Commentaries* 136 (1765). Thus, 17th-century "Englishmen liked to boast that they were 'the freest subjects under Heaven' because, among other things they had the right 'to be guarded and defended from all violence and Force, by their own Arms, kept in their own hands, and used at their own charge under their Prince's Conduct.'" Joyce Lee Malcolm, *The Right to Carry Your Gun Outside: A Snapshot History* 5 (George Mason Univ. Legal Studies Research Paper No. LS 19-18), *available at* https://ssrn.com/abstract=3456940 (quoting "*The Security of Englishmen's Lives...*," *State Tracts: Being a Further Collection of Several Choice Treatises Relating to Government from the Year 1660 to 1689* 225 (1692)).

As this Court has extensively recorded, the right to keep and bear arms was likewise held dear in early America. *See Heller*, 554 U.S. at 592-03. "Antifederalists and Federalists alike agreed that the right to bear arms was fundamental to the newly formed system of government." *McDonald*, 561 U.S. at 769; *see also* 3 J. Story, *Commentaries on the Constitution of the United States* § 1890 (1833) ("The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic."). And many of the State constitutions that were adopted in the years following ratification of the Second Amendment "unequivocally protected an

individual citizen's right to self-defense." *Heller*, 554 U.S. at 603.

Following the Civil War, Congress set about securing this fundamental right for African-Americans who had previously been denied their rights as citizens. Congress passed both the Civil Rights Act of 1866, 14 Stat. 27, and the Freedmen's Bureau Act of 1866, 14 Stat. 173, in part to ensure that (in the language of the latter) "the right ... to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, *including the constitutional right to bear arms*" would "be secured to and enjoyed by all the citizens ... without respect to race or color, or previous condition of slavery." 14 Stat. 176-77 (emphasis added). And "[i]n debating the Fourteenth Amendment, the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection." *McDonald*, 561 U.S. at 775.

Fortunately, those efforts were not in vain. States that once forbid black citizens from carrying firearms no longer do. But that history continues to bear witness to the fact that the right to keep and bear arms has always been a fundamental right of citizenship. And a citizen's ability to exercise that right should not turn on whether she can persuade a bureaucrat that the right is really worth having.

B. The Core of the Right Extends Beyond the Home.

Not only does history demonstrate that the general right to keep and bear arms was a fundamental right of citizenship, but the text and history of the Second Amendment confirm that the core of the right extends beyond the home. That is because the core of the right is, just as Blackstone said, "the natural right of resistance and self-preservation." 1 Blackstone, *Commentaries* 136; *see Heller*, 554 U.S. at 592 ("Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation."); *Wrenn*, 864 F.3d at 661 ("[T]he individual right to carry common firearms beyond the home for self-defense—even in densely populated areas, even for those lacking special self-defense needs—falls within the core of the Second Amendment's protections.").

In *Heller*, the Court explained that "[a]t the time of the founding, as now, to 'bear' meant to 'carry.'" 554 U.S. at 584. The Court then endorsed Justice Ginsburg's analysis in *Muscarello v. United States* of what it means to "carry" a firearm: "Surely a most familiar meaning is, as the Constitution's Second Amendment ... 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." *Id.* (quoting 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

This broad definition extends beyond the home. As the Seventh Circuit explained: "The right to 'bear' as distinct from the right to 'keep' arms is unlikely to refer to the home. To speak of 'bearing' arms within one's home would at all times have been an awkward usage." *Moore*, 702 F.3d at 936. Taken in context, the natural language of the Second Amendment "implies a right to carry a loaded gun outside the home." *Id.*

Not only that, but an interpretation of the right to bear arms that did not extend beyond the home would undermine the Amendment's prefatory clause: "A well regulated Militia, being necessary to the security of a free State...." U.S. Const. amend. II. In *Heller*, the Court explained that the prefatory clause in no way weakens the underlying right to bear arms. Rather, it "announces the purpose for which the right was codified: to prevent elimination of the militia." *Heller*, 554 U.S. at 599. And this Court has also instructed that the scope of the right should be "consistent with the announced purpose." *Id.* at 578 (footnote omitted); *see also United States v. Miller*, 307 U.S. 174, 178 (1939) ("With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view."). It is difficult to imagine how the right could accomplish that objective if it were limited to the confines of the home.

Moreover, the historical examples the Court invoked in *Heller* confirm that the right extends beyond the home. In *Heller*, the Court explained that, by the time of the founding, the historical

experiences of the English had led to an understanding of the right as "protecting against both public and private violence." 554 U.S. at 594. And even the historical examples the Court pointed to as *limitations* on the right confirm its general breadth. For example, the Court stated that its decision in *Heller* "should [not] be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, *or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings*, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27 (emphasis added). Implicit in these examples is the assumption that the right generally extends to the public carrying of arms in the first place.

Finally, the Court's focus on the purpose of the Second Amendment—ensuring the means to self-defense—underscores that the right extends beyond the home. As the Court reiterated in *McDonald*, the "possession of firearms," which is "essential for self-defense," is constitutionally protected because "self-defense" is the "central component" of the Second Amendment right. 561 U.S. at 787.

Nor has the Court limited this constitutional right or its purpose to the home. In *Heller*, the Court dealt with the right to keep arms within the home where the need for self-defense is "most acute," 554 U.S. at 628, but it did not do so at the expense of the right to bear arms in public. The Court's opening line in *McDonald* is thus instructive: "Two years ago ... this Court held that the Second Amendment protects the right to keep and bear arms *for the*

purpose of self-defense....” 561 U.S. at 742 (emphasis added). Thus, because the need for self-defense does not end at the front door of the home, neither does the right.

* * *

Although increasing safety and reducing crime are compelling government interests, the Court has made clear that “the very enumeration of the [Second Amendment] right takes out of the hands of government ... the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634. Yet this is precisely what “good cause” regimes like Maryland’s seek to do. They leave it up to a state agency to determine on a case-by-case basis whether a citizen’s reasons for carrying a handgun are good enough (in the agency’s view) for her to do so, and they deny the vast majority of citizens the right to bear arms outside the home. Such regimes “seem almost uniquely designed to defy” any plausible reading of the Second Amendment, which at a minimum guarantees the right of “the typical citizen to carry a gun.” *Wrenn*, 864 F.3d at 668. And it is telling that most States—who share Maryland’s interests in public safety—have not found the elimination of the Second Amendment right to bear arms necessary to ensure public safety. This Court should therefore grant certiorari to bring clarity to the law, resolve the deep circuit split, and restore the fundamental right to bear arms to all citizens, no matter in which circuit they happen to live.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

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