

No. 20-843

IN THE
Supreme Court of the United States

NEW YORK STATE RIFLE
& PISTOL ASSOCIATION, INC., ET AL.,
Petitioners,

—v.—

KEVIN P. BRUEN, in His Official Capacity as
Superintendent of New York State Police, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF CITIZENS CRIME
COMMISSION OF NEW YORK CITY AS
AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1978 by concerned members of the business community, for over 40 years the Citizens Crime Commission of New York City (“Crime Commission”) has been a leader in converting into action ideas that address crime and protect the economic and social viability of New York City. One of the Crime Commission’s first ideas to be put into action was a plan to make the criminal justice system more effective as a means to reduce street crime that plagued New York City during the 1980s and 90s. As the criminal justice landscape of New York City has changed, the Crime Commission’s work has evolved with it. By issuing reports, holding forums, providing commentary to national and local media, and creating innovative projects, the Crime Commission has continued to generate new ideas and convert them into action. Since its formation, the Crime Commission has remained an independent, non-partisan, non-profit organization working to reduce crime and to improve the criminal justice system and the safety of New York City. In recent years, under the direction of Richard Aborn and his advisors, including Program Associate Claire Abrahams, the Crime Commission has been a national leader in the area of harm reduction from firearm-related violence, and has pursued initiatives in areas ranging from the reduction of mass shooting incidents to advocating against interstate firearms trafficking.

¹ The parties have consented in writing to the participation of *amicus*. No party in this case authored this brief in whole or in part or made any monetary contribution to its preparation and submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the decision below, the Second Circuit upheld New York State’s legal requirement that an applicant for a license to carry a concealed handgun outside of the home must show that “proper cause exists for the issuance thereof” and ruled that this requirement does not violate the Second Amendment. That was the right outcome, consistent with many years of precedent and public policy experience, and it was based on the right constitutional analysis.

In *District of Columbia v. Heller*, this Court held that the Second Amendment guarantees the right to keep and bear arms for self-defense. However, it recognized that the right of the individual “is not unlimited” and does not “cast doubt on . . . laws forbidding the carrying of firearms in sensitive places,” which remain “presumptively lawful.” 554 U.S. 570, 626 & n.26 (2008). In *McDonald v. City of Chicago*, the Court reiterated that *Heller* “did not cast doubt on such longstanding regulatory measures,” and it rejected municipalities’ “doomsday proclamations” that applying the Second Amendment to the states would “imperil every law regulating firearms.” 561 U.S. 742, 786 (2010). Rather, states and municipalities remain “free to restrict or protect the right under their police powers,” *Heller*, 554 U.S. at 619-20 (citing *United States v. Cruikshank*, 92 U.S. 542, 553 (1875)), including through restrictions on the possession and use of firearms in public, where safety concerns are heightened.

The Second Circuit's decision in this case should be affirmed. It is faithful to the Court's holdings in *Heller* and *McDonald*. While individuals have the right to possess and use firearms for self-defense, they also have the right to ensure their collective safety by acting through their elected officials to enact sensible, reasonable restrictions, including the licensing restrictions at issue here. Those elected officials should receive substantial deference from the judiciary when they determine that restrictions on the possession and use of firearms in public will serve to protect community safety. Indeed, "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 655 (1994)).

The experience of New York City and other leading American cities demonstrates the wisdom of the Second Circuit's ruling and the need for deference to legislative determinations. After decades of crime problems, New York City is, by many metrics, one of the safest metropolitan areas in the country. That result is thanks in significant part to the licensing regime that permits individuals to obtain firearms licenses for carrying of concealed handguns outside of the home where "proper cause" exists for the issuance of the license. N.Y. Penal Law § 400.00(2)(f).

Despite all this, Petitioners and *amici* advocate for a rule that would not only invalidate this licensing

system in New York State, but also prevent municipalities across the country from imposing more than the barest eligibility requirements for a license for the concealed carry of handguns. This Court should not take such a drastic step and displace the power of state legislatures to regulate the concealed carry of firearms, an issue that is central to the State’s police power and to public safety concerns that are broadly shared by Americans.

ARGUMENT

I. The New York licensing system, upheld by the Second Circuit, properly accommodates individual and governmental interests

In 2008, this Court held in *District of Columbia v. Heller* that the Second Amendment confers an “individual right to possess and carry weapons in case of confrontation.” 554 U.S. at 592. The District of Columbia law at issue in *Heller* categorically prohibited handgun possession in the home and provided that any lawful firearm in the home be “disassembled or bound by a trigger lock at all times, rendering it inoperable.” *Id.* at 628. The Court held the law unconstitutional because it struck at the “inherent right of self-defense . . . central to the Second Amendment” through “prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for that lawful purpose of [self-defense]—handguns—and extending that prohibition “to the home, where the need for defense of self, family, and property is most acute.” *Id.* at 628-29. Likewise, the disassembly and trigger-lock requirement “ma[de] it impossible for citizens to use

[lawfully held firearms] for the core lawful purpose of self-defense” *Id.* at 630.

While *Heller* recognized this Second Amendment right for the first time, it also made clear that the Second Amendment does not confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. The Court made specific reference to laws restricting the carrying of firearms in public, which were found lawful by the majority of 19th-century courts to consider them. *Id.* at 626. *Heller* also did not “establish a level of scrutiny for evaluating Second Amendment restrictions,” and it did not purport to “clarify the entire field” of permissible and impermissible gun regulations. *Id.* at 634-35. Rather, the Court’s analysis was driven in part by the extreme nature of the D.C. law at issue, which amounted to a near total ban. This law, Justice Scalia wrote, would fail “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.” *Id.* at 628-29.

Following *Heller*, the Second Circuit has adopted a two-part test for Second Amendment claims. That analysis properly accommodates the individual’s right to possess and use firearms for self-defense and the community’s right to promote public safety through firearm regulations—and its longstanding tradition of doing so through restrictions on firearms in public.

First, the Circuit asks whether the law impinges upon conduct protected by the Second Amendment. *See, e.g., United States v. Decastro*, 682 F.3d 160, 166

(2d Cir. 2012). “Given *Heller*’s emphasis on the weight of the burden imposed” on the individual right, “heightened scrutiny is triggered only by those restrictions that . . . operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes).” *Id.*

Second, the Circuit looks to the severity of that burden, and how close it comes to the “core Second Amendment protection identified in *Heller*”—the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Kachalsky*, 701 F.3d at 93-94; *see also Heller*, 554 U.S. at 599, 628-29 (self-defense is “the central component” of the Second Amendment right and is “most acute” in the home). For laws implicating the alleged right of public carry, intermediate scrutiny applies and the government need only show that the law is “substantially related to the achievement of an important governmental interest,” giving “substantial deference” to the legislature’s predictive judgments and policy determinations. *Kachalsky*, 701 F.3d at 93-94, 96-97.

This proper application of intermediate scrutiny necessarily means that the judiciary has a more limited role in reviewing, and the legislature has more discretion in crafting, laws restricting firearm possession and use *outside* of the home, in public. As the Second Circuit has observed, “[t]he state’s ability to regulate firearms and, for that matter, conduct, is qualitatively different in public than in the home,” and “[t]he historical prevalence of the regulation of firearms in public demonstrates that . . . states have long recognized a countervailing and competing set of

concerns with regard to handgun ownership and use in public.” *Id.* at 94-96.

In the decision below, the Second Circuit followed its post-*Heller* precedent which held that the “proper cause” licensing requirement does not violate the Second Amendment. *See New York State Rifle & Pistol Ass’n, Inc v. Beach*, 818 F. App’x 99, 100 (2d Cir. 2020) (summary order) (following *Kachalsky*, 701 F.3d at 100-01). The Second Circuit affirmed the district court’s ruling against the plaintiff on the basis that its argument was foreclosed by Second Circuit precedent. *Id.*

The Second Circuit’s analysis is exactly right given our Nation’s longstanding tradition of regulating firearm possession and use in public, including the concealed carry of handguns. Petitioner and *amici* criticize the Second Circuit for not conducting historical analysis or ignoring tradition. (Petitioner Br. at 45; Brief of the Cato Institute as *Amicus Curiae* in Support of Petitioners at 11.) The Second Circuit did not “decline” to engage in historical analysis or ignore tradition. *See Kachalsky*, 701 F.3d 81, 89-91 (discussing the history of state regulation of open carry). The traditional approach has been to allow States to regulate the possession of firearms.

If States and municipalities are to meet the challenge of guaranteeing public safety and preventing crime, they must have due discretion to determine the appropriate degree of firearm regulation. The experiences in New York City and

across the country have demonstrated the policy wisdom of this approach.

II. Firearm possession and use is uniquely related to public safety concerns

In order to keep local communities safe, state and local governments need to have the ability to regulate the possession and use of firearms in public. *See, e.g., Cruikshank*, 92 U.S. at 553 (recognizing “the people” must look to local government to address abuses of the right to bear arms for lawful purposes). It is not surprising that colonial and State governments have long imposed limits on firearm possession and use in public as a result of the obvious dangers to public safety. *See, e.g., Kachalsky*, 701 F.3d at 94-96 (collecting examples and finding “our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public”).²

The need for legislative discretion in this context is no less true today than it was at the time of our Nation’s Founding. In 2019, the most recent year for which the Centers for Disease Control and Prevention has data, there were approximately 39,707 firearm-related deaths in the United States, more than 14,000 of which were related to homicides or law-enforcement intervention and more than

² *See also* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 *Law & Hist. Rev.* 139, 155-65 (2007) (describing colonial and state governments’ regulation of firearm possession and use to promote public safety and protect private property).

23,000 of which were suicides.³ In 2019, there was an 18% jump from firearm-related deaths in 2013.⁴ On average, more than 107,000 people are wounded by firearms each year.⁵ These figures for the United States are far higher than those of other economically comparable countries.⁶

State and local regulation is a key tool by which local and state governments can seek to stem this tide of gun-related violence. And there is strong evidence of the efficacy of gun control laws—not opinion or speculation, but indisputable science. Study after study demonstrates that states with stricter firearm laws experience lower rates of gun violence and gun-related death. In a 2015 article in the *American Journal of Public Health*, for instance, researchers analyzed data from hospitals in 18 states and concluded that stricter firearm legislation is associated with lower rates of non-fatal firearm

³ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal Injury Reports, National, Regional and State, 1981-2017*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (last visited Sept. 8, 2021).

⁴ *Id.*

⁵ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Nonfatal Injury Reports, National, Regional and State, 1981-2017*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (last visited Sept. 8, 2021) (based on average of data from 2013 to 2019).

⁶ *See, e.g.*, The Global Burden of Disease 2016 Injury Collaborators, *Global Mortality From Firearms, 1990-2016*, *J. Am. Med. Ass'n*, 320(8):792-814 (Aug. 28, 2018), *abstract available at* <https://jamanetwork.com/journals/jama/fullarticle/2698492>.

injuries.⁷ A systematic review published in the Journal of the American Medical Association evaluated peer-reviewed articles from 1970 to 2016 on U.S. firearm laws and firearm homicide and similarly concluded that “[i]n the aggregate, stronger gun policies were associated with decreased rates of firearm homicide, even after adjusting for demographic and sociologic factors.”⁸

Studies have likewise found that states with stricter gun laws have lower rates of firearm-related mortality and suicide⁹ and that children in states with stricter firearm laws experience lower rates of non-fatal firearm injury and firearm mortality.¹⁰ By contrast, states with more lax firearm laws have

⁷ Joseph A. Simonetti et al., *State firearm legislation and nonfatal firearm injuries*, Am. J. Pub. Health 105(8):1703–1709 (Aug. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504301/>.

⁸ Lois K. Lee et al., *Firearm Laws and Firearm Homicides: A Systematic Review*, J. Am. Med. Ass’n Internal Med., 177(1):106–119 (Jan. 2017), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2582989>.

⁹ Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, J. Am. Med. Ass’n Internal Med., 173(9):732–740 (May 13, 2013), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1661390>; Michael D. Anestis & Joyce C. Anestis, *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, Am. J. Pub. Health 105(10):2049–2058 (Oct. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566524/>.

¹⁰ Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, Pediatrics 144(2):e20183283 (Aug. 2019), <https://pediatrics.aappublications.org/content/144/2/e20183283>; Arash Safavi et al., *Children Are Safer in States with Strict Firearm Laws: a National Inpatient Sample Study*, J. Trauma Acute Care Surg. 76(a):146-60 (Jan. 2014), <https://www.ncbi.nlm.nih.gov/pubmed/24368370>.

significantly higher firearm-related injury and mortality rates.¹¹

Data compiled by the Giffords Law Center tells the same story. California, for example, has one of the strongest gun safety regimes in the country and one of the lowest firearm-related death rates—7.2 gun deaths per 100,000 residents, compared to a national average of 11.9 deaths.¹² New Jersey, Connecticut, Massachusetts, and New York, widely considered among the strongest regulators of firearms, also have gun death rates considerably below the national average.¹³ On the other hand, Mississippi, Missouri, Alaska, Alabama, Wyoming, South Carolina, and Louisiana, all of which have very lax firearm regulation, have gun death rates near to or more than double the national average.¹⁴

This data demonstrates that the nationwide statistics about gun ownership cited by some *amici* disguises the truth that there is significant variation in firearm violence, a variation that is correlated with the relative laxity or absence of firearms regulations in some States. (Br. for *Amici Curiae* Law

¹¹ Faisal Jehan et al., *The Burden of Firearm Violence in the United States: Stricter Laws Result in Safer States*, J. Inj. Violence Res. 10(1):11–16 (Jan. 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5801608/>.

¹² Giffords Law Center to Prevent Gun Violence, *Annual Gun Law Scorecard*, <https://lawcenter.giffords.org/scorecard/> (last visited Sept. 8, 2021).

¹³ *Id.* (4.1 (New Jersey), 5.3 (Connecticut), 3.4 (Massachusetts) and 3.9 (New York) deaths per 100,000 residents).

¹⁴ *Id.* (24.2 (Mississippi), 20.5 (Missouri), 24.5 (Alaska), 22.1 (Alabama), 22.4 (Wyoming), 19.8 (South Carolina), and 22.1 (Louisiana) deaths per 100,000 residents).

Enforcement Groups and State and Local Firearms Rights Groups at 10-12.) For example, when *amici* state that the national increase in gun ownership has run alongside a decline in murder and violent crimes, the truth is that these declines have occurred disproportionately in the states that have regulated firearm possession.

Firearm permitting systems like New York's, which require a showing of "proper cause" to carry a concealed handgun outside of the home, have been proven to work. That is not only the independent academic consensus, but also the clear lesson of experimentation among the states as "laboratories of democracy." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 858 (2015) (Scalia, J., dissenting) (internal quotation marks omitted). States like New York should be permitted, consistent with *Heller*, to exercise their police power to protect their citizens from firearm violence, even if other states choose to elevate other priorities. The Court need look no further than the publicly available scientific data and research to see the close link between firearm regulation and increased public safety.

III. New York City's experience demonstrates lawmakers' need for deference and discretion

The statewide licensing regime Petitioners challenge arose out of a need to regulate firearms in New York City more than a century ago. "New York's efforts in regulating the possession and use of firearms predate the Constitution," and laws limiting

when and where guns could be used existed throughout the Eighteenth and Nineteenth Centuries. *Kachalsky*, 701 F.3d at 84. Courts have consistently affirmed the constitutionality of these statutes, including *Heller*. *See id* at 93 & n.17 (collecting cases).

The history of crime and gun violence in New York City demonstrates not only the efficacy of legislative initiatives like the firearm licensing statute, but also the crucial role played by firearm restrictions in combating crime and violence in the unique urban landscape of New York. Allowing Petitioners to undo New York's carefully calibrated firearm licensing framework could reverse the success story of gun violence reduction in New York City. And it is not only New York. Similar licensing regimes in other States have likewise played an important part in reducing gun violence. *See, e.g.*, Cal. Penal Code § 26150; N.J. Stat. § 2C:58-4(c). As discussed in the prior section, data demonstrates that those states with common-sense firearms regulations have lower rates of firearm-related crime.

New York's modern licensing requirements began in 1911, with the enactment of the Sullivan Law, a response to a marked "increase of homicide by shooting." *Kachalsky*, 701 F.3d at 84-85 (quoting *Revolver Killings Fast Increasing*, N.Y. Times, Jan. 30, 1911). The Sullivan Law required police-issued licenses for those wishing to possess concealable firearms, and in 1913 the statute was amended to require a showing of "proper cause for the issuance" of a license to carry a concealed handgun in public. *See* 1911 Laws of N.Y., ch. 195, § 1, at 443 (codifying

N.Y. Penal Law § 1897, ¶ 3); 1913 Laws of N.Y., ch. 608, at 1627-30. These laws remain the foundation of New York's firearm regulatory scheme today. *See* N.Y. Penal Law § 400.00.

A. The law at issue has helped New York City dramatically lower violent crimes involving firearms

Petitioners ignore that New York's firearm licensing law creates two different licensing regimes: a more rigorous licensing process for individuals seeking to carry a gun in New York City, and a more lenient one for individuals seeking to carry a gun elsewhere in New York State. That carefully calibrated licensing regime has yielded tangible, life-saving results, all of which could be undermined if the decision below is reversed.

In seeking to strike down N.Y. Penal Law § 400, Petitioners ask this Court to undo decades of progress in combatting the epidemic of handgun violence.¹⁵ In 1990, there were more than 2,200 homicides in New York City, a record high. Two-thirds of the homicides that year involved guns; 39 children under the age of 16 were killed with guns, with 10 of those young children being killed by stray bullets.¹⁶

Guns were fueling the wave of violent crime sweeping over New York City: “the patterns for gun

¹⁵ Christina Sterbenz, *New York City Used To Be a Terrifying Place*, Business Insider (July 12, 2013), <https://www.businessinsider.com/new-york-city-used-to-be-a-terrifying-place-photos-2013-7>.

¹⁶ Donatella Lorch, *Record Year For Killings Jolts Officials In New York*, N.Y. Times (Dec. 31, 1990).

and nongun killings [were] sharply different.”¹⁷ Indeed, during the late 1980s and early 1990s, when violent crime was surging, non-gun-related homicides *declined* in New York.¹⁸ But gun-related homicides increased dramatically, doubling between 1985 and 1991.¹⁹ Young people were especially hit by this scourge of gun violence, with “[t]he entire growth in homicides” in the United States between 1985 and 1993 being “attributable to young people with handguns.”²⁰

As Thomas Reppetto, the then-director of *amicus curiae* the Crime Commission and a former detective in the New York City Police Department, put it in 1990: “Who shot whom and why and where—you can’t keep track because there are so many. . . . This is a hell of a way to live.”²¹

Since 1990, New York City has transformed itself from one of the Nation’s most dangerous cities to one of the safest. It has done so through the very common-sense gun control measures that are being challenged by Petitioners in this case. In the 1990s, the NYPD changed the way it policed gun violence and other crime, including by implementing its famous CompStat program, which used data analysis and sophisticated management techniques. As part

¹⁷ Jeffrey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. Crim. L. & Criminology 1277, 1290 (Summer 1998).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Alfred Blumstein, *Youth, Guns and Violent Crime*, *The Future of Children*, Volume 12, Number 2, 39, 53 (2002), <https://www.jstor.org/stable/1602737>.

²¹ Lorch, *supra* note 16.

of these initiatives, the City “strictly enforce[ed] gun laws to reduce firearm crimes.”²² The City also introduced the Firearms Investigation Unit, which “seeks to reduce the flow of guns onto the streets of New York City by identifying and pursuing gun traffickers.”²³ Other innovative approaches to reducing gun violence included Operation Gun Stop, an anonymous tips program to reward citizens who provide information on illegal firearms; the Integrated Ballistics Imaging System, which allowed NYPD to image and match markings on bullets and cartridge casings; the Joint Firearms Task Force, a partnership between NYPD and the Bureau of Alcohol, Tobacco, Firearms and Explosives aimed at stemming the flow of out-of-state guns into New York; a specialized Gun Court for people charged with gun possession; Triggerlock, a collaboration between federal prosecutors and NYPD to prosecute gun crimes; and Operation Impact, which used data to place additional law enforcement resources in high-crime areas.²⁴

Due to these efforts by police, prosecutors, and policy makers across multiple mayoral administrations of both parties, the City has since seen an unprecedented decline in crime. From 1990 to 2020, the total number of major felony offences fell

²² Patrick A. Langan & Matthew R. Durose, *The Remarkable Drop in Crime in New York City*, U.S. Dep’t of Justice Bureau of Justice Statistics (Oct. 21, 2004) at 7.

²³ Megan Golden & Cari Almo, *Reducing Gun Violence: An Overview of New York City’s Strategies*, Vera Institute of Justice (March 2004) at 5.

²⁴ See generally *id.*

from 527,257 to 95,589: an 81.9 percent reduction.²⁵ From 1993 to 2019, shooting incidents decreased by 85 percent.²⁶ Between 1990 and 1999, the homicide rate dropped by 73 percent, the burglary rate dropped by 66 percent, and assault dropped by 40 percent.²⁷ From 2000 to 2020, the City’s homicide, burglary, and assault rates fell an additional 30%, 21%, and 60%, respectively.²⁸ And in 2021, the Economist’s Safe Cities Index ranked New York the 11th safest city considered for its global Index, and the safest American city on the list.²⁹ While the City’s dramatic change has surely been caused by many factors, independent academic analysis credits “gun-oriented policing strategies”³⁰ as a leading reason.

²⁵ N.Y.C. Police Dep’t, *CompStat Report Covering the Week 8/30/2021 Through 9/5/2021*

https://www1.nyc.gov/assets/nypd/downloads/pdf/crime_statistics/cs-en-us-city.pdf (last visited Sept. 9, 2021).

²⁶ N.Y.C. Mayor’s Office of Criminal Justice, *Shooting Incidents in NYC*, https://criminaljustice.cityofnewyork.us/individual_charts/shooting-incident-in-nyc/ (last visited Sept. 9, 2021).

²⁷ Hope Corman & Naci Mocan, *Carrots, Sticks and Broken Windows*, Nat’l Bureau of Econ. Res., Working Paper 9061 (July 2002) at 22, <https://www.nber.org/papers/w9061>.

²⁸ N.Y.C. Police Dep’t, *Compstat Report: Citywide Seven Major Felony Offenses*, https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/historical-crime-data/seven-major-felony-offenses-2000-2020.pdf (last visited Sept. 19, 2021).

²⁹ The Economist Intelligence Unit, *The Safe Cities Index 2021*, <https://safecities.economist.com/safe-cities-2021-whitepaper/> (last visited Sept. 9, 2021).

³⁰ Fagan, *supra* note 17 at 1322; Corman & Mocan, *supra* note 27 at 22 (concluding that “the contribution of deterrence measures” to falling crime rates “is larger than those of economic variables”).

At the heart of New York City’s success in turning the tide on violent crime has been N.Y. Penal Law § 400.00, the common-sense statute that ensures individuals who carry guns on the streets of the City that never sleeps have a license to do so. What began with the Sullivan Law has blossomed into one of the country’s most effective set of gun laws, rated an “A-” by the Giffords Law Center.³¹

While the Court would not know it from reading Petitioners’ brief, New York State gun law treats the City differently from the rest of New York. The Court should not be misled into thinking that the same regulatory system in New York governs both New York City, a city of more than 8 million people, and Saranac Lake, an Adirondacks village with a population just over 5,000. The law differs in recognition of the unique public safety challenges posed by the City’s dense urban environment.

For instance, firearm licenses in New York State must be recertified every five years; in New York City, the licenses last for three years.³² New York State firearm licenses are valid anywhere in the State *except* New York City, where a special local permit is required.³³ In the State’s most densely populated areas—New York City and the surrounding counties of Nassau and Suffolk—licensing officers whose professional focus is the licensing of firearms are responsible for processing

³¹ See Giffords Law Center to Prevent Gun Violence, *New York Gun Laws Score an “A-”*, <https://lawcenter.giffords.org/gun-laws/state-law/new-york/> (last visited Sept. 9, 2021).

³² N.Y. Penal Law § 400.00(10).

³³ N.Y. Penal Law § 400.00(6).

the cancellation and/or revocation of a license when a licensee is convicted of a felony and thus becomes ineligible for a license.³⁴ In other, less densely populated parts of the State, license revocations and cancellations are directed to any judge or justice of a court of record.³⁵ And the State has many laws restricting the types of guns available and the locations in which they may be carried that apply to the City as well as the rest of the State.³⁶ It is through this tapestry of interlocking gun regulations that the City and State have been able to reduce gun violence and promote public safety so successfully in New York City without imposing those restrictions on those who live in other, different regions of New York State.

That New York law treats New York City differently from other, less populated areas within the State is not surprising given that the majority of gun regulations in the United States are “local” and tailored to the “particular risks of gun use in densely populated areas.”³⁷ Indeed, “the fifty metropolitan statistical areas [in the United States] with one million or more people ‘comprise only a small fraction of the nation’s land mass but include about 58% of the nation’s population’” and “suffer a

³⁴ *Id.* § 400.00(11)(a).

³⁵ *Id.*

³⁶ *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 18, § 441.19(f) (limiting firearm possession on the grounds of a residential child care facility); N.Y. Env'tl. Conserv. Law § 11-0931(2) (prohibiting possession of a loaded long gun in or on a motor vehicle); N.Y. Penal Law §§ 265.02(7), 265.10 (prohibiting manufacture, transport, disposal, and possession of assault weapons).

³⁷ Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 99-100 (2013).

disproportionate amount of the nation's gun violence.”³⁸ New York City, as the largest metropolitan area in the United States, housing 8.6 million people, is particularly at risk of firearm-related violence.³⁹

The requirement that a duly appointed licensing officer determine that “proper cause” exist before issuing a concealed carry permit to a New Yorker wishing to carry a firearm down Broadway is at the heart of New York’s success in driving down firearm-related violence. New York citizens, through their elected representatives, have made a policy judgment that they wish to live in neighborhoods free of violent crime, and that reducing the number of guns on the streets is a sensible, data-driven method of achieving that policy goal. Some do not agree with that policy judgment and instead wish that more people had more guns. For instance, certain *amici* supporting Petitioners’ position, many of whom have little to no connection to New York State or New York City, lament that, as of June 2020, “*only* 196,132 individuals in New York had carry licenses,” express disappointment that licensing requirements in New York City are “more restrictive than in the rest of the state,” and suggest that New York should at least be more like Massachusetts, which “grants carry

³⁸ *Id.* at 92 (quoting Carl T. Bogus, *Gun Control and America’s Cities: Public Policy and Politics*, 1 Alb. Gov’t L. Rev. 440, 463 (2008)).

³⁹ Edward L. Glaeser, *Urban Colossus: Why is New York America’s Largest City?*, Harv. Inst. Econ. Res., Discussion Paper 2073 (June 2005) at 1, <https://scholar.harvard.edu/glaeser/publications/urban-colossus-why-new-york-americas-largest-city>.

permits at a respectable rate.” (Br. for *Amici Curiae* Law Enforcement Groups and State and Local Firearms Rights Groups at 8-9 (emphasis added).)

That same set of *amici* offer heroic scenes of concealed carry permit holders gunning down would be mass shooters as a basis for striking down New York’s “proper cause” requirement. (*Id.* at 22.) The policy determinations of the New York legislature through the exercise of its police power should not be struck down based on anecdotes or tired tropes of good guys with guns versus bad guys with guns advanced by those who simply disagree with the soundness of New York’s policy decisions. *Cf. United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 344-45 (2007) (Roberts, C.J.) (“We may or may not agree with that approach, but nothing in the Commerce Clause vests the responsibility for that policy judgment with the Federal Judiciary.”) And, in any event, anecdotal arguments about a “good guy with a gun” are disproven by verifiable data.⁴⁰ A report by the Federal Bureau of Investigation reveals that more mass shootings are stopped by individuals without

⁴⁰ See J.F. Gunn, et al, *The Impact of Firearm Legislation on Firearm Deaths, 1991-2017*, J. Pub. Health (Oxf), (April 13, 2021), abstract available at <https://academic.oup.com/jpubhealth/advance-article-abstract/doi/10.1093/pubmed/fdab047/6225077?redirectedFrom=fulltext> (analyzing suicide and homicide rates across all 50 states from 1990-2017 and finding that “firearm laws significantly predicted state firearm suicide and homicide rates,” as “[s]tates with greater numbers of [firearm] laws had reduced suicide and homicide rates as compared with those with fewer laws”).

guns than by individuals with guns.⁴¹ In short, this is a case with real-world implications for millions of New Yorkers, not an action movie.

New York City should be permitted to make policy decisions based on overwhelming data and historical experience showing that its firearms licensing framework—including the “proper cause” requirement—has driven down violent crime, reduced gun-related homicides, and made New York City one of the safest metropolitan environments in the world. (*See supra* at 14-17.)

Indeed, New York State and New York City suffer the consequences of the lax gun laws of other states. In 2018, 77% of firearms recovered in New York State were originally sold outside of the State.⁴² That figure has been largely consistent over time; from 2010-2015, 74% of firearms recovered in New York were originally sold out-of-state.⁴³ States with lax gun laws are the highest contributors to gun crime in New York. In 2018 the top out-of-state suppliers of firearms to New York were: Georgia (582); Virginia

⁴¹ J. Pete Blair & Katherine W. Schweit, “A Study of Active Shooter Incidents in the United States between 2000 and 2013,” Texas State University and Federal Bureau of Investigation, at 11 (2014), <https://www.fbi.gov/file-repository/active-shooter-study-2000-2013-1.pdf/view>.

⁴² U.S. Dep’t of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, *New York Data Source: Firearm Tracing System, January 1, 2018-December 31, 2018* at 7, <https://www.atf.gov/file/137211/download> (last visited Sept. 10, 2021).

⁴³ New York State Office of the Attorney General, *Target on Trafficking: New York Crime Gun Analysis*, <https://targettrafficking.ag.ny.gov/#tool> (last visited Sept. 10, 2021).

(473); Florida (388); Pennsylvania (337); South Carolina (326); North Carolina (303); Ohio (255); Alabama (138); and Texas (111).⁴⁴ In these states, concealed carry weapons permits are granted with limited to no discretion. In other words, the gap between the levels in firearm violence in states with licensing systems and those without such systems is narrowed by the national crisis of firearms trafficking.

New York’s firearms statute does not seek to force any other state to change its gun laws or to adopt the same viewpoint on gun regulation that New York has. Nor has New York sought to prohibit its citizens from owning guns or carrying them in public; it has merely adopted a “licensing regime.” *Heller*, 554 U.S. at 633. New York’s “proper cause” requirement is a part of that licensing regime, and is simply one among “a variety of tools” to “regulat[e] handguns” that New York has implemented to “combat[]” its “problem of handgun violence.” *Id.* at 636. New York’s carefully calibrated statewide firearms licensing framework should not be undone by this Court.

B. Petitioners’ efforts to paint New York’s common-sense gun restrictions as discriminatory should be rejected

Petitioners spend a surprising amount of their brief focusing not on the substance of New York’s firearm laws or the undeniable impact those laws have had in driving down gun-related fatalities and

⁴⁴ *Id.* at 10.

making New York City one of the safest urban environments in the United States, but rather on arguing that the Sullivan Law should be viewed with scrutiny because it was the product of ethnic bias towards Italian immigrants who were perceived to contribute to violence in the City through the use of firearms. (Pet. Br. at 2, 13-14, 43.) It “was no secret,” Petitioners report, that the entirety of New York’s modern legislative and regulatory scheme concerning firearms was in fact part of a long-running conspiracy to persecute immigrants, and that firearms restrictions more generally are traceable to the *Dred Scott* decision. (Pet. Br. 10, 14.)

Petitioners suggest (but do not outright say) that this purported illicit legislative purpose, which Petitioners have been able to discern through law journal articles written a century later, supports striking down the statute on constitutional grounds. In the same breath, of course, Petitioners explain that the Second Amendment itself was born out of a desire by white colonists to fend off “savages.” (Pet. Br. 27 (quoting John Ordronaux, *Constitutional Legislation in the United States: Its Origin, and Application to the Relative Powers of Congress, and of State Legislatures* 241-42 (1891)).) This entire line of argument is nothing more than a distraction from the issue before the Court.

New York’s firearms licensing laws protect New Yorkers of every color, creed, religion, and ethnicity from “the problem of handgun violence,” *Heller*, 554 U.S. at 636, which of course is perpetrated by individuals of every color, creed, religion, and ethnicity. And there is nothing in the record to

suggest that Petitioners or anyone else has been denied a firearms license for want of “proper cause” because of any sort of ethnic or racial bias or discrimination.

Petitioners’ unspoken invitation to strike down New York’s common-sense firearms licensing regime based on Petitioners’ assurances that all forms of gun restriction are somehow racist or anti-immigrant is historically questionable and constitutionally irrelevant. This Court should disregard those arguments entirely.

* * *

Under the valid framework set forth by the Second Circuit, New York’s “proper cause” requirement is constitutional because it is substantially related to the State and City’s important interests in promoting public safety and preventing crime. As the Second Circuit recognized, “New York’s restriction on firearm possession in public has a number of close and longstanding cousins.” *Kachalsky*, 701 F.3d at 91 (citing *Heller*, 554 U.S. at 629). The City and State have reasonably determined that the license scheme is necessary to limit firearm-related crimes, and the statute challenged in this case is thus a permissible way of addressing the serious “problem of handgun violence.” *Heller*, 554 U.S. at 636.

CONCLUSION

For the reasons set forth above, this Court should affirm the Court of Appeals’ decision in this case.

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