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 THE EDUCATIONAL FUND TO STOP GUN VIOLENCE AND 35 OTHER ORGANIZATIONS AND INDIVIDUALS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*

Amici are the Educational Fund to Stop Gun Violence (Ed Fund) and 35 other organizations and individuals focused on promoting evidence-based solutions to reduce gun violence.[1] The Ed Fund is a nonprofit organization, founded in 1978, that uses a public health lens to identify and implement evidence-based policy solutions and programs to reduce gun violence. The Ed Fund is the gun violence prevention movement's premier research intermediary and founder of the Consortium for Risk-Based Firearm Policy, a group of researchers and academics who collaborate to develop innovative recommendations for policymakers. The Ed Fund engages in policy development, advocacy, community and stakeholder engagement, and technical assistance to reduce gun violence in all of its forms.

The other organizational *amici* are:

- CeaseFire Pennsylvania Education Fund
- Colorado Ceasefire Legislative Action
- The Delaware Coalition Against Gun Violence
- The Jewish Alliance for Law and Social Action
- The Maine Gun Safety Coalition
- Marylanders to Prevent Gun Violence
- The Massachusetts Coalition to Prevent Gun Violence
- North Carolinians Against Gun Violence
- New Yorkers Against Gun Violence Education Fund

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

- The Ohio Coalition Against Gun Violence
- Protect Minnesota
- The Rhode Island Coalition Against Gun Violence
- States United To Prevent Gun Violence
- Stop Handgun Violence
- The Wisconsin Anti-Violence Effort Educational Fund

The individual *amici* are:

- Michael Anestis, PhD, Executive Director of the New Jersey Gun Violence Research Center and an Associate Professor of Urban-Global Public Health at Rutgers University
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- Stephen Hargarten, MD, MPH, Professor of Emergency Medicine at the Medical College of Wisconsin
- David M. Hureau, PhD, Assistant Professor at the University at Albany, State University of New York
- Aaron Kivisto, PhD, Associate Professor of Clinical Psychology at the University of Indianapolis
- David McDowall, PhD, professor in the School of Criminal Justice, University at Albany, State University of New York, and co-director of the Violence Research Group
- Emma E. McGinty, PhD, MS, member of the Johns Hopkins Center for Gun Violence Prevention and Policy and Professor of Health Policy at the Johns Hopkins Bloomberg School of Public Health
- Paul Nestadt, MD, psychiatrist and epidemiologist at the Johns Hopkins School of Medicine
- Veronica Pear, PhD, MPH, Assistant Professor in-Residence at the University of California, Davis' Violence Prevention Research Program

- William Pridemore, PhD, Distinguished Professor in the School of Criminal Justice, University at Albany, State University of New York
- Jeffrey Swanson, PhD, founding member of the Consortium for Risk-Based Firearm Policy, member of the Consortium's executive steering, Professor in Psychiatry and Behavioral Sciences at Duke University School of Medicine, and faculty affiliate of the Center for Firearms Law at Duke Law School
- Daniel W. Webster, ScD, MPH, Director of the Johns Hopkins Center for Gun Violence Prevention and Policy and Bloomberg Professor of American Health at the Johns Hopkins University
- Garen Wintemute, MD, MPH, Baker-Teret Chair in Violence Prevention and Distinguished Professor of Emergency Medicine at the University of California, Davis
- April M. Zeoli, PhD, MPH, Associate Professor in Michigan State University's School of Criminal Justice[2]

Amici have a strong interest in ensuring that the Court's legal analysis is informed by empirical public health research, especially in the context of public firearm carry laws, where significant data exist. They have participated as *amicus curiae* in many firearm-related cases in this Court and in other courts. See, *e.g.*, *Voisine* v. *United States*, 136 S. Ct. 2272 (2016); *United States* v. *Castleman*, 572 U.S. 157 (2014); *McDonald* v. *City of Chi.*, 561 U.S. 742 (2010).

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[2] The individual *amici* join this brief in their individual capacities, and not on behalf of their organizations or academic institutions. Their views do not reflect the views of their employers.

Amici submit this brief to provide their unique perspective on New York's public-carry law. Their position, informed by decades of research and experience, is that strong empirical data support the New York law at issue. They urge the Court to uphold that law.

INTRODUCTION AND SUMMARY OF ARGUMENT

Gun violence is a public health epidemic that threatens the safety and well-being of all Americans. In 2019, there were nearly 40,000 gun related deaths in the United States. Fifteen percent of Americans report that a friend or loved one has been killed with a firearm. Gun violence is a leading cause of death for African-American men and boys under the age of 40. Gun violence in public places disrupts the sense of safety and security for entire communities. One-third of Americans fear going to public places like malls and movie theaters because of mass shootings.

A public health approach to addressing gun violence can help save lives. This approach involves quantifying risks to the public by reviewing data on a population-wide level, identifying potential solutions to mitigate those risks, and testing and refining those solutions. Public health researchers draw on a variety of disciplines, including medicine, epidemiology, sociology, psychology, criminology, education, and economics, to develop preventative solutions to societal problems. Notable advancements driven by public health initiatives include the eradication or prevention of diseases through the widespread use of vaccines, the decline in smoking-related illnesses and deaths, and the reduction in motor-vehicle crash injuries and fatalities.

A data-driven, public health approach should be used to address the problem of gun violence. Empirical data overwhelmingly demonstrate that increased carrying of guns in public is associated with increased gun violence. For example, a 2021 study of adolescents and young adults in Phoenix and Philadelphia concluded that when people carry a gun in public, even for self-defense, they are more likely to become the victim of gun violence or to witness gun violence. Other research has discussed the possible reasons for that correlation. For example, a 2017 meta-analysis reviewing several decades of literature concluded that simply seeing a firearm can increase aggression, and a 2012 study reported that carrying a gun makes the carrier more likely to believe that another person has a gun. Relatedly, research has shown that even when a person attempts to use a firearm in self-defense, the presence of a gun can cause the aggressor to become more violent.

New York's public-carry licensing law is supported by strong empirical evidence. The law authorizes public-carry permits for individuals in certain professions, and then authorizes government officials to determine where and when to allow others to carry firearms in public based on the risks involved to the public and the individual's demonstrated need for self-defense. Public health data are critically important in assessing the constitutionality of New York's law. That information is relevant to both components of the means-ends analysis. It shows that the government's interest here is a compelling one, that the risks of carrying firearms in public justify restrictions on that practice, and that states that have taken more

permissive approaches to the public carrying of firearms have experienced more gun violence. The Court should uphold the New York licensing law.

ARGUMENT

I. GUN VIOLENCE IS AN EPIDEMIC THAT SHOULD BE ADDRESSED USING PUBLIC HEALTH PRINCIPLES AND EMPIRICAL RESEARCH

A. Gun Violence Is An Epidemic

Gun violence is pervasive in the United States. Firearms kill an average of over 100 Americans each day and injure many more. CDC, Nat'l Ctr. for Health Stats., *Underlying Cause of Death, 1999-2019*, https://perma.cc/EEJ8-4YSC (last visited Sept. 19, 2021) (CDC, *Underlying Cause*). In 2019 alone, nearly 40,000 Americans were killed with firearms. *Ibid.* That was more than the number of Americans killed in car crashes. See *ibid.* Thousands more suffer traumatic, nonfatal injuries from firearms. Between 2006 and 2014, over 970,000 Americans suffered firearm-related injuries—an average of over 100,000 individuals each year. Faiz Gani et al., *Emergency Department Visits for Firearm-Related Injuries in the United States, 2006-14*, 36 Health Affairs 1729, 1735 (2017). Many survivors suffer long-term disabilities and psychological trauma. CDC, *Firearm Violence Prevention* (May 4, 2021), https://perma.cc/6T63-MM6Z (CDC, *Firearm Violence Prevention*).

Of all gun deaths reported between 2010 and 2019, about 35% were homicides and about 60% were suicides; the rest include unintentional shootings, shootings involving law enforcement, and shootings of undetermined intent. Ed Fund, *Gun Violence in the*

United States, https://perma.cc/CU5F-7HLL (last visited Sept. 19, 2021); Ed Fund, *Quick Facts About Firearm Suicide*, https://perma.cc/4MNW-EFTS (last visited Sept. 19, 2021). During that time period, more than 126,000 Americans died of firearm homicide and more than 200,000 died of firearm suicide. *Ibid.* Nearly 75% of all homicides in the United States are committed with firearms. CDC, *Underlying Cause*.

Gun violence is an everyday occurrence in the United States. One-fourth of all American adults have reported being threatened or intimidated with a gun at some point in their lifetime. SurveyUSA, *Results of Market Research Study 24554* (Dec. 11, 2018), https://perma.cc/U49K-RWXS. Fifteen percent of Americans have witnessed a shooting. *Ibid.* Separately, fifteen percent of Americans have had a friend or loved one killed with a firearm. *Ibid.*

Gun violence affects certain populations even more acutely. Gun violence is the leading cause of death for African-American men and boys under the age of 40. Ed Fund, *A Public Health Crisis Decades in the Making* 24 (Feb. 2021), https://perma.cc/2T2T-U8GC. The majority of intimate partner homicides are committed with firearms, and a woman's likelihood of being murdered by her abuser increases five-fold when the abuser has access to a gun. April M. Zeoli et al., *Risks and Targeted Interventions: Firearms in Intimate Partner Violence*, 38 Epidemiologic Revs. 125, 125 (2016); Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003). Children often are victims of firearm violence as well. CDC, *Underlying Cause* (noting that in 2019, 1,732 people under the age of 18 were killed by firearms).

Firearm violence is a particularly severe problem in the United States, as opposed to in other countries. The firearm homicide rate in the United States is 25.2 times higher than the average for other high-income countries. Rachel Choron et al., *Firearm Violence in America: Is There A Solution?*, 53 Advances in Surgery 195, 196 (2019). In an analysis of nearly two dozen populous, high-income countries, 82% of the total gun deaths occurred in the United States alone. Am. Pub. Health Ass'n, *Gun Violence is a Public Health Crisis*, https://perma.cc/9UKF-8LHA (last visited Sept. 19, 2021) (APHA, *Public Health Crisis*).

The sheer number of gun deaths each year exacts a drastic, negative effect on the overall population. For example, in 2019, firearm deaths accounted for an estimated 925,023 years of potential life lost among those killed before the age of 65. See CDC, *WISQARS Years of Potential Life Lost (YPLL) Report, 1981-2019* (Feb. 20, 2020).

Gun violence also exacts a heavy psychological toll. Widespread exposure to gun violence has been shown to lead to higher rates of antisocial behavior, depression, substance abuse, and post-traumatic stress disorder. APHA, *Public Health Crisis*. That exposure has led to "broader social costs," including "trauma, anxiety, and costly social adaptations—such as withdrawal from community activities and associations," which can "actually undermine collective efforts to achieve neighborhood safety." David Hureau & Theodore Wilson, *The Co-occurrence of Illegal Gun Carrying and Gun Violence Exposure: Evidence for Practitioners from Young People Adjudicated for Serious Involvement in Crime*, Am. J. of Epidemiology 3 (2021) (Hureau & Wilson).

Gun violence in schools, places of worship, shopping areas, and other community spaces disrupts the sense of safety and security for entire communities. APHA, *Public Health Crisis*. In 2019, approximately one-third of Americans reported that a fear of mass shootings prevented them from visiting certain places (such as malls and movie theaters) or attending particular events (such as large public gatherings). Am. Psychological Ass'n, *One-Third of US Adults Say Fear of Mass Shootings Prevents Them from Going to Certain Places or Events* (Aug. 15, 2019), https://perma.cc/5WTH-QU9J.

Finally, gun violence imposes enormous financial costs on our society—about $280 billion annually in lost wages, medical care, insurance claims, and prison costs. See APHA, *Public Health Crisis*. Thus, in addition to threatening Americans' well-being and public safety, gun violence harms the national economy.

B. A Public Health Approach To Gun Violence Can Save Lives

"Public health is the science of reducing and preventing injury, disease, and death and promoting the health and well-being of populations through the use of data, research, and effective policies and practices." Ed Fund, *Public Health Approach to Gun Violence Prevention* (Feb. 2021), https://perma.cc/QJ55-XZPB (Ed Fund, *Public Health Approach*). Public health researchers seek to improve the health of people and their communities by studying the population as a whole, rather than by addressing problems at the individual level. *Ibid.* They do that by using a data-driven approach, one that identifies risk factors in the population. *Ibid.* Then, specific prevention strategies based on the data are developed, implemented, and

monitored for success. CDC, *The Public Health Approach to Violence Prevention*, https://perma.cc/8SEC-YRYQ (last visited Sept. 19, 2021) (CDC, *Public Health Approach*).

Public health researchers and practitioners work with legislatures and communities to implement those strategies and accomplish those goals. Ed Fund, *Public Health Approach*. Public health data allow legislatures (and courts) to make decisions about whether a law is needed to address a certain problem, and which means of doing so are most effective.

Public health researchers draw on expertise from a broad range of disciplines, including medicine, epidemiology, sociology, psychology, criminology, education, and economics. CDC, *Public Health Approach*. They seek preventative solutions that address the underlying causes of a disease or injury at a societal level before it occurs—in contrast to, for example, medical professionals in hospitals who treat individuals after they become sick or injured. *Ibid.*; see Ed Fund, *Public Health Approach*.

Government officials in the United States have successfully adopted public health approaches to decrease the rates of premature death and injury and improve the health and well-being of the population overall. Notable advances driven by public health initiatives include the eradication of diseases such as polio and smallpox through the widespread use of vaccines, the decline in smoking-related illnesses and deaths, and the reduction in motor-vehicle crash injuries and fatalities. See Ed Fund, *Public Health Approach*.

For example, after the federal government implemented a public health approach to motor-vehicle

safety, driving deaths in the United States fell by nearly eighty percent between 1967 and 2017, amounting to 3.5 million fewer deaths, even as the number of miles driven increased. See Ed Fund, *Public Health Approach*. The government's approach involved studying the causes of motor vehicle crashes and injuries, then addressing them through legislation, such as airbag requirements, seat belt mandates, age requirements to obtain driver's licenses, and criminal penalties for drunk driving. *Ibid.* All of those measures were designed to, and did, prevent motor vehicle crash injuries and deaths. *Ibid.*

C. An Evidence-Based, Public Health Approach Should Be Used To Address Gun Violence

Gun violence is preventable. A public health approach can and should be used to address the pervasive problem of gun violence. Leading medical and public health organizations have identified gun violence as a significant public health problem in the United States. For example, the American Public Health Association calls gun violence "a major public health problem and a leading cause of premature death." APHA, *Public Health Crisis*. The American Academy of Family Physicians has labeled gun violence "a national public health epidemic that exacts a substantial toll on the U.S. society." Am. Acad. of Family Physicians, *Prevention of Gun Violence Position Paper* (2018), https://perma.cc/X7UE-G6UN. And the Centers for Disease Control and Prevention has recognized that "[f]irearm injuries are a serious public health problem in the United States" that impacts the health and safety of Americans. CDC, *Firearm Violence Prevention*.

Taking a public health approach to addressing gun violence can be effective. Gun violence affects not only individuals, but also the broader community. So in assessing the problem and developing preventative solutions, government officials and communities should focus on population-wide risks and interventions. Ed Fund, *Public Health Approach*. Further, as discussed in detail below, significant data exist about the behaviors and characteristics related to firearm ownership that pose the most significant risks to the public. See pp. 14-23, *infra*. That substantial body of research enables government officials and communities to develop tailored and effective solutions to reduce gun violence.

Firearm regulation requires government officials to make choices about when to constrain individual firearm ownership or use to benefit the public as a whole. A data-driven approach that focuses on the risks and benefits to the public helps ensure that governments adopt regulations that are effective, yet only constrain individual behavior to the extent justified by the risks and societal harms. See, *e.g.*, CDC, *Violence Prevention* (Aug. 8, 2018), https://perma.cc/2WQ6-XKDU (explaining that by focusing on "the health, safety and well-being of entire populations," officials can "provide the maximum benefit for the largest number of people").

A public health approach to gun violence uses data to address both the risks of firearm access and the factors that contribute to, and protect the public from, gun violence. Ed Fund, *Public Health Approach*. The public health approach has four steps: (1) define and monitor the problem through systematic data collection; (2) identify risk factors and protective factors, meaning conduct research to determine why violence

occurs and who it affects; (3) develop and test prevention strategies, to see what works; and (4) ensure widespread adoption of effective strategies, by scaling up the solutions and monitoring them to evaluate effectiveness. *Ibid.* This approach recognizes that there are many different types of gun violence, and each type may require different prevention strategies. *Ibid.*

The Centers for Disease Control and Prevention—"the nation's leading public health authority on violence and injury prevention for nearly 30 years"—agrees that a public health approach is "essential to addressing firearm violence and keeping people safe and healthy." CDC, *Firearm Violence Prevention.* Thus, a public health approach, grounded in evidence, provides an essential policy framework for addressing the gun violence epidemic.

II. A PUBLIC HEALTH APPROACH CAN IDENTIFY RISK FACTORS FOR GUN VIOLENCE

A. Empirical Evidence Is Critically Important For Correctly Identifying Risk Factors For Gun Violence

A public health approach is grounded in empirical evidence. Over the past several decades, public health researchers have developed a vast body of data on gun violence to help lawmakers and courts identify which risk factors are significant—and which ones are not.

For example, research has demonstrated that, contrary to a common public narrative, the enactment of a Stand Your Ground law—a law that abrogates the common-law duty to retreat in public spaces and permits a gun carrier to use deadly force—is a significant risk factor for *increasing* gun violence. See Marc Levy

et al., *Stand Your Ground: Policy and Trends in Firearm-Related Justifiable Homicide and Homicide in the US*, 230 J. Am. Coll. of Surgeons 161, 161 (2020) (Levy); Rosanna Smart et al., "Stand-Your-Ground Laws," in *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States* (RAND Corp. 2d ed., 2020); RAND Corp., *The Effects of Stand-Your-Ground Laws* (Apr. 22, 2020), https://perma.cc/2ZRH-76A7. One study found that, between 2000 and 2017, states with Stand Your Ground laws saw a 10.8% increase in rates of homicide with a firearm, whereas states without those laws saw a 2.3% decrease. Levy 161.

Research also has shown that there is a significant connection between firearm ownership and impulsive anger. See Jeffrey W. Swanson et al., *Guns, Impulsive Angry Behavior, and Mental Disorders: Results from the National Comorbidity Survey Replication (NCS-R)*, 33 Behav. Sci. L. 199 (2015). A large, nationally representative study found that nearly 9% of adults in the United States had access to a firearm and displayed impulsive, angry behaviors, including engaging in physical altercations and destroying property when angered. *Ibid.* People with impulsive anger who carried guns outside the home also were significantly more likely to own multiple (six or more) firearms. *Ibid.* The combination of firearm access and anger poses a significant risk for gun violence, because most homicides in the United States begin with angry arguments, and fatal arguments usually involve someone carrying a gun. *See ibid.*

Research further has shown that, contrary to popular belief, mental illness contributes very little to gun violence, particularly compared to other risk factors such as substance abuse and youth. Jeffrey W.

Swanson et al., *Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy*, 25 Annals of Epidemiology 366, 373-374 (2015). And research has shown that restricting people at high risk of harming themselves from accessing a firearm (even temporarily) is an effective method of reducing firearm suicide. Jeffrey W. Swanson et al., *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does It Prevent Suicides?*, 80 L. & Contemp. Problems 179, 184 & n.29 (2017).

Petitioners' *amici* suggest that insufficient data exist to determine the effectiveness of firearm laws. See, *e.g.*, Attorneys General *Amicus* Br. 11-12. They cite a CDC study from 2003, which concluded that there was "insufficient evidence to determine the effectiveness of any of the firearms laws or combination of laws * * * on violent outcomes." *Ibid.* (quoting CDC, *First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws* (Oct. 3, 2003)). But in the two decades since that study, public health researchers, social scientists, and other academics and institutions have developed robust data that can be used to assess the need for, and effectiveness of, laws restricting firearm possession and carrying.

Legislatures and courts should use this evidence in selecting, implementing, and evaluating laws and regulations. Doing so ensures that restrictions on gun carrying are tailored and effective, in order to comply with the Constitution.

B. Empirical Evidence Demonstrates That Public Carry Is A Significant Risk Factor For Gun Violence

Research has demonstrated that the public carrying of firearms is a significant risk factor for increased gun violence. Public possession of a firearm increases the likelihood that the firearm ultimately will be used to kill or injure. Further, when crime victims possess guns, they are more likely to be the victim of gun violence. Public carrying of firearms also increases the likelihood that situations that could be resolved peacefully instead will end in violence.

1. Gun ownership in general is associated with gun violence

As an initial matter, data collected by the CDC reports an unmistakable association between gun ownership and gun deaths. The CDC's National Center for Injury Prevention and Control publishes yearly statistics reporting fatal injuries and leading causes of death, on a state-by-state level. See CDC, *WISQARS—Web-Based Injury Statistics Query and Reporting System* (July 1, 2020), https://perma.cc/462W-WWRZ.

The most recent statistics confirm that states that rank among the highest in gun ownership also rank among the highest in gun deaths. See Violence Policy Center, *States with Weak Gun Laws and Higher Gun Ownership Lead Nation in Gun Deaths, New Data for 2018 Confirms* (Feb. 24, 2020), https://perma.cc/A2ER-YKAR (VPC, *Weak Gun Laws*) (analyzing the CDC data); see also, *e.g.*, Michael D. Anestis & Claire Houtsma, *The Association Between Gun Ownership and Statewide Overall Suicide Rates*, 48 Suicide & Life-Threatening Behavior 204 (2017). Conversely,

states with lower rates of gun ownership have lower rates of gun deaths. VPC, *Weak Gun Laws*. Thus, states with "strong gun violence prevention laws" and "low rates of gun ownership" have the "lowest rates of gun death." *Ibid*.

2. Public carry in particular presents a high risk of gun violence

Research shows that public carry in particular presents a high risk of gun violence. A 2021 study examined 1,354 adolescents and young adults in Phoenix and Philadelphia who had been involved in serious crimes. See Hureau & Wilson 4-5. For this age group, the authors noted that the "primary reason for obtaining illegal guns is self-protection from neighborhood violence." *Id.* at 3.

The authors concluded that carrying a firearm increases the risks of both gun violence exposure and gun victimization. First, they observed that "risk of gun violence exposure appears to be substantially heightened when respondents are carrying a gun and remarkably reduced when respondents are not carrying a gun." Hureau & Wilson 9. About 30-35% of the people who carried guns witnessed someone getting shot, as opposed to only about 4% of the people who did not carry guns. *Ibid.* Second, the authors observed "a strong correspondence between periods of gun carrying and heightened gun victimization." *Id.* at 9-10. "[D]uring any period of gun carrying, the carrier has at least a 2% chance of getting shot themselves," while the number is "close to, if not equal to, zero" during periods of time where the person did not carry a gun. *Id.* at 11-12.

Further, the authors noted that the association between gun carrying and gun violence exposure and

victimization was present "even among populations with chronic exposure to gun violence," and even among individuals with "substantial experience" carrying guns. Hureau & Wilson 5, 9, 10-11. The authors concluded that reducing gun carrying would reduce the risks of gun violence exposure and gun victimization: "[E]ven the temporary cessation of gun carrying," the authors explained, "is associated with the reduction of such risks." *Id.* at 10-11. The authors thus concluded that "[r]educing gun carrying can reduce experiences of gun violence." *Id.* at 13.

Another study examined whether people were more likely to be shot during assaults if they possessed guns during the assaults. See Charles C. Branas, et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034, 2037 (2009) (Branas). The study examined assault victims in Philadelphia from 2003 to 2006. *Id.* at 2034. The authors found that a victim who was carrying a gun during the assault was 4.46 times more likely to be shot than a victim without a gun. *Id.* at 2037. In assaults where the victim had a chance to forcibly resist the attacker, the fact that the victim had a gun did not reduce the victim's chance of serious injury; instead, it significantly *increased* the likelihood that the victim would be fatally shot during the assault. *Ibid.* (individuals in possession of a gun with a chance to resist were 5.45 times more likely to be shot during the assault).

These and other studies permit social scientists to "say conclusively" that the phenomena of "gun carrying and gun victimization * * * are co-occurring." Hureau & Wilson 12.

3. Empirical research explains how public carry leads to gun violence

Research also explains how gun carrying can lead to gun violence. First, studies have found that the mere presence of a firearm leads to increased aggression and hostility in those who observe the gun, increasing the likelihood that the gun ultimately will be used. A 2017 meta-analysis reviewed several decades of literature to determine how people react to the presence of a gun or other weapons. See Arlin J. Benjamin Jr. et al., *Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Review of the Weapons Effect Literature*, 22 Personality & Soc. Psych. Rev. 347, 359 (2018) (Benjamin). The authors noted that a landmark 1967 study "showed that simply seeing a gun can increase aggression." *Id.* at 347. They analyzed the data that had accumulated since then—data from 78 independent studies, involving over 7,000 individual participants—to see if that understanding held up. *Ibid.*

The authors concluded that the presence of a firearm leads to aggression. They observed that "merely seeing a weapon can increase aggressive thoughts, hostile appraisals, and aggressive behavior." Benjamin 359. They also explained that seeing a firearm tends to make a person more willing to "believe that other people are aggressive" and to "respond in an aggressive manner in ambiguous situations." *Ibid.* They noted that those "quite robust" effects were observed across demographic lines, regardless of the underlying situation, among "males and females * * * and for people of all ages," and "regardless of whether they were provoked." *Ibid.*

Second, studies have found that carrying a gun also increases aggression and hostility in the carrier. Having a gun "may falsely empower its possessor to overreact, instigating and losing otherwise tractable conflicts with similarly armed persons." Branas 2037. Further, those "in possession of a gun may increase [their] risk of gun assault by entering dangerous environments that they would have normally avoided." *Ibid.*; see John Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J. Empirical Legal Stud. 198, 203 (2019) (Donohue) (observing that gun carriers "tend to overestimate their gun-related abilities," which leads to "increase[d] risk taking").

In fact, increased aggression from carrying a gun has been observed even in situations that do not involve actually firing a weapon. For example, multiple studies have found that drivers who have guns in their cars are more likely to exhibit aggressive behavior when driving. See Brad J. Bushman et al., *The Weapons Effect on Wheels: Motorists Drive More Aggressively When There Is a Gun in the Vehicle*, 73 J. Experimental Soc. Psych. 82, 85 (2017); David Hemenway et al., *Is an Armed Society a Polite Society? Guns and Road Rage*, 38 Accident Analysis & Prevention 687, 687 (2006).

This effect is particularly pronounced when the carrier is young. One 2019 study concluded that "youth with potential firearm access demonstrate higher prevalence of multiple violence and other behavioral or mental health factors," including "physical and relational aggression," "general violence involvement," and higher scores on assessments used to

"identify which youth are at risk for perpetrating serious violence." Eric Jon Sigel et al., *Increased Violence Involvement and Other Behavioral and Mental Health Factors Among Youth with Firearm Access*, 65 J. Adolescent Health 63, 69-70 (2019).

Third, the data show that carrying a gun makes a person more likely to believe that another person has a gun, increasing the risk that the carrier will escalate to violence. See Jessica K. Witt & James R. Brockmole, *Action Alters Object Identification: Wielding a Gun Increases the Bias to See Guns*, 38 J. of Experimental Psychology 1159, 1166 (2012). After a series of five experiments, the authors concluded that a person who "ha[s] the opportunity to use a gun" is "more likely to classify objects held by others as guns" and, as a result, is more likely "to engage in threat-induced behavior (in this case, raising a firearm to shoot)." *Id.* at 1165. That is, "the act of wielding a firearm raises the likelihood that nonthreatening objects will be perceived as threats," which can lead to accidental shootings, including of innocent bystanders. *Id.* at 1166. Thus, carrying a gun increases the likelihood that the carrier will engage in gun violence.

Fourth, public carry increases the opportunities for guns to be stolen. Donohue 207. A recent nationally representative survey found that gun owners who carry guns outside the home had their guns stolen at a far higher rate than those who did not. See David Hemenway et al., *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4 Injury Epidemiology 11, 13 tbl.1 (2017). So even if the carrier does not use the gun, it may be stolen and then used by others.

Finally, research has shown that when a person seeks to use a firearm in self-defense, the presence of

a gun can increase the likelihood of gun violence by the aggressor. Even if held by the proverbial "good guy with a gun," studies examining levels of aggression in individuals who observe others in possession of guns have confirmed the presence of a gun in a situation can cause increased aggression among individuals who see it. See Brad J. Bushman, *Guns Automatically Prime Aggressive Thoughts, Regardless of Whether a "Good Guy" or "Bad Guy" Holds the Gun*, 9 Soc. Psych. & Personality Sci. 727, 731 (2017). And criminals arm themselves more heavily and act more aggressively when they expect to encounter individuals with guns, which increases the chances that the aggressor, the victim, or both, will use a firearm. Donohue 203-215.

In short, the evidence is clear and unmistakable: The public carrying of a firearm is a significant risk factor for gun violence. States thus have ample justification for restricting public carry to promote public safety and health.

III. STRONG EMPIRICAL EVIDENCE JUSTIFIES NEW YORK'S PUBLIC-CARRY LICENSING LAW

At issue in this case is a longstanding New York firearm-licensing law. Rather than make permit issuance mandatory to anyone meeting eligibility criteria, it gives government officials discretion to make individualized determinations. Empirical evidence about the risks of carrying guns in public provides strong support for the law.

A. A Constitutional Analysis Of The New York Law Should Be Informed By Empirical Data

The New York law permits government officials to make individualized determinations about whether

certain individuals should be permitted to carry firearms in public. The law requires a person to have a license to carry a concealed handgun in public. N.Y. Penal Law § 400.00(2)(c)-(f). The law directs officials to issue carry licenses to applicants in certain occupations, *id.* § 400.00(2)(c)-(e), and to anyone else who shows "proper cause," *id.* § 400.00(2)(f). "Proper cause" as interpreted by the New York courts, includes "carrying a handgun for target practice, hunting, or self-defense"; to carry a firearm for self-defense, the applicant need only show a need that is "actual and articulable," rather than "speculative or specious." *Kachalsky* v. *County of Westchester*, 701 F.3d 81, 86, 98 (2d Cir. 2012).

New York officials make individualized permitting decisions because different people and situations present different levels of risk and need, and an individualized determination allows them to consider those criteria. In issuing licenses, officials may restrict licenses to specific activities or specific locations. See, *e.g.*, *O'Brien* v. *Keegan*, 663 N.E.2d 316, 316-318 (N.Y. 1996); *Babernitz* v. *Police Dep't*, 411 N.Y.S.2d 309, 324 (N.Y. App. Div. 1978); J.A. 41. By placing restrictions on people and situations that present the greatest risks, public officials are able to save lives.

As explained below, whether the New York law is constitutional under the Second Amendment depends on an analysis of the law's purpose and the effectiveness of the law in furthering that purpose. Empirical data inform both steps in that analysis. The strength of the government's interest in regulating public carry depends on the scope and severity of the problem the government is trying to address. Evidence about the nature and societal impacts of gun violence can help

courts to assess those considerations. Further, evidence informs whether the means chosen are appropriate and whether the law is effective in reducing gun violence. Courts routinely use this type of empirical data to conduct a constitutional means-ends analysis. See, *e.g.*, *Jackson* v. *City & Cty. of S.F.*, 746 F.3d 953, 966, 964 (9th Cir. 2014); *Drake* v. *Filko*, 724 F.3d 426, 439 (3d Cir. 2013); *United States* v. *Carter*, 669 F.3d 411, 418 (4th Cir. 2012). This Court should do the same as it evaluates the constitutionality of New York's licensing law.

B. States With More Permissive Public-Carry Laws Have More Gun Violence

Recent research on the relationship between public-carry laws and gun violence, reviewing decades of data, have confirmed that more restrictive public-carry laws lead to decreased rates of gun injury.

A 2019 study comprehensively assessed the relationship between state right-to-carry laws and violent crimes. See Donohue 198. The study defined right-to-carry states as states with "shall-issue" public-carry laws. *Ibid.*[3] The authors reviewed decades of data to "estimate the impact on violent crime" when states adopt right-to-carry concealed handgun laws. *Ibid.* The authors found that right-to-carry laws are

[3] "Shall-issue" licensing laws are those in which permits must be issued if certain criteria are met. Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States,* 107 Am. J. Pub. Health 1923, 1923 (2017). "May-issue" laws, like the law in New York, provide law enforcement officials with some discretion when granting or denying a public-carry license. *Ibid.*

"associated with 13-15 percent *higher* aggregate violent crime rates 10 years after adoption" of those laws. *Ibid.*

The authors acknowledged that, for many years, there had been a "spirited academic debate" about whether right-to-carry laws increase or decrease crime. Donohue 198. In 1997, researchers articulated a "More Guns, Less Crime" hypothesis, which may have encouraged state legislatures to adopt right-to-carry laws. *Id.* at 199. After considering an additional 14 years of data and performing multiple panel data regressions, the authors concluded that "[a]ll of the statistically significant results * * * show [right-to-carry] laws are associated with *higher* rates of overall violent crime, property crime, or murder." *Ibid.*

The study found "not even the slightest hint in the data that [right-to-carry] laws reduce violent crime." Donohue 240. Instead, they found that the "weight of the evidence * * * best supports the view that the adoption of [right-to-carry] laws substantially *raises* overall violent crime." *Ibid.* (emphasis added). In the 33 states that had adopted right-to-carry laws between 1981 and 2007, the authors found that "violent crime is substantially higher after 10 years than would have been the case had the [right-to-carry] laws not been adopted." *Id.* at 200.

Those findings confirm that, far from ensuring personal safety, laws that promote widespread firearm possession lead "to statistically significant and substantial increases in violent crime." Donohue 240. The authors determined that the extensive data they considered "uniformly undermine the 'More Guns, Less Crime' hypothesis." *Ibid.* Rather, the "best

available evidence using different statistical approaches * * * all suggest that the net effect of state adoption of [right-to-carry] laws is a substantial increase in violent crime." *Ibid.*

Other recent studies have reached the same conclusion. For example, a 2017 study examined the relationship between ease of legal access to firearms and homicide rates. See Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States,* Am. J. of Public Health 1923 (2017). To do that, the authors compared homicide rates in "shall-issue" states and "may-issue" states from 1991 to 2015. *Id.* at 1924-1925. They found that shall-issue state laws were associated with statistically significant 6.5% higher homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates. *Id.* at 1923, 1928. They noted that the ownership and public carrying of firearms has increased since the 1990s, and they found that "the relationship between the shall-issue laws and higher homicide rates" has "increased over time" as well. *Id.* at 1928.

A 2018 study that focused on urban counties reached a similar conclusion. See Cassandra K. Crifasi et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. Urban Health 383 (2018). The authors examined the effect of public-carry laws on firearm homicide rates in urban counties. *Id.* at 384-385. They found that urban counties in states with right-to-carry laws "experienced a 4% increase in firearm homicide rates relative to counties in states with more restrictions on the issuance of concealed carry weapon permits." *Id.* at 387. The authors noted that their study "strengthens [the] available evidence" showing that more permissive public-carry

laws are associated with increased violence, because it "isolat[es] the effects in the geographic locations in which firearm homicides concentrate." *Id.* at 383.

A recent study focused on workplace homicides showed a similar effect in right-to-carry states. See Mitchell L. Doucette et al., *Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992-2017)*, 109 Am. J. Pub. Health 177 (Dec. 2019) (Doucette). The authors hypothesized that states with right-to-carry laws would have a proportionally greater number of workplace homicides, both because "gun carrying potentially emboldens aggressive behaviors," and because people carrying guns "may intervene in a well-intentioned way," "only to unintentionally inflict violence." *Id.* at 1747-1748.

The authors examined 25 years' worth of data and concluded that the data support their hypothesis. Specifically, they concluded that "states with [right-to-carry] laws experienced higher firearm [workplace homicide] incidence rates than did non-[right-to-carry] states." Doucette 1751. In particular, they determined that "States that had [a right-to-carry] law between 1992 and 2017 experienced 29% greater rates of firearm [workplace homicides]." *Ibid.* The authors concluded that their analysis confirmed prior research showing that right-to-carry laws "are associated with higher rates of violent crime," but they noted that "the strength of the relationship" between right-to-carry laws and workplace homicides "is notably higher than in previous studies" about homicides generally. *Ibid.*

In sum, the state-level evidence is clear and robust: Higher rates of firearm possession in public lead to higher rates of gun crime and gun death.

C. Public Health Data Strongly Support The Constitutionality Of New York's Law

Respondent's brief explains that New York's law is amply supported by a historical analysis of restrictions on the public carrying of firearms. Resp. Br. 21-36. But assuming the Court does not find the historical record dispositive, the constitutionality of New York's law will depend on an evaluation of the ends the state seeks to achieve and the means used to further those ends. As respondent explains, Br. 37-42, intermediate scrutiny (rather than strict scrutiny) is the appropriate level of review for the law at issue. After all, this Court stated that "the right secured by the Second Amendment is not unlimited" and that some firearm restrictions—including at least some public-carry restrictions—are "presumptively lawful." *District of Columbia* v. *Heller*, 554 U.S. 570, 626 & n.26 (2008); see *id.* at 595 (Second Amendment does not give citizens an "unlimited" right "to carry arms for *any sort* of confrontation"); *id.* at 626 (Second Amendment right historically "was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose"). Nearly all, if not all, of the courts of appeals that have considered Second Amendment challenges to licensing laws have applied a form of intermediate scrutiny. See *Gould* v. *Morgan*, 907 F.3d 659, 672 (1st Cir. 2018) (citing cases), *cert. denied sub nom. Gould* v. *Lipson*, 141 S. Ct. 108 (2020). Accordingly, to pass constitutional muster, New York's law must be at least "substantially related" to an "important governmental objective." *Clark* v. *Jeter*, 486 U.S. 456, 461 (1988).

New York has justified its restrictions on public carrying of certain firearms as necessary to address its compelling governmental interests in promoting

public safety and preventing gun violence. Resp. Br. 43. As the data discussed above demonstrate, the risks posed by firearms in public spaces are undoubtedly compelling governmental interests. See pp. 14-23, *supra*. Not surprisingly, this Court has recognized that a state has a compelling interest in preventing crime and protecting public safety. See, *e.g.*, *Mitchell* v. *Wisconsin*, 139 S. Ct. 2525, 2535 (2019) (protecting individuals from harm in highway vehicle accidents is a compelling interest); *United States* v. *Salerno*, 481 U.S. 739, 750 (1987) (ensuring public safety is a compelling interest). So the state's goal plainly is important enough to justify at least some restrictions on the public carrying of firearms.

Further, New York's law is an appropriate means to ensure public safety and prevent gun violence. Recent public-health research has demonstrated that states that place limits on public carry experience notably fewer incidents of gun violence overall, including lower homicides rates, than states without those limits. See pp. 25-28, *supra*. The evidence shows, from a variety of sources and over several decades, that lower rates of public firearm possession led to fewer gun deaths and injuries. Public health research therefore supports New York's view that limiting the public carrying of handguns to particular individuals, places, and situations will make the public safer and reduce gun violence.

Experience has borne that out. For years, New York has had one of the lowest rates of gun deaths in the country. Giffords Law Ctr., *Annual Gun Law Scorecard: New York* (2021), https://perma.cc/KA3E-ZM35 (ranking New York's gun death rate as the second lowest in the United States); see Everytown for Gun Safety, *Everystat–New York*, https://perma.cc/

Y9YZ-3BQQ (last visited Sept. 19, 2021) (ranking New York 49 out of 51 jurisdictions in gun injuries). In 2019, New York had the second-lowest rate of firearm mortality of any state, with only 3.9 gun deaths per 100,000 residents that year, and it was among the four states with the lowest rates of gun death for the preceding five years. CDC, *Firearm Mortality by State* (2019), https://perma.cc/V77P-9SBH. New York's rate of gun deaths is less than one-third the nationwide average—while New York is home to just over 6% of the U.S. population, in 2019 it accounted for only 2% of the 39,707 recorded gun deaths nationwide. *Ibid.* Because New York has had public-carry restrictions in place since 1911, one cannot directly compare its experience with how the state would have fared without those laws. But ample evidence from other states shows that right-to-carry laws are associated with significant increases in gun violence, see Donohue 240, which strongly suggests that New York's law reduces violence from what it would have been without the law.

In *Heller*, this Court noted "the problem of handgun violence in this country" and assured states that "[t]he Constitution leaves [them] a variety of tools for combating [the] problem" of "handgun violence." 554 U.S. at 636. Empirically driven public health research strongly supports the view that New York's decision to place restrictions on the public carrying of firearms is a constitutionally permissible approach.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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