No. _____

IN THE
Supreme Court of the United States

JOSEPH SROUR

Applicant,

v.

NEW YORK CITY, NEW YORK and EDWARD A. CABAN,

Respondents.

TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT ON APPLICATION TO VACATE STAY OF A PERMANENT INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO EMERGENCY APPLICATION TO VACATE THE SECOND CIRCUIT'S STAY PENDING APPEAL

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Dated: March 20, 2024

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United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of February, two thousand twenty-four.

Present:

Amalya L. Kearse,
Michael H. Park,
Beth Robinson,
Circuit Judges.

Joseph Srour,

Plaintiff-Appellee,

v. 23-7549

New York City, New York, Edward A. Caban,

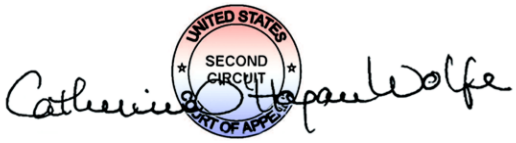
Defendants-Appellants,

Keechant Sewell, in her Official Capacity as NYPD Police Commissioner,

Defendant.

Appellant New York City moves for a stay, pending appeal, of the part of the district court's order enjoining N.Y.C. Administrative Code § 10-303(a)(2). Upon due consideration, it is hereby ORDERED that the motion is GRANTED. *See Nken v. Holder*, 556 U.S. 418, 434–35 (2009); *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007); *see also Antonyuk v. Chiumento*, 89 F.4th 271, 312 (2d Cir. 2023) (upholding constitutionality of New York State's requirement that an applicant for a firearm license have "good moral character").

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH SROUR, Plaintiff, -v- NEW YORK CITY, New York, and KEECHANT SEWELL, In Her Official Capacity as NYPD Police Commissioner, Defendants.	:	22 Civ. 3 (JPC) OPINION AND ORDER

JOHN P. CRONAN, United States District Judge:

In 2018, Joseph Srour applied to the New York City Police Department ("NYPD") License Division for a permit to possess rifles and shotguns in his home, and the following year he applied for a license to possess handguns in his home. Both applications were denied in 2019, with the License Division's Appeals Unit citing Sections 3-03 and 5-10 of Title 38 of the Rules of the City of New York ("RCNY"), and specifically pointing to Srour's prior arrests, bad driving history, and supposedly false statements on the applications as the reasons for denial. Since then, both Sections 3-03 and 5-10 have been amended.

Srour brings this action against New York City and Edward A. Caban[1] in his official capacity as the Commissioner of the NYPD and therefore the City's firearms licensing official,

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Commissioner Caban was automatically substituted for Keechant Sewell, his predecessor, upon his appointment as Commissioner of the NYPD on July 17, 2023. *See* NYPD, Police Commissioner, https://www.nyc.gov/site/nypd/about/leadership/commissioner.page (last visited Oct. 23, 2023). Therefore, the Clerk of the Court is respectfully directed to substitute Edward A. Caban for Keechant Sewell in the caption of this case.

challenging those denials. Srour contends that the pre-amendment versions of Sections 3-03 and 5-10, as well as other related provisions of the New York City Administrative Code, run afoul of the Second Amendment. While Srour originally alleged that these provisions are unconstitutional both facially and as applied to him, Srour since has abandoned his as-applied challenges and now argues only that the provisions are facially invalid under the Second Amendment. Before the Court is Srour's motion for summary judgment, which seeks, among other relief, a declaration of the unconstitutionality of these provisions and a permanent injunction preventing Defendants from enforcing them.

Under the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), this Court considers, first, whether the conduct at issue is covered by the text of the Second Amendment, and if so, second, whether the challenged New York City regulations are "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. For reasons that follow, the Court finds that the conduct at issue—the possession of firearms for lawful purposes—plainly falls within the text of the Second Amendment. Indeed, the Second Amendment safeguards "the right of the people to keep and bear Arms." U.S. Const. amend. II. Thus, a presumption of constitutional protection is triggered. Further, Defendants have failed to show that the broad discretion afforded to licensing officials under subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303, which imposes the permit requirement for rifles and shotguns, and the pre-amendment versions of Sections 3-03 and 5-10 of Title 38 of the RCNY, is consistent with the history and tradition of firearm regulation in this country. Each of these provisions allows for the denial of a firearm permit upon a City official's determination of the applicant's lack of "good moral character" or upon the official's finding of "other good cause"—broad and unrestrained discretionary standards which Defendants have not shown to have

any historical underpinning in our country. And because that unconstitutional exercise of discretion occurs every time a licensing official applies or has applied these provisions, they each are facially unconstitutional.

For the reasons more fully discussed below, the Court grants Srour's motion for declaratory and injunctive relief with respect to subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303. The Court also grants summary judgment in Srour's favor on his challenges to the prior versions of Sections 3-03 and 5-10 of Title 38 of the RCNY. However, because Srour has not demonstrated that the other provision he challenges, New York City Administrative Code Section 10-310, which provides for penalties for violations of certain New York City firearms regulations, is unconstitutional in all its applications, the Court denies summary judgment with respect to that provision.

I. Background

A. Facts[2]

In 2018, Srour, a resident of Brooklyn, New York, applied to the NYPD License Division for a permit to possess rifles and shotguns in his home for self-protection. Pl. 56.1 Stmt. ¶¶ 1, 4; Srour Decl. ¶ 3. That application was denied on or about June 13, 2019. Pl. 56.1 Stmt. ¶ 5; Dkt. 27-2 ("6/13/19 Notice of Application Disapproval"). In its Notice of Application Disapproval, the NYPD License Division explained to Srour: "The circumstances surrounding your actions

[2] These facts are mainly drawn from Srour's statement of undisputed material facts under Local Civil Rule 56.1(a), Dkt. 28 ("Pl. 56.1 Stmt."), Defendants' counter-statement under Rule 56.1(b), Dkt. 33, and Srour's declaration, Dkt. 27 ("Srour Decl."), including the exhibits attached thereto, to the extent that Defendants do not challenge Srour's statements in his declaration. Unless otherwise noted, the Court cites only to Srour's statement of undisputed material facts when Defendants do not dispute the particular fact. These facts are largely recited herein only for framing the background of this case, however, as the specific circumstances giving rise to Srour's permit denials are not material to his facial challenges to the at-issue regulations.

exhibited in your past question your ability to abide by the rules and regulations to possess a rifle/shotgun permit." 6/13/19 Notice of Application Disapproval. The Notice proceeded to explain: "Based on your prior arrests for [redacted] you have shown poor moral judgment and an unwillingness to abide by the law. The above circumstances, as well as your derogatory driving record (twenty-eight moving violations and thirty license suspensions), reflect negatively on your moral character and casts [sic] grave doubt upon your fitness to possess a firearm." *Id.*

In 2019, Srour submitted another application to the NYPD License Division, this one for a permit to possess handguns in his home for self-protection. Pl. 56.1 Stmt. ¶ 6; Srour Decl. ¶ 4. On May 30, 2019, this application too was denied. Pl. 56.1 Stmt. ¶ 7; Dkt. 27-3 ("5/30/19 Notice of Disapproval"). That Notice of Disapproval explained that Srour's handgun application was denied "per Title 38 of the RULES OF THE CITY OF NEW YORK § 5-10 . . . based" on Srour's prior arrests, two criminal court summonses for "Navigational Law" violations, twenty-eight driving violations, twenty-four driver license suspensions, and six driver license revocations. 5/30/19 Notice of Disapproval.

Srour timely appealed each denial to the Appeals Unit of the NYPD License Division. Pl. 56.1 Stmt. ¶ 8. Both appeals were simultaneously denied on November 7, 2019. *Id.* ¶ 9; Dkt. 27-4 ("11/7/19 Notice of Disapproval After Appeal"). In its Notice of Disapproval After Appeal, the License Division's Appeals Unit detailed its reasoning for rejecting Srour's appeals. 11/7/19 Notice of Disapproval After Appeal at 1. The Notice began with referencing the good moral character and good cause inquiries under New York State and New York City law:

> Section 400.00 of the New York State Penal Law states that "no license shall be issued except for an applicant . . . (b) of good moral character . . . and; (n) for whom no good cause exists for the denial of the license." Title 38 of the Rules of the City of New York (RCNY), Section 5-10, provides a list of factors to be considered in assessing moral character and "good cause." See, also, 38 RCNY 3-03.

Id. The Notice proceeded to articulate particular findings in support of its ultimate determination that Srour lacked good moral character and that good cause existed to deny him either a firearm or rifle permit or a handgun license. It first explained, under a section titled "Arrest History":

> Pursuant to 38 RCNY 5-10 and 38 RCNY 3-03, arrests may be grounds for disapproval of a handgun license or rifle/shotgun permit. On June 7, 1995, Mr. Srour was arrested for [redacted] and on July 11, 1996, he was arrested for [redacted]. Although these cases were dismissed, pursuant to Criminal Procedure Law Section 160.50(1)(d)(3), the License Division may consider the circumstances surrounding these arrests. While these arrests are not recent, Mr. Srour's having been arrested twice, as well as the violent nature of the circumstances surrounding the [redacted] arrest, are factors supporting denial of his applications.

Id. Under the next section, titled "Failure to Disclose," the Notice contended that Srour failed to mention those arrests on his firearms applications:

> Failure to disclose arrests on the application is a denial ground. 38 RCNY 5-10(e), 38 RCNY 3-303(e), [sic] as is a displaying [sic] a lack of candor or a failure to cooperate with the background investigation. Section 38 RCNY 5-10(n), 38 RCNY 3-03(n). The firearms applications require the applicant to indicate whether he or she was ever arrested, even if the arrest was dismissed, sealed, voided, or nullified by operation of law. However, Mr. Srour failed to disclose either of his two arrests on his application. He checked "No" in response to the question asking if he had ever been arrested (even if sealed, etc.). In addition, in connection with his Rifle/Shotgun application, Mr. Srour [] signed and notarized an Arrest Information Affidavit stating that "By signing this document, you acknowledge that you understand the requirement to disclose all information relating to your arrest history. Any omission of a previous arrest or any false statements made in relation to your application for a Rifle/Shotgun permit is grounds for denial of a permit."
>
> Mr. Srour only provided required statements describing the arrests after he had submitted his application, and the investigator, who had independently learned of the arrests, had requested the statements. Therefore, this submission does mitigate [sic] the negative impact on his application stemming from Mr. Srour's failure to disclose his arrests on his application, as required. Even though these were sealed and are not recent, he was very clearly instructed in the application to disclose them and failed to do so.
>
> Mr. Srour's failure to disclose on his applications that he had been arrested for [redacted], and for other charges, demonstrates a lack of candor and is a strong ground for disapproval of his applications. 38 RNYC 3-03(e) and 5-10(e).

Id. at 2. Then, under a section titled "Driver History," the Notice explained its consideration of Srour's driving record:

> Pursuant to 38 RCNY §§ 3-03(h) and 5-10(h), an applicant who has a "poor driving history, has multiple driver license suspensions, or has been declared a scofflaw by the New York State Department of Motor Vehicles," may be denied a rifle/shotgun permit and/or handgun license. Mr. Srour's driving history includes 28 moving violations from June 1991 to December 2013, 24 license suspensions between August 1991 and December 2000, and six license revocations between July 1992 and January 1995. In addition, he received two summons [sic] for Navigational Law violations in August 2012 and in August 2015, both of which were for the same offense (while on a jetski), showing a disregard for the rules even after being informed of them. Notably, Mr. Srour's Navigational Law violations occurred recently. Mr. Srour's poor driving history demonstrates an inability to abide by laws and regulations, shows a lack of moral character, and provides an additional ground for denial.

Id. The Notice concluded:

> The circumstances surrounding Mr. Srour's two arrests, his failure to disclose his arrests on the Handgun and Shotgun/Rifle Applications, and poor driving history portray a lack of good moral character and disregard for the law. For all of the reasons stated above, good cause exists to deny his applications and his appeal of the disapproval of [his] Premises Residence handgun license application as well as the Rifle/Shotgun Permit application is denied.

Id. at 2-3.

B. Procedural History

Srour initiated this case on January 2, 2022 against the City of New York and then-Commissioner Sewell, seeking monetary, declaratory, and injunctive relief. Dkt. 1 ("Compl.") at 32-33. In his Complaint, Srour sought declarations that "New York City's discretionary and permissive licensing of handguns under 38 RCNY 5; and rifles and shotguns under 38 RCNY 3; and New York City Administrative Code 10-303 violate the Second Amended facially and as applied to" him, *id.* ¶ 2, and more specifically that New York City Administrative Code Section 10-303(a)(2) and (a)(9) (First Cause of Action); Section 5-10 (a), (e), (h), and (n) of Title 38 of the RCNY (Second Cause of Action); Section 3-03(a), (e), (h), and (n) of Title 38 of the RCNY (Third

Cause of Action); and New York City Administrative Code Section 10-310 (Fourth Cause of Action) are unconstitutional, both facially and as applied. *Id.* ¶¶ 2, 161-172. His Fifth Cause of Action alleged that these New York City provisions are preempted by New York State law. *Id.* ¶¶ 173-176. In addition to declaratory relief, Srour also sought an injunction enjoining Defendants from enforcing these provisions. *Id.* at 32.

At the initial pre-trial conference on March 14, 2022, the Court stayed this case with the parties' consent pending the United States Supreme Court's resolution of *New York State Rifle & Pistol Association, Inc. v. Bruen*, No. 20-843 (U.S.). *See* Mar. 14, 2022 Minute Entry. *Bruen* was decided on June 23, 2022. *See Bruen*, 142 S. Ct. 2111. On June 30, 2022, Defendants made an unopposed request that the stay remain in place for another thirty days on account of a special session convened by the New York State Legislature in response to the *Bruen* decision. Dkt. 14. The Court granted that request the following day. Dkt. 15. On July 25, 2022, after New York State amended its firearms regulations, Defendants requested that the stay remain in place for an additional sixty days to afford the City time to consider whether to amend its own regulations. Dkt. 16. The Court granted that request and ordered the parties to file a joint status letter by September 25, 2022 reflecting, among other things, whether the provisions implicated in this case had been modified. Dkt. 17.

The parties then filed a joint letter on September 25, 2022, offering their views of the impact of *Bruen* on Srour's claims and further informing the Court that Srour wished to move for summary judgment. Dkt. 18 at 1-3. Defendants opposed Srour's request to file a pre-discovery summary judgment motion, taking the position that discovery was necessary given Srour's as-applied challenges to the City's provisions. *Id.* at 3. At a conference on November 3, 2022, Srour withdrew his as-applied challenges (thereby obviating the need for discovery) and his preemption

claims,[3] thus presenting only a facial challenge to the regulations, and the Court set a briefing schedule for Srour's motion for summary judgment. Nov. 3, 2022 Minute Entry.

Srour moved for summary judgment on December 16, 2022. Dkts. 25, 26 ("Motion"), 27-28. Defendants opposed on February 21, 2023. Dkts. 31 ("Opposition"), 32-33. Srour filed a reply on March 28, 2023. Dkt. 36. On July 5, 2023, the Court ordered the parties to address recent amendments to Sections 3-03 and 5-10 of Title 38 of the RCNY, which went into effect on December 16, 2022. Dkt. 37. Srour filed a letter addressing those amendments on July 15, 2023, Dkt. 39, and Defendants filed their letter on July 21, 2023, Dkt. 40.

II. Legal Standards

A. Summary Judgment

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine dispute exists where 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party,' while a fact is material if it 'might affect the outcome of the suit under the governing law.'" *Chen v. 2425 Broadway Chao Rest., LLC*, No. 16 Civ. 5735 (GHW), 2019 WL 1244291, at *4 (S.D.N.Y. Mar. 18, 2019) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

B. The Second Amendment

The Second Amendment to the U.S. Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend II. The Second Amendment "codified a *pre-existing* right": the Amendment "was not intended to lay down a 'novel principle' but rather but rather codified a

[3] Accordingly, the Court dismisses Srour's Fifth Cause of Action without prejudice.

right 'inherited from our English ancestors.'" *District of Columbia v. Heller*, 554 U.S. 570, 592, 599 (2008) (quoting *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)) (alteration omitted); *accord Bruen*, 142 S. Ct. at 2127. As the *Heller* Court emphasized, the Second Amendment "confer[s] an individual right to keep and bear arms," *Heller*, 554 U.S. at 595—a right that is held not just by our country's military but by the people of the United States, *id.* at 579-95. *See Bruen*, 142 S. Ct. at 2157 (Alito, J., concurring) ("[T]he key point that we decided [in *Heller*] was that 'the people,' and not just members of the 'militia,' have the right to use a firearm to defend themselves."). And "the *central component*" of that right is "individual self-defense." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (plurality) (quoting *Heller*, 554 U.S. at 599); *accord Heller*, 554 U.S. at 592 (explaining that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation").[4]

That right, of course, is "not unlimited." *Heller*, 554 U.S. at 595. "[T]he right to keep and bear arms is 'not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" *McDonald*, 561 U.S. at 786 (quoting *Heller*, 554 U.S. at 626); *see also Heller*, 554 U.S. at 626 (explaining that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons"). The Supreme Court's recent decision in *Bruen* articulated the standard for applying the Second Amendment to a government firearm regulation: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm

[4] In *McDonald*, the Supreme Court clarified that the Second Amendment applies to states and municipalities through the Fourteenth Amendment. 561 U.S. at 750.

regulation." *Bruen*, 142 S. Ct. at 2129-30.[5] To determine whether a firearm regulation is consistent with the Nation's historical tradition of firearm regulation, a court is not required to embark on its own historical inquiry. Rather, a court is "entitled to decide a case based on the historical record compiled by the parties." *Id.* at 2130 n.6. The government bears the burden and must provide material that demonstrates its regulation is consistent with our country's history of firearm regulation. *Id.* at 2135 ("[T]he burden falls on the respondents to show that New York's proper-cause requirement is consistent with this Nation's historical tradition of firearm regulation."); *see id.* at 2150 ("Of course, we are not obliged to sift the historical materials for evidence to sustain New York's statute."); *see also id.* at 2132 ("[W]e find no such tradition in the historical materials that respondents and their *amici* have brought to bear on that question.").[6]

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[5] In announcing this standard, *Bruen* supplanted the "'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny" around which the Courts of Appeals, including the Second Circuit, previously "coalesced." *Bruen*, 142 S. Ct. at 2125. Under that prior framework, courts first would "determine whether the challenged legislation impinges upon conduct protected by the Second Amendment" and, if so, then would determine "the appropriate level of scrutiny to apply and evaluate the constitutionality of the law using that level of scrutiny." *United States v. Jimenez*, 895 F.3d 228, 232 (2d Cir. 2018); *accord Bruen*, 142 S. Ct. at 2126 ("At the second step, courts often analyze 'how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right.'" (quoting *Kanter v. Barr*, 919 F.3d 437, 441 (7th Cir. 2019))); *see, e.g.*, *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 96-101 (2d Cir. 2012) (sustaining the New York State "proper cause" standard for public carry, which *Bruen* subsequently invalidated, upon holding that the requirement was "substantially related to the achievement of an important government interest"), *overruled by Bruen*, 142 S. Ct. 2111. While the *Bruen* Court largely agreed with the first step as "broadly consistent with *Heller*," because that step examines the Second Amendment's text informed by history, *Bruen*, 142 S. Ct. at 2127, the Court made clear that the second step—the means-ends balancing—is not part of the inquiry, *id.* ("Despite the popularity of this two-step approach, it is one step too many."); *see also id.* at 2126 ("To justify its regulation, the government may not simply posit that the regulation promotes an important interest.").

[6] In their briefing, Defendants at times seem not to appreciate that it is their burden to come forward with evidence that the challenged regulations are consistent with our country's historical tradition of firearm regulation. *See, e.g.*, Opposition at 11 ("Notably, plaintiff's memorandum is devoid of citations to source material, statutes, historical analysis, or historical legal precedent to support the assertion that governments did not require individuals to seek permission to keep or

The Supreme Court in *Bruen* provided guidance for courts conducting this historical inquiry. Sometimes, the inquiry is straightforward:

> For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Id. at 2131. In other instances, the "historical inquiry that courts must conduct will often involve reasoning by analogy . . . . Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are 'relevantly similar.'" *Id.* at 2132 (quoting C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 773 (1993)). Two "metrics" of how regulations may be "relevantly similar under the Second Amendment" are "how and why the regulations burden a law-abiding citizen's right to armed self-defense," since, as noted, that right to "individual self defense is 'the *central component*' of the Second Amendment." *Id.* at 2133 (quoting *McDonald*, 561 U.S. at 767). "Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are '*central*' considerations when engaging in an analogical inquiry." *Id.* (quoting *McDonald*, 561 U.S. at 767). This analogical approach requires the government only to "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.*

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bear firearms."); *id.* at 11-12 ("Nor does plaintiff provide any historical analysis or contemporary statements regarding the ratification of the Second Amendment to support the conclusory assertion that the challenged regulations are 'entirely inconsistent with this Nation's traditional history of firearm regulation.'" (quoting Motion at 12)). *Bruen* was clear that this is in fact Defendants' burden.

C. Facial Constitutional Challenge

A party making a facial challenge to the constitutionality of a statute "can only succeed . . . by 'establish[ing] that no set of circumstances exist under which the Act would be valid,' *i.e.*, that the law is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987));[7] *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019) ("A facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications."); *see also Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540, 548-50 (2d Cir. 2023) (applying the *Washington State Grange* standard for a facial challenge and rejecting arguments that a more lenient standard should apply). "Facial challenges are disfavored for several reasons," including that such challenges "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied" and that "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Wash. State Grange*, 552 U.S. at 450-51 (citations and internal quotation marks omitted). But when a statute implicates "fundamental rights protected by the Constitution," a facial challenge can be appropriate. *United States v. Requena*, 980 F.3d 30, 40 (2d Cir. 2020).

[7] At points, Srour appears to dispute the facts considered by the NYPD License Division in denying his applications, maintaining, for instance, that he told the investigator during the licensing application process about his prior arrests and that those arrests were dismissed because he did not commit a crime. *See, e.g.*, Motion at 1, 11 n.12; Srour Decl. ¶¶ 9, 10. But because Srour has abandoned his as-applied challenges and only argues that the at-issue New York City regulations are facially unconstitutional, any disputes as to such facts are of no moment.

III. The Challenged Regulations

New York City has local laws that as a general matter require an individual to obtain a permit or license before possessing a firearm in the City. *See* N.Y.C. Admin. Code § 10-303 ("[I]t shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns."); RCNY Tit. 38, § 3-03 (identifying grounds for the NYPD to deny a rifle or shotgun permit); *id.* § 5-10 (identifying grounds for the NYPD to deny a handgun license); *see also* N.Y. Penal Law § 400.00(6) (requiring a permit from the Police Commissioner of New York City in order for a New York State-issued license to carry or possess a pistol or revolver to be effective in New York City, barring certain enumerated circumstances).

The Notices issued to Srour by the NYPD License Division are not models of clarity in explaining the precise legal grounds for denying his applications to possess firearms. The June 13, 2019 Notice of Application Disapproval did not cite any particular provision of New York City law for denying Srour a rifle or shotgun permit, but expressed the License Division's concern with Srour's "ability to abide by the rules and regulations to possess a rifle/shotgun permit," and cited his arrests as showing "poor moral judgment and unwillingness to abide by the law" as well as his "derogatory driving record," which combined "reflect negatively upon [Srour's] moral character and casts [sic] grave doubt upon [Srour's] fitness to possess a firearm." 6/13/19 Notice of Application Disapproval. By using this language, the License Division appeared to rely on the grounds for denial of a rifle and shotgun permit under Section 3-03 of Title 38 of the RCNY and New York City Administrative Code Section 10-303(a)(2). As quoted more fully *infra*, Section 3-03 at the time provided that such an application may be denied upon a determination that the "applicant lacks good moral character" (as well as more generally for "other good cause") pursuant

to Section 10-303, and then enumerated factors upon which the License Division was required to base that determination to include, among others, an applicant's prior arrests, "poor driving history," and "[o]ther information [that] demonstrates an unwillingness to abide by the law." RCNY Tit. 38, § 3-03(a), (h), (n) (2019) (last amended Dec. 16, 2022). Section 10-303(a)(2) similarly provides that an applicant may be denied a permit to purchase and possess a rifle or shotgun if he or she "is not of good moral character." N.Y.C. Admin. Code § 10-303(a)(2).

The May 30, 2019 denial of Srour's application for a handgun license specifically cited Section 5-10 of Title 38 of the RCNY. 5/30/19 Notice of Disapproval. In addition, this Notice of Disapproval listed the "following reasons" for denying Srour a handgun license: Srour's arrest history, his criminal court summons history, and his driving record. *Id.* These reasons tracked the language in Section 5-10, which at the time required that the licensing official's determination that an applicant "lacks good moral character or that other good cause exists" be based on factors to include the applicant's arrest history, "poor driving history," and "[o]ther history [that] demonstrates an unwillingness to abide by the law." RCNY Tit. 38, § 5-10(a), (h), (n) (2019) (last amended Dec. 16, 2022).

The Notice of Disapproval After Appeal, issued by the Licensing Division's Appeals Unit, cited both Section 3-03 and Section 5-10 in affirming the denials of Srour's applications. 11/7/19 Notice of Disapproval After Appeal at 1-2. Like the original denials, the affirmance pointed to Srour's arrest history and his "poor driving history," specifically finding that the latter "shows a lack of moral character." *Id.* at 1-2. The Appeals Unit additionally cited Srour's "[f]ailure to disclose arrests on the application[s]" as a ground for denial because it "display[s] a lack of candor or a failure to cooperate with the background investigation." *Id.* at 2. Such a failure to disclose a complete arrest history was among the considerations enumerated under each of Section 3-03 and

Section 5-10 that licensing officials were required to consider in making a determination of lack of good moral character or other good cause. *See* RCNY Tit. 38, §§ 3-03(e), 5-10(e) (2019) (last amended Dec. 16, 2022). Further, by specifically referencing "a lack of good moral character" and the existence of "good cause" for denying his rifle or shotgun permit, the Appeals Unit also appeared to rely on subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303, discussed more fully below.

Accordingly, the Court considers in this Opinion and Order the constitutionality of Sections 3-03 and 5-10 of Title 38 of the RCNY, as those provisions existed at the time the License Division denied Srour's applications, as well as subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303.[8] Titled "Grounds for Denial of Permit," Section 3-03 provided that an official may deny a rifle or shotgun permit upon a finding of a lack of "good moral character" or the existence of "other good cause," and identified the factors to be considered in making that assessment. As relevant to the grounds cited by the NYPD License Division and its Appeals Unit for denying Srour's application for a rifle or shotgun permit, Section 3-03 read at the time:

> In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an application for a rifle/shotgun permit may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to § 10-303 of the Administrative Code of the City of New York. Such a determination shall be made based upon consideration of the following factors:
>
> (a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.
>
> * * *
>
> (e) The applicant made a false statement on their application, or failed to disclose their complete arrest history, including sealed arrests. Sealed arrests are made

[8] The Court discusses the effect of recent amendments to the RCNY at *infra* IV.A.

> available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun.
>
> * * *
>
> (h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.
>
> * * *
>
> (n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the permit. In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.

RCNY Tit. 38, § 3-03 (2019) (last amended Dec. 16, 2022).

Section 5-10, titled "Grounds for Denial of Handgun License," similarly identified grounds for denying a handgun license. Like Section 3-03, Section 5-10 permitted denial of a handgun license upon a determination of lack of "good moral character" or the existence of "other good cause," and enumerated factors to be considered in arriving at that determination. At the time that Srour's application was denied, Section 5-10 read, as relevant here:

> In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law § 400.00 (1).[9] Such a determination shall be made based upon consideration of the following factors:

[9] At the time that Srour's applications were denied, New York Penal Law Section 400.00(1) stated that "[n]o license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant [who satisfies certain enumerated conditions]." N.Y. Penal Law § 400.00(1) (2019) (last amended Dec. 9, 2022). Srour's Fifth Cause of Action, since withdrawn, alleged that this provision preempted the at-issue City provisions. *See* Compl. ¶¶ 173-76.

> (a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.
>
> * * *
>
> (e) The applicant made a false statement on their application, or failed to disclose their complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun.
>
> * * *
>
> (h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.
>
> * * *
>
> (n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.

RCNY Tit. 38, § 5-10 (2019) (last amended Dec. 16, 2022).

Section 10-303 of the New York City Administrative Code makes it unlawful for someone to possess a rifle or shotgun without a permit and specifically identifies the absence of "good moral character" and a general notion of "good cause" as legitimate grounds for denying someone such a permit. Both these grounds were cited by the Appeals Unit as reasons for denying Srour's application for a rifle or shotgun permit. The relevant language of Section 10-303, which remains in effect, is as follows:

> It shall be unlawful to dispose of any rifle or shotgun to any person unless said person is the holder of a permit for possession and purchase of rifles and shotguns; it shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns.

> The disposition of a rifle or shotgun, by any licensed dealer in rifles and shotguns, to any person presenting a valid rifle and shotgun permit issued to such person, shall be conclusive proof of the legality of such disposition by the dealer.
>
> (a) *Requirements*. No person shall be denied a permit to purchase and possess a rifle or shotgun unless the applicant:
>
> * * *
>
> (2) is not of good moral character; or
>
> * * *
>
> (9) unless good cause exists for the denial of the permit.
>
> * * * *

N.Y.C. Admin. Code § 10-303. And as noted above, at the time Srour was denied a rifle or shotgun permit, Section 3-03 of Title 38 of the RCNY expressly referenced Section 10-303's "good moral character" and "good cause" language in articulating grounds allowing for denial of a permit.

Srour challenges one other provision of New York City law in this action: New York City Administrative Code Section 10-310. Unlike the other challenged provisions, Section 10-310 does not address the issuance of firearm permits. Rather, this Section provides for penalties for violations of the Administrative Code's firearms provisions:

> Except as is otherwise provided in sections 10-302 and 10-303.1, violation of sections 10-301 through 10-309 and of rules and regulations issued by the commissioner pursuant thereto shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both, provided that the first violation of such sections involving possession of an unregistered rifle or shotgun or rifle or shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition shall be an offense punishable by a fine of not more than three hundred dollars or imprisonment of not more than fifteen days, or both on condition that (a) the first violation of possession of an unregistered rifle and shotgun or rifle and shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition is not in conjunction with the commission of a crime and (b) the possessor has not been previously convicted of a felony or a serious offense and (c)

> the possessor has not previously applied for and been denied a permit for such possession.

N.Y.C. Admin. Code § 10-310.

IV. Discussion

A. Srour's Standing

Effective December 16, 2022, the NYPD amended both Section 3-03 and Section 5-10 of Title 38 of the RCNY. *See* New York Police Department, Notice of Adoption of Final Rule (Dec. 13, 2022), https://rules.cityofnewyork.us/wp-content/uploads/2022/10/Permanent-Rule-FINAL-12.13.22.pdf, at 3-4, 20-21 ("Notice of Adoption"); *see also* 240 City Record 6129-41 (Dec. 16, 2022)."

There were three main changes to Section 3-03. The first sentence of Section 3-03 was amended to remove the phrase, "or that other good cause exists for denial, pursuant to § 10-303 of the Administrative Code of the City of New York."[10] Second, the following two sentences were added after, "if it is determined that an applicant lacks good moral character":

> For the purposes of this chapter, "good moral character" means having the essential character, temperament and judgment necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others. For the purposes of the preceding sentence, the use of force that is reasonably necessary to protect oneself or others shall not be construed as endangering oneself or others.

Notice of Adoption at 4. And lastly, Section 3-03(n), which formerly generally encompassed other information showing a failure to abide by the law, a lack of candor toward authorities, a lack of concern for safety, or other good cause for denial of a rifle or shotgun permit, was amended to now read:

[10] New York City has not amended New York City Administrative Code Section 10-303, which continues to provide, *inter alia*, that a rifle or shotgun permit may be denied if "good cause exists for denial of the permit." N.Y.C. Admin. Code § 10-303(a)(9).

> Other information that demonstrates a lack of good moral character, including but not limited to an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety or an inability to maintain rifle/shotgun possession in a manner that is safe to oneself or others.

Id.

Similar amendments were made to Section 5-10. The first sentence likewise was amended to remove the phrase, "or that other good cause exists for denial." And Section 5-10(n) was amended to now read:

> Other information that demonstrates the lack of good moral character, including but not limited to an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or an inability to maintain handgun possession in a manner that is safe to oneself or others.

Id. at 20-21.[11]

Therefore, Srour was denied permission to possess firearms upon application of certain provisions of the RCNY that since have been amended. Because Srour alleges to have been injured by, *inter alia*, the application of the former versions of these regulations and seeks compensatory damages as a result, Srour has standing to challenge them. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801-02 (2021) ("Because nominal damages were available at common law in analogous circumstances, we conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right."). The Court therefore will consider below whether the discretion granted to licensing officials under the versions of Sections 3-03 and 5-10 of Title 38 of the RCNY that were in effect in 2019 (as well as under the relevant provisions of the current version of New York City Administrative Code Section

[11] The expanded definition of "good moral character" that was added to Section 3-03 was not added to Section 5-10.

10-303) was inconsistent with the history and tradition of firearm regulation in this nation and so violative of the Second Amendment.

Srour, however, has not been denied permission to possess firearms pursuant to a City official's application of the current version of either Section 3-03 or Section 5-10. Nor has he shown how he might bring a preemptive challenge against the amended provisions prior to being denied a license or permit under them, or even that he has reapplied for such a license or permit. He thus has alleged no injury in fact arising from the current version of either provision. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) ("To establish Article III standing, an injury must be [among other things] concrete, particularized, and actual or imminent . . . . Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending. Thus, we have repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact and that allegations of *possible* future injury are not sufficient." (internal quotation marks and alterations omitted)); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 135 (2011) ("The party who invokes the power of the federal courts must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement." (quoting *Doremus v. Bd. of Educ. of Hawthorne*, 342 U.S. 429, 434 (1952))). The Court therefore does not reach herein the constitutionality of the current versions of Sections 3-03 and 5-10.

Accordingly, at issue before the Court are the following provisions: (1) the pre-December 16, 2022 version of Section 3-03 of Title 38 of the RCNY; (2) the pre-December 16, 2022 version of Section 5-10 of Title 38 of the RCNY; (3) the current version of New York City Administrative Code Section 10-303(a)(2); and (4) the current version of New York City Administrative Code

Section 10-303(a)(9). The Court will refer to these provisions collectively as the "Challenged Firearms Licensing Provisions." The other provision at issue—New York City Administrative Code Section 10-310—does not concern the issuance of a firearm license or permit, and is addressed separately below. *See infra* IV.E.

B. Whether the Conduct is Protected

As noted, the Second Amendment safeguards "the right of the people to keep and bear Arms." U.S. Const. amend II. The Supreme Court held in *Bruen* that

> when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command.

142 S. Ct. at 2126 (internal quotation marks omitted). Thus, the initial question for this Court under *Bruen* is whether the "conduct" at issue in the Challenged Firearms Licensing Provisions is covered by the plain text of the Second Amendment.

The answer to this question turns on what conduct is actually at issue. Srour argues that the conduct is the "possession of handguns, rifles, and shotguns." Motion at 7. If the challenged conduct is the possession of firearms for a lawful purpose,[12] the conduct plainly falls within the

[12] While Srour does not add the "for a lawful purpose" qualifier, the Court does not take Srour to argue that possession of firearms for unlawful purposes, such as the commission of a crime, is a constitutionally protected right. *See Heller*, 554 U.S. at 595 ("[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*."). Indeed, the parties agree that Srour submitted both applications so that he could possess the firearms "in his home for self-protection." Pl. 56.1 Stmt. ¶¶ 4, 6. To examine whether a regulation may restrict the *unlawful* use of firearms is simply to examine a tautological truth that would essentially bar all facial challenges to firearms regulations. The Court therefore considers only

scope of the Second Amendment. *See Bruen*, 142 S. Ct. at 2122 ("In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree . . . ."); *Heller*, 554 U.S. at 595 ("There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms."); *id* at 636 (holding that the Second Amendment forbids the "absolute prohibition of handguns held and used for self defense in the home"); *see also Bruen*, 142 S. Ct. at 2134 (observing that "individuals often 'keep' firearms in their home, at the ready for self-defense").

While Defendants' briefing does not expressly reveal their view as to the conduct at issue in this case, they maintain that the Second Amendment applies only to "responsible" and "law-abiding" individuals. Opposition at 11. Because a "good moral character" requirement separates those who are "responsible" and "law-abiding" from those that are not, Defendants argue, the challenged regulations are not "presumptively unconstitutional" but instead "presumptively constitutional." *Id.* In other words, Defendants seem to identify the conduct challenged in this case as the possession of firearms by someone lacking good moral character and reason that such conduct is not protected under the Second Amendment because such a person is not "responsible" and "law-abiding."

The Court disagrees. The conduct at issue is the possession of a firearm. The question is whether such conduct in possessing firearms may be constitutionally regulated. Whether an applicant "lacks good moral character" is not part of the *conduct* being regulated. The requirement that an applicant submit to a determination of moral character instead is the regulation itself. In

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those lawful purposes of firearms possession in conducting its analysis of the facial constitutionality of the Challenged Firearms Licensing Provisions.

arguing otherwise, Defendants impermissibly merge a person's conduct with their status as defined by the regulation. *Bruen*, however, draws a clear distinction between the individual's conduct and the regulation which burdens that conduct. *See* 142 S. Ct. at 2126 ("Only if a firearm *regulation* is consistent with this Nation's historical tradition may a court conclude that the individual's *conduct* falls outside the Second Amendment's unqualified command." (emphasis added) (internal quotation marks omitted)). This makes sense. Under Defendants' theory, the government would be able to skirt a court's analysis of the history and tradition of firearm regulation, as required by *Bruen*, merely by roping the actual regulation into the individual's conduct. *See Range v. Att'y Gen.*, 69 F.4th 96, 102-103 (3d Cir. 2023) (*en banc*) (rejecting "the Government's claim that only 'law abiding, responsible citizens' are protected by the Second Amendment," and explaining that such "extreme deference" would "give[] legislatures unreviewable power to manipulate the Second Amendment by choosing a label" and "to decide whom to exclude from 'the people'" (internal quotation marks and citations omitted)).[13]

[13] Post-*Bruen*, courts in this Circuit have largely agreed that the classification of a person as not "law-abiding" does not alter the characterization of the relevant conduct under the *Bruen* test. In *United States v. Rowson*, No. 22 Cr. 310 (PAE), 2023 WL 431037, at *18-19 (S.D.N.Y. Jan. 26, 2023), for instance, the court determined that those indicted for felonies remained part of "the people" who possessed Second Amendment rights and so considered the criminalization of their possession of firearms under *Bruen*'s framework. Similarly, courts have determined that possession of firearms by felons is "conduct" covered by the Second Amendment and so have analyzed the criminalization of such possession under *Bruen*'s framework. *See United States v. Martin*, No. 21 Cr. 68, 2023 WL 1767161, at *2 (D. Vt. Feb. 3, 2023) (determining that a felon's "possession of a firearm constitutes 'keep[ing]' an 'Arm' under the Second Amendment's plain text" (alteration in original)); *Campiti v. Garland,* No. 22 Civ. 177 (AWT), 2023 WL 143173, at *3 (D. Conn. Jan. 10, 2023) ("The plain text of the Second Amendment covers the plaintiff's potential conduct."). And in *Antonyuk v. Hochul*, 639 F. Supp. 3d 232, 298 (N.D.N.Y. 2022), the court stated that a determination of whether one is of good moral character "does not *precede* the application of the Second Amendment, but *follows* it." The only post-*Bruen* in-Circuit decision the Court has located that does not engage in a history and tradition analysis is *Gazzola v. Hochul*, No. 22 Civ. 1134 (BKS) (DJS), 2022 WL 17485810 (N.D.N.Y. Dec. 7, 2022), which determined that the text of the Second Amendment did not cover the commercial sale of firearms.

The Court therefore determines that the conduct at issue here—the possession of firearms for lawful purposes—is covered by the plain text of the Second Amendment. The assessments of "good moral character" or "good cause" are regulations which the government must justify "by demonstrating that [they are] consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2130. The Court therefore turns to that inquiry.

D. Whether Subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 and the Former Versions of Sections 3-03 and 5-10 of Title 38 of the Rules of the City of New York Are Consistent with the Nation's Historical Tradition of Firearm Regulation

As discussed, the Challenged Firearms Licensing Provisions each contains the same or very similar "good moral character" and "good cause" language. New York City Administrative Code Section 10-303(a) states that no person shall be denied a permit to possess a rifle or shotgun unless the "applicant . . . (2) is not of good moral character; or . . . (9) unless good cause exists for the denial of the permit." N.Y.C. Admin. Code § 10-303(a). At the time of the denial, Section 3-03 and Section 5-10 of Title 38 of the RCNY contained largely identical standards for denying rifle or shotgun permits and for handgun licenses, respectively. They provided, much like Section 10-303, that an application "may be denied where it is determined [by the licensing body] that an applicant lacks good moral character or that other good cause exists for denial." RCNY Tit. 38, §§ 3-03, 5-10 (2019) (last amended Dec. 16, 2022). The licensing body made that determination under Sections 3-03 and 5-10 based upon "consideration" of several "factors," including whether the "applicant has been arrested, indicted or convicted for a crime or violation," *id.* § 3-03(a); *id.* § 5-10(a); whether the applicant has made a "false statement on [their] application, or failed to disclose their complete arrest history, including sealed arrests," *id.* § 3-03(e); *id.* § 5-10(e); whether the applicant "has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles," *id.* § 3-03(h); *id.*

§ 5-10(h); or otherwise if "[o]ther information demonstrates an unwillingness [of the applicant] to abide by the law, a lack of candor towards lawful authorities . . . and/or other good cause for the denial of the permit," *id.* § 3-03(n); *id.* § 5-10(n). Section 3-03(n), concerning the issuance of a rifle or shotgun permit, further provided: "In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency, and severity of incidents and the outcome of any judicial or administrative proceeding." *Id.* § 3-03(n).

Srour argues that the application of "discretionary factors" like those enumerated in these provisions of New York City law "to deny firearm licenses violates the Second Amendment." Motion at 8 (capitalization removed). While Defendants fail to fully address the "good cause" language of these provisions, they respond that "good moral character" requirements impose a constitutional limitation of Second Amendment rights to those who are "law-abiding" and "responsible" citizens, Opposition at 10-11, and that the challenged provisions have historical analogues in regulations that barred "firearm possession by categories of people perceived by society to be dangerous" and in "Colonial surety laws, which restricted citizens' firearm access based on allegations of wrongdoing," *id.* at 13, 15.[14]

To start, *Bruen* itself, while addressing a different New York State statute, poses considerable obstacles for Defendants to overcome in defending the Challenged Firearms

[14] Defendants go to great lengths to argue that *Bruen* did not disturb a municipality's ability to implement licensing requirements for firearms. *See, e.g.*, Opposition at 2, 9-13. But the issue before this Court is not whether a municipality may impose a constitutionally permissible licensing requirement for people to possess firearms within its jurisdiction. *Cf. Bruen*, 142 S. Ct. at 2161 (Kavanaugh, J., concurring) ("[T]he Court's decision does not prohibit states from imposing licensing requirements for carrying handguns for self-defense."). Rather, the Court confronts here the extent to which a government, consistent with the Second Amendment, may enact laws restricting the ability of someone to obtain such a license and thereby possess a firearm.

Licensing Provisions. The petitioners in *Bruen* challenged New York State's licensing regime, which at the time required an applicant seeking to possess a gun at home to "convince a 'licensing officer'—usually a judge or law enforcement officer—that, among other things, he is of good moral character, has no history of crime or mental illness, and that 'no good cause exists for the denial of the license.'" *Bruen*, 142 S. Ct. at 2122-23 (quoting N.Y. Penal Law §§ 4000.00(1)(a)-(n) (2022)). An applicant seeking to carry a firearm also had to "prove that 'proper cause exists' to issue [a license]." *Id.* at 2123 (quoting N.Y. Penal Law § 4000.00(2)(f)). The court contrasted a "may issue" regime like New York's, "under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria," with "shall issue" regimes, "where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability." *Id*. at 2123-24. In stating that "nothing in [the court's] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes," the Court described such regimes as being "designed to ensure only that those bearing arms in the jurisdiction are in fact, law-abiding, responsible citizens," and stated that they did so using "only narrow objective and definite standards guiding licensing officials, rather than requiring the appraisal of facts, the exercise of judgment, and the formation of an opinion—features that typify proper-cause standards like New York's." *Id.* at 2138 n.9 (internal quotation marks omitted). After conducting a lengthy and thorough review of "the Anglo-American history of public carry," the Court held that the respondents failed to meet "their burden to identify an American tradition justifying the State's proper-cause requirement." *Id.* at 2156.

The Challenged Firearms Licensing Provisions land very close to the problematic "may issue" laws criticized in *Bruen*. *Cf. id.* at 2162 (Kavanaugh, J., concurring) ("Going

forward . . . the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall-issue States."). The Challenged Firearms Provisions empower a City licensing official to decide not to issue a permit or license for a firearm based on that official's discretionary assessment of the applicant's "good moral character" and the determination of a vaguely defined presence of "good cause." Much like the "proper-cause" inquiry invalidated in *Bruen*, permitting denial of a firearms license based on a government official's "good moral character" or "good cause" assessment has the effect of "prevent[ing] law-abiding citizens with ordinary self defense needs from exercising their right to keep and bear arms." *Bruen*, 142 S. Ct. at 2156. Under the former versions of both Sections 3-03 and 5-10, a licensing official would make a judgment call about the character, temperament, and judgment of each applicant without an objective process. There are some objective *components* that come into play this process: whether or not an applicant has been arrested, indicted, or convicted of a crime, for example, is a discernible fact. *See* RCNY Tit. 38, §§ 3-03(a), 5-10(a) (2019) (last amended Dec. 16, 2022). But the former versions of Sections 3-03 and 5-10 did not specify how a licensing official was to consider those facts, or even that any of those facts was dispositive; Sections 3-03 and 5-10 only generally required their consideration by the official in arriving at the ultimate conclusion of whether to deny a permit or license based on the applicant's lack of "good moral character" or "other good cause." *See id.* §§ 3-03, 5-10. Relatedly, and probably more problematically, by allowing the official to make a determination of the person's moral character, and to vaguely consider "other good cause," Sections 3-03 and 5-10 further bestowed vast discretion on licensing officials. *Id.* Indeed, subsection (n) of each provision allowed a licensing official to deny a permit based on "[o]ther information [that] demonstrates . . . other good cause

for the denial of the permit." *Id.* §§ 3-03(n), 5-10(n). The permissive language of these provisions—allowing that a permit "may be denied"—does not undermine the fact that the challenged regime requires "the appraisal of facts, the exercise of judgment, and the formation of an *opinion*" prior to the issuance of a license. *Bruen*, 142 S. Ct. at 2138 n.9 (emphasis added) (internal quotation marks omitted). Subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 suffer from the very same constitutional flaws under *Bruen*. These provisions allow a City official to deny a shotgun or rifle permit after finding that an applicant "is not of good moral character" or that "good cause exists for the denial of the permit." N.Y.C. Admin. Code § 10-303(a)(2), (a)(9). Section 10-303 itself defines neither of these terms in further detail, with the factors enumerated in Section 3-03 of Title 38 of the RCNY implementing Section 10-303. Without doubt, the very notions of "good moral character" and "good cause" are inherently exceedingly broad and discretionary. Someone may be deemed to have good moral character by one person, yet a very morally flawed character by another. Such unfettered discretion is hard, if not impossible, to reconcile with *Bruen*.

The Court now turns to whether Defendants have shown a historical basis for the Challenged Firearms Licensing Provisions. To reiterate, the Supreme Court made clear that this is the government's burden:

> To support [the respondents' claim that the Second Amendment permits a state to condition handgun carrying in areas frequented by the general public on showing a non-speculative need for self defense in those areas], the burden falls on the respondents to show that New York's proper-cause requirement is consistent with this Nation's historical tradition of firearm regulation. Only if respondents carry that burden can they show that the pre-existing right codified in the Second Amendment, and made applicable to the States through the Fourteenth, does not protect petitioners' proposed course of conduct.

Id. at 2135.

Under *Bruen*'s historical inquiry analysis, the Court initially considers whether the "challenged regulation addresses a general societal problem that has persisted since the 18th century" and, if so, whether there was "a distinctly similar historical regulation addressing that problem." *Bruen*, 142 S. Ct. at 2131. Defendants are not particularly clear regarding what, if anything, they consider to be the "general societal problem" addressed by both the Challenged Firearms Licensing Provisions in this case and our country's historical tradition of firearm regulation. They do, however, indicate that both the challenged provisions and their suggested historical analogues are geared towards "ensuring public safety." Opposition at 16. For essentially the same reasons discussed below in conducting an analogical analysis, the historical information presented by Defendants fails to reveal a "distinctly similar historical regulation" to the at-issue provisions. *Id.* The Court therefore turns to "reasoning by analogy," *id.* at 2132, and considers the degree of relevant similarity between the challenged provisions and the historical tradition presented by Defendants.[15]

Here too, the fatal problem with subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 and the former versions of Sections 3-03 and 5-10 of Title 38 of the RCNY continues to lie in the broad discretion afforded to City officials in determining whether someone may exercise their Second Amendment right. Defendants have not identified any historical analogue for investing officials with the broad discretion to restrict someone's

[15] Defendants provide no information about whether any burdens caused by the Challenged Firearms Licensing Provisions and the proposed historical analogues are "comparably justified." *Bruen*, 142 S. Ct. at 2133. Other than asserting that both aim to "ensur[e] public safety," Defendants fail to discuss the justifications for either set of laws. *See* Opposition at 16. The Court therefore focuses its analysis on comparing burdens, assuming the public safety justifications to be roughly equal so as to avoid impermissible interest balancing. *See Bruen*, 142 S. Ct. at 2131 ("The Second Amendment is the very product of an interest balancing by the people and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense." (internal quotation marks omitted)).

Second Amendment right based on determining the person to "lack[] good moral character" or for a vague and undefined notion of "good cause." And while this Court finds allowing such a discretionary determination to run afoul of the Second Amendment, Defendants have not even identified a historical analogue for the various non-determinative considerations that were required to go into the official's "good moral character" and "other good cause" assessments under Sections 3-03 and 5-10. Moreover, and as mentioned, subsection (n) of each of those Sections affords tremendous—and seemingly boundless—discretion to the licensing official in making that lack of "good moral character" or "good cause" determination by allowing the official to consider "[o]ther information [that] demonstrates an unwillingness to abide by the law, a lack of candor toward lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or *other good cause for the denial of the permit*." RCNY Tit. §§ 3-03(n), 5-10(n) (2019) (last amended Dec. 16, 2022) (emphasis added).

Defendants have no more success in arguing that "Founding-era regulations[16] restricted firearms sales to people that the Founders deemed dangerous or potentially dangerous." Opposition at 13. But a law preventing a person who is "dangerous or potentially dangerous" from possessing a firearm is hardly analogous to denying someone their Second Amendment's rights

[16] The Second Amendment was adopted in 1791 and the Fourteenth Amendment was adopted in 1868. The parties dispute whether historical regulations subsequent to the Founding era may be considered by the Court. *See* Motion at 5-6; Opposition at 9 (arguing that Reconstruction era regulations are also relevant). The answer appears to remain unsettled. *See Bruen*, 142 S. Ct. at 2137 ("[W]e have generally assumed the scope of the protection applicable to the Federal Government and the States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791." (citations omitted)); *id.* at 2138 (acknowledging the "ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope," but declining to address the issue because "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry"). Here, given that the proposed historical analogues provided by Defendants all seem to come from the Founding era, the Court need not resolve this dispute.

based on a City official's discretionary determination that that person "lacks good moral character" or that "good cause" exists. *See* N.Y.C. Admin. Code 10-303; RCNY Tit. 38 §§ 3-03, 5-10 (2019) (last amended Dec. 16, 2022). The latter is far broader and sweeps in significantly more conduct. More importantly, this Court finds no evidence in the historical materials that Defendants identify of a tradition of regulations of the sort challenged here.[17]

First, Defendants point to "statutes disarming classes of people deemed to be threats, including those unwilling to take an oath of allegiance (to the crown and later the states), slaves, and native Americans." Opposition at 13-14 (citing *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 200 (5th Cir. 2012)). But those examples hardly entailed the sort of discretionary disarming that is at issue in this case. Loyalty oath requirements, for instance, provided an objective criterion for an administering official to assess: did the person make the oath or not? These historical requirements also seem to have disarmed those who previously had been able to exercise their right to bear arms, rather than serving as a prerequisite to legally obtaining arms in the first place. *See* Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 505-08 (2004) (discussing in particular laws in Pennsylvania and Massachusetts that disarmed those who would not take an oath of allegiance to the state). The materials examined by the courts in *National Rifle Association of America, Inc.*, 700 F.3d at 200, and *Rowson*, 2023 WL 431037, at *21, also suggest that classes of people were subject to disarmament in the Founding

[17] Presumably, there were plenty of people at the time of our country's Founding who were considered to lack good moral character, but were not necessarily dangerous, yet Defendants have identified no law depriving such individuals of their right to possess firearms.

era based on specific characteristics.[18] But Defendants have provided no historical analogue for denying a person's exercise of their Second Amendment right upon on a municipality official's subjective assessment of that person's character, or based on a vague determination of the existence of good cause—particularly when that determination is made after weighing in an undefined manner both objective and subjective factors. Defendants' argument that the government previously could disarm those that were "perceived dangerous" when certain identified criteria were met, and so now can prohibit firearm possession when an administrative official deems a person not to have "good moral character" or otherwise finds "good cause," is unavailing.

Defendants also cite Founding era surety laws. Generally speaking, and as potentially relevant here, these provisions empowered government officials, typically justices of the peace, to restrain those who committed certain acts until they provided a surety of their good behavior. *See Statutes at Large of Pennsylvania from 1682 to 1801*, Chapter XXVI at 23 (James T. Mitchell & Henry Flanders eds. 1896) (1700 statute) ("Be it enacted . . . [t]hat whosoever shall threaten the person of another, to wound, kill or destroy him, or do him any harm in person or estate, and the person so threatened shall appear before a justice of the peace and attest that he believes that by such threatening he is in danger to be hurt in body or estate; such person so threatening as aforesaid shall be bound over, with one sufficient surety, to appear at the next sessions or county court . . . and, in the meantime, to be of his good behavior and keep the peace towards all the King's

[18] In *Rowson*, the court pointed to statutes disarming persons "perceived as *per se* dangerous, on the basis of their religious, racial, and political identities." 2023 WL 431037, at *21 (citations omitted). The Fifth Circuit in *National Rifle Association of America, Inc.* commented that "[t]he historical record shows that gun safety was commonplace in the colonies, and around the time of the founding, a variety of gun safety regulations were on the books" to include "laws disarming certain groups and restricting sales to certain groups." 700 F.3d at 200 (citations omitted).

subjects."); Samuel Adams & John Adams, *Laws of the State of Delaware from the Fourteenth Day of October, One Thousand Seven Hundred, to the Eighteenth Day of August, One Thousand Seven Hundred and Ninety-Seven*, Chapter IV at 52 (1797) (1700 statute) ("Be it enacted . . . [t]hat whosoever shall threaten the person of another, to wound, kill or destroy him, or do him any harm in person or estate, and the person so threatened shall appear before a justice of the peace, and attest, that he believes that by such threatening he is in danger to be hurt in body or estate; such person so threatening as aforesaid, shall be bound over, with one sufficient surety, to appear at the next sessions or county court . . . in the mean time, to be of his good behaviour, and keep peace towards all the king's subjects."); Hartford Press, *Acts and Laws of His Majesties Colony of Connecticut in New-England*, 91-92 (1901) (1702 statute) ("Be it enacted. . . that effectual means may be used and improved for the preserving and promoting of the peaceable and civil behavior and good cooperation of His Majesties Subjects in this Colony, and for preventing and suppressing of what is contrary thereunto . . . [and] [t]hat the Surety of the Peace or good behavior, as the merit of the Case shall require, may and shall be granted (by any of His Majesties Assistants or Justices of the Peace in this colony) against all and every such person and persons, as by [committing various acts] and if any such person or persons shall refuse to give surety for the peace or good behavior, it shall be in the power of any Assistant or Justice of the Peace, to commit such person or persons to the common Goal, there to remain till delivered according to Order of Law.").[19] A

[19] Defendants additionally cite to what appears to be the entirety of the statutory law of Maryland from 1692 to 1839, without a pin-cite to identify any specific provision that they wish to bring to the Court's consideration. *See* Opposition at 16. Further, Defendants cite William Rawle, *A View of the Constitution of the United States of America*, 126 (2d ed. 1829), for his statement that "even the carrying of arms abroad by a single individual, attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them, would be sufficient cause to require him to give surety of the peace." This statement does not resolve the constitutional infirmities of the City's challenged regulations discussed herein. But the Court also

somewhat similar Virginia law granted certain members of the judiciary the power to demand surety of persons to ensure their good behavior. *See* William Waller Hening, *Statutes at Large; Being a Collection of All the Laws of Virginia, From the First Session of the Legislature, in the Year 1619*, 41 (1823) (1789 statute) ("The judges of the court of appeals, high court of chancery and general court shall be conservators of the peace throughout the Commonwealth; and the justices of the peace in each county and corporation shall be conservators of the peace within their several countries and corporations respectively, and the said judges and justices within the limits aforesaid respectively shall have power to demand of such persons, as are not of good fame, sufficient surety and mainprize of their good behavior.").

These historical surety provisions lack relevant similarity to the Challenged Firearms Licensing Provisions to constitute a valid historical analogue. To start, and most significantly, the lack of "good moral character" or "other good cause" standards under the former Sections 3-03 and 5-10 of Title 38 of the RCNY and subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 are vastly broader than the circumstances that triggered a surety obligation under these statutes. Nor is it clear why Defendants believe that these surety statutes, which generally provide for a person to be "bound over" and do not mention firearms or arms of any kind, provide comparable burdens for regulating the possession of firearms or even are relevant to the issue of firearms possession. Presumably, Defendants' point is that an individual who was "bound over" lacked access to his firearms, or perhaps that the firearms themselves might be given as a surety, but their brief does not say so one way or the other. *See* Opposition at 15-16. To the extent that Defendants contend that the greater restraint of imprisoning

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notes that the quoted sentence from Rawle's treatise occurs in his discussion of the law of England, which is actually cited in juxtaposition to a discussion of the Second Amendment.

an individual included the lesser restraint of depriving him of his firearms, these provisions do not appear to have empowered officials to permanently deprive liberty or arms, only to demand a surety before release from detention. If the suggestion is that a firearm itself might have been the surety, nothing provided by Defendants indicates any restriction on firearm possession or the length of time any firearm might be kept. The *Bruen* decision, however, suggests that these surety laws may have extended to *carrying* firearms in public. In conducting its historical analysis of surety statutes, the Court noted that "[i]n the mid-19th Century, many jurisdictions began adopting surety statutes that required certain individuals to post bond before *carrying weapons in public*." *Bruen*, 142 S. Ct. at 2148 (emphasis added); *see also id.* (citing an 1836 Massachusetts statute that "required any person who was reasonably likely to 'breach the peace,' and who, standing accused, could not prove a special need for self-defense to post a bond before publicly carrying a firearm" and noting that "[b]etween 1838 and 1871, nine other jurisdictions adopted variants of the Massachusetts law" (citing Mass. Rev. Stat., ch. 134, § 16)). The *Bruen* Court additionally noted a key distinction when it comes to surety laws: surety laws that restricted the carry of firearms presumed that individuals had a right to public carry, which could be burdened only by a specific showing of reasonable fear of an injury or breach of the peace. *Bruen*, 142 S. Ct. at 2148 (stating that "the surety statues *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing"). That is quite different from the situation here, where a New York City official can deny the right to possess a firearm in the first instance based on a vague and unconstrained finding of a lack of "good moral character" or the presence of "good cause." And the Court in *Bruen* further expressed skepticism that such surety laws were regularly enforced to an extent that they burdened the right to bear arms. *See id.* at 2149 ("Besides, respondents offer little evidence that authorities ever enforced surety laws."). Defendants do not

provide any additional information in this regard. Thus, the Court cannot conclude that the cited surety statutes can be considered analogous to the challenged New York City licensing provisions.

Defendants point to two other statutes in place at the time of the Founding in endeavoring to find a historical analogue. Neither is. They cite a 1692 Massachusetts statute which provided:

> That every justice of the peace in the county where the offense is committed, may cause to be staid and arrested all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride, or go armed offensively before any of their majesties' justices or other their officers or ministers doing their office or elsewhere by night or by day, in fear or affray of their majesties' liege people, and such others shall utter any menaces or threatening speeches; and upon view of such justice or justices, confession of the party or other legal conviction of any such offence, shall commit the offender to prison until he find sureties for the peace and good behavior, and seize and take away his armour or weapons, and shall cause them to be apprized and answered to the kind as forfeited . . . .

Wright & Potter, *Acts and Resolves, Public and Private of the Province of the Massachusetts Bay*, Chapter 18, 52-53 (1692) (1692 statute); *see* Opposition at 15. Defendants also cite an 18th Century New Hampshire statute that appears quite similar to the Massachusetts law. *See* Opposition at 15; *see also Bruen*, 142 S. Ct. at 2142-43. The New Hampshire statute provided:

> And every justice of the peace within this province, may cause to be stayed and arrested, all affrayers, rioters, disturbers or breakers of the peace, or any other who shall go armed offensively, or put his Majesty's subjects in fear, by menaces or threatening speeches: And upon view of such justice, confession of the offender, or legal proof of any such offense, the justice may commit the offender to prison, until he or she finds such sureties for the peace and good behaviour, as is required, according to the aggravations of the offense; and cause the arms or weapons so used by the offender, to be taken away, which shall be forfeited and sold for his Majesty's use.

Daniel Fowle, *Acts and Laws of His Majesty's Province of New Hampshire in New England with Sundry Acts of Parliament*, 1-2 (1761) (1759 statute).[20]

[20] Defendants refer to this as a "1701 statute," Opposition at 15, but the statute appears to have been passed in 1759, Fowle at 1-2; *see also Rowson*, 2023 WL 431037, at *22 ("In 1759, New Hampshire enacted a substantially identical statute empowering justices of the peace to arrest

Unlike other historical statutes cited by Defendants, these Massachusetts and New Hampshire laws do directly address "weapons" and, in the case of the New Hampshire statute, "arms." These two laws also appear to have vested at least some degree of discretion in justices of the peace, providing for sureties and confiscation of arms "upon view of such justice." But the Massachusetts and New Hampshire statutes, unlike the City licensing provisions challenged in this case, authorized disarmament of a limited and clearly defined group of people. The Massachusetts statute was limited to "all affrayers, rioters, disturbers or breakers of the peace" who "ride, or go armed offensively" or cause "fear or affray of their majesties' liege people," and those who "utter any menaces or threatening speeches." The New Hampshire statute similarly was limited to "all affrayers, rioters, disturbers or breakers of the peace," as well as others "who shall go armed offensively, or put his Majesty's subjections in fear, by menaces or threatening speeches." The challenged New York City regulations, meanwhile, apply broadly to those seeking to possess a firearm. And nothing in either the Massachusetts or New Hampshire statute provides a burden on the right to bear arms comparable to a holistic and discretionary assessment of an individual's character or other unspecified good cause *prior to* that individual's ability to exercise their right to possess a firearm. The fact that justices of the peace in those states were empowered to take firearms instead indicates that but for the specified activity—*e.g.*, fighting, rioting, or disturbing or breaking the peace—the right to possess those arms was presumed.[21] The discretion of the

'all affrayers, rioters, disturbers or breakers of the peace, or any other who shall go armed offensively, or put his Majesty's subjects in fear' and, 'upon view of such justice,' 'cause the arms or weapons so used by the offender, to be taken away, which shall be forfeited and sold for his Majesty's use.'" (citing Fowle at 1-2)).

[21] To be sure, what is constitutionally problematic in this case is not necessarily assessing a license or permit applicant for dangerousness, but rather the excessive discretion vested in licensing officials in making that determination based on "good moral character" or "good cause." Both the Massachusetts and New Hampshire statutes directed officials to look at specific types of

justices of the peace under these Massachusetts and New Hampshire statutes thus was considerably more limited, both in terms of the subjects of consideration and those to whom they applied that discretion, than the discretion afforded to City officials under the Challenged Firearms Licensing Provisions.

These are facial problems with the constitutionality of the Challenged Firearms Licensing Provisions. The discretion of the licensing officials in assessing "good moral character" and "good cause" necessarily was invoked under Section 3-03 and 5-10 of Title 38 of the RNCY for each firearm application submitted under those provisions, regardless of approval or denial, and regardless of the presence of some, all, or none of the enumerated factors. In other words, every time a New York City official denied a rifle or shotgun permit pursuant to the former Section 3-03 and a handgun license pursuant to the former Section 5-10, the official acted pursuant to an unconstitutional exercise of discretion. This makes those provisions facially invalid.[22]

New York City Administrative Code Section 10-303 requires a different analysis. That provision operates differently from the RCNY provisions by establishing nine independent grounds for denial of a rifle or shotgun permit in subsection (a), using the disjunctive "or" between

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prior activity by the individual in assessing whether that person should be disarmed. These activities essentially constituted recent behaviors that breached the general peace, and were not so expansive as to include, among other factors, the payment of debts, candor towards officials, and "any other information." And again, even if these statutes bore greater relevant similarity to the provisions currently before this Court, Defendants have provided no evidence regarding the extent to which these statutes were actually enforced or burdened rights.

[22] The Court's holding that the excessive discretion vested to the licensing officials pursuant to the former Sections 3-03 and 5-10 does not pass muster under the Second Amendment is based on the discretionary authority afforded to the licensing officials to allow them to deny applicants their Second Amendment rights based on a determination of "good moral character" or "other good cause" in all circumstances. As such, the Court does not reach herein whether the consideration of any one of the enumerated factors in those regulations violates the Second Amendment. Even a required consideration of a constitutionally valid factor, conducted in the context of an overall constitutionally impermissible assessment, is itself unconstitutional.

each enumerated ground. *Cf. Loughrin v. United States*, 573 U.S. 351, 357 (2014) (noting that the "ordinary use [of the word 'or'] is almost always disjunctive, that is, the words it connects are to be given separate meanings" (internal quotation marks omitted)). While a City official's consideration of the "good moral character" and more general "good cause" provisions runs afoul of the Second Amendment for the reasons discussed above, not every assessment under the auspices of Section 10-303(a) (and, indeed, perhaps not even a majority) necessarily involves those two subsections. Consider, for instance, a rifle or shotgun permit application submitted by someone under the age of twenty-one. This applicant would presumably be denied a permit under subsection (a)(1), which allows for denial if the applicant "is under the age of twenty-one," without necessarily implicating the "good moral character" or "good cause" provisions. Indeed, Srour himself seems to be attuned to that distinction between Section 10-303 and the RCNY provisions detailed above, since he narrowly tailors his requested relief to subsections (a)(2) and (a)(9) of the former. *See* Complaint at 32-33 (requesting declaratory and injunctive relief as to subsections (a)(2) and (a)(9)). The Court similarly concludes that only subsections (a)(2) and (a)(9) in their isolation raise Second Amendment concerns, unlike the section-wide problems detailed above with respect to the former versions of the RCNY provisions.

In sum, having considered Defendants' proffered historical materials, and applying the standard set in *Bruen*, the Court determines that the magnitude of discretion afforded to New York City licensing officials under subsections (a)(2) and (a)(9) of Section 10-303 of the New York City Administrative Code and the pre-December 16, 2022 versions of Sections 3-03 and 5-10 of Title 38 of the RCNY, empowering them to evaluate an applicant's "good moral character" and "good cause" in deciding whether to permit that applicant to exercise his or her Second Amendment rights, is not constitutionally permissible under the Second and Fourteenth Amendments.

E. New York City Administrative Code Section 10-310

Srour additionally challenges the constitutionality of New York City Administrative Code Section 10-310, which generally makes it a crime to violate "sections 10-301 through 10-309 and . . . rules and regulations issued by the commissioner." N.Y.C. Admin. Code § 10-310; *see* Motion at 13-14. Because Srour is only proceeding on a facial challenge, to prevail he must show that all applications of Section 10-310 are unconstitutional. But Section 10-310 criminalizes far more than violations of subsections (a)(2) and (a)(9) of Section 10-303, which are invalidated above, and even more than conduct involving the possession of firearms. Section 10-310 reaches conduct such as defacing the name of the maker, model, or serial numbers of a rifle, shotgun, or assault weapon, as well as selling a firearm with such a defacement, *see* N.Y.C. Admin. Code § 10-309, and possessing ammunition feeding devices above a certain capacity, *id.* § 10-306. Srour has presented no argument that such conduct is protected by the Second Amendment, and so has failed to establish that Section 10-310 is facially unconstitutional.

F. Severability

The Court's conclusion that subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 run afoul of the Second Amendment raises a question of severability to which the Court must turn before fashioning adequate relief to remedy the constitutional harms identified above. Put simply, can the reset of Section 10-303 survive without these two subsections? *Cf. Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2208 (2020) (plurality opinion) ("[R]esolving [severability] is a necessary step in determining petitioner's entitlement to its requested relief."); *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 331 (2006) ("Only a few applications of New Hampshire's parental notification statute would present a constitutional problem. So long as they are faithful to legislative intent, then, in this case the lower courts can

issue a declaratory judgment and an injunction prohibiting the statute's unconstitutional application.").

"Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem, severing any problematic portions while leaving the remainder intact." *Seila Law*, 140 S. Ct. at 2209 (internal quotation marks omitted). "[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature," in this case the New York City Council through its enactment of the permitting system espoused by Section 10-303.[23] *Ayotte*, 546 U.S. at 330 (internal quotation marks omitted); *cf. Gem Fin. Serv., Inc. v. City of New York*, 298 F. Supp. 3d 464, 499 n.40 (E.D.N.Y. 2018) ("When portions of a New York statute are found unconstitutional, the intent of the state legislature in originally enacting the statute is the touchstone in determining whether the remainder of the statute is severable and may be spared from the unconstitutional taint." (quoting *Gen. Elec. Co. v. N.Y. State Dep't of Lab.*, 936 F.2d 1448, 1460 (2d Cir. 1991))). "The severability of a state statute is to be determined according to state law." *Gen. Elec.*, 936 F.2d at 1460. Under New York law, "[t]he question is in every case whether the legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part exscinded, or rejected altogether." *CWM Chem. Servs., L.L.C. v. Roth*, 846 N.E.2d 448, 455 (N.Y. 2006) (internal

[23] For sake of clarity, the New York State Legislature codified what is now Section 10-303 as part of its larger recodification of the City Administrative Code in 1985. *See* 1985 New York Laws 3737, 3906. The New York City Council originally enacted the permitting scheme espoused by that section through local laws. *See* N.Y.C. Local Law 106, § 1 (1967) (enacting former Section 436-6.6 of the Administrative Code, which is the predecessor provision of Section 10-303). The New York City Council appears to have enacted the "good moral character" and "good cause" provisions in 1984, *see* N.Y.C. Local Law 5, § 8 (1984), although it bears mentioning that the original 1967 version of Section 436-6.6 had similar language to the effect that "[n]o person of good character . . . shall be denied a permit to purchase and possess a rifle or shotgun," and also permitted the denial of a permit if "the issuance of a permit . . . would not be in the interests of public health, safety or welfare," N.Y.C. Local Law 106, § 1 (1967).

quotation marks omitted). "The answer must be reached pragmatically, by the exercise of good sense and sound judgment, by considering how the statutory rule will function if the knife is laid to the branch instead of at the roots." *Id.* (internal quotation marks omitted).

Here, the Court has little trouble concluding that the subsections (a)(2) and (a)(9) are severable from the rest of Section 10-303. First of all, New York City Administrative Code Section 1-105 provides: "If any clause, sentence, paragraph, section or part of the code shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered." N.Y.C. Admin. Code § 1-105. This is a "broad severability clause of general applicability." *Ass'n of Home Appliance Manufs. v. City of New York*, 36 F. Supp. 3d 366, 377 (S.D.N.Y. 2014) (citing N.Y. Admin. Code § 1-105). But, more generally, the notion that the New York City Council would have preferred for the entirety of Section 10-303 to be "rejected altogether" strains credulity. Section 10-303(a) articulates multiple alternative grounds for an official to deny a shotgun or rifle permit, with individual subsections identifying reasons entirely unrelated to an applicant's character or general good cause, including the applicant's age and criminal history, to name two examples. *See* N.Y.C. Admin. Code § 10-303(a)(1) (age limitation); *id.* § 10-303(a)(3) (convictions limitation). Nor can the Court discern any reason to believe that Section 10-303 is unworkable without subsections (a)(2) and (a)(9), since City officials can simply continue to process permit applications by considering the seven other subsections.

Given these factors, the Court severs subsections (a)(2) and (a)(9) from the rest of Section 10-303 and fashions a remedy in light of this severance.

G. Injunctive and Declaratory Relief

Having conducted the severability analysis, the Court turns to analyzing whether Srour's requested injunctive and declaratory relief is warranted in this case.

"According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). "To obtain a permanent injunction, a plaintiff must [also] succeed on the merits . . . ." *Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006) (Sotomayor, J.).

The Court has already concluded that Srour succeeds on the merits of his facial challenge to subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303. The Court also finds that all four of the *eBay* factors weigh in Srour's favor. First, Srour has suffered irreparable injury by being denied his Second Amendment rights under these provisions. As the Supreme Court noted in *Bruen*, "[t]he Second Amendment is the very product of an interest balancing by the people, and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense." *Bruen*, 142 S. Ct. at 2131 (internal quotation marks omitted). Nor would remedies at law suffice to repair this harm. Defendants have applied subsections (a)(2) and (a)(9) to deny Srour a shotgun or rifle permit, and the Court cannot discern from the record any reason to believe that Defendants will not continue to enforce those unconstitutional provisions going forward in the absence of equitable relief. Relatedly, district

courts around the country have found permanent injunctions to constitute appropriate relief for violations of Second Amendment rights stemming from unconstitutional state statutes. *See Fraser v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 22 Civ. 410, 2023 WL 5617899, at *5 (E.D. Va. Aug. 30, 2023) (collecting cases). Turning to the balance of hardships, as previously noted, Srour has suffered a significant hardship in being denied his Second Amendment rights. The government, on the other hand, "does not have an interest in the enforcement of an unconstitutional law." *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (internal quotation marks omitted); *see also Fraser*, 2023 WL 5617899, at *6 ("[A]ny minimal hardship that may befall the Government from not being able to enforce the unconstitutional statute and regulations must yield to that harm suffered by the individual whose constitutional rights are being denied by the Government's conduct."). The hardship to the government should also be minimized by the Court's severance of subsections (a)(2) and (a)(9) from the rest of Section 10-303, as the other provisions of Section 10-303 remain valid and enforceable. Finally, "the public interest is best served by ensuring the constitutional rights of persons within the United States are upheld," *Coronel v. Decker*, 449 F. Supp. 3d 274, 287 (S.D.N.Y. 2020) (internal quotation marks omitted), a proposition that certainly rings true for rights as "fundamental" as those protected by the Second Amendment, *Bruen*, 142 S. Ct. at 2151. In sum, with all four *eBay* factors in Srour's favor, the Court concludes that a permanent injunction is plainly warranted in this case with respect to subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303.

"In order to decide whether to entertain an action for declaratory judgment, [the Second Circuit has] instructed district courts to ask: (1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the

controversy and offer relief from uncertainty." *Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 411 F.3d 384, 389 (2d Cir. 2005). "The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." Fed. R. Civ. P. 57. These criteria too are met here. As detailed above, the question of whether subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 are facially unconstitutional is central to this case. Given that these provisions are still in effect, Srour's exercise of his Second Amendment rights to obtain a permit to possess rifles and shotguns going forward in many ways depends on the issuance of declaratory relief. A declaration of these two provisions' unconstitutionality would thus help "clarify[]" and "settl[e]" the issues in this case; doing so would offer Srour "relief from uncertainty" as to his constitutional rights.

H. Remedy

For reasons discussed, the Court grants in part Srour's requested declaratory relief, declaring that subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 are facially unconstitutional. The Court also grants injunctive relief with respect to subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303, and permanently enjoins Defendants from enforcing those subsections. The Court *sua sponte* stays the injunction until midnight on October 26, 2023 to afford Defendants an opportunity to consider their appellate options and whether they wish to seek a stay pending any appeal.

The Court denies Srour declaratory relief as to New York City Administrative Code Section 10-310 because, as discussed, his facial challenge fails as to that Section. An injunction or declaration as to the pre-December 16, 2022 versions of Section 3-03 and Section 5-10 is neither necessary nor appropriate, as those provisions are no longer in effect and, as noted, the current versions of those Sections are not before this Court. *See supra* IV.A.

This Court previously bifurcated the questions of liability and damages. *See* Minute Entry dated Nov. 3, 2022. The parties shall file a joint letter containing a proposed discovery plan regarding Srour's damages claims, as well as a proposed briefing schedule for Srour's anticipated motion for attorneys' fees and costs, by October 30, 2023.

V. Conclusion

This case is not about the ability of a state or municipality to impose appropriate and constitutionally valid regulations governing the issuance of firearm licenses and permits. The constitutional infirmities identified herein lie not in the City's decision to impose requirements for the possession of handguns, rifles, and shotguns. Rather, the provisions fail to pass constitutional muster because of the magnitude of discretion afforded to City officials in denying an individual their constitutional right to keep and bear firearms, and because of Defendants' failure to show that such unabridged discretion has any grounding in our Nation's historical tradition of firearm regulation.

For the previously stated reasons, the Court grants Srour's motion for summary judgment in part and denies it in part. The Court grants summary judgment in favor of Srour on his First, Second, and Third Causes of Action as facial challenges, and dismisses without prejudice any as-applied challenges brought in those Causes of Action. The Court denies Srour's motion for summary judgment with respect to his facial challenge in the Fourth Cause of Action, and dismisses without prejudice the as-applied challenge brought in that Cause of Action. The Court also dismisses the Fifth Cause of Action without prejudice. In reaching this holding, the Court finds that Srour is entitled to a declaration that subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 are facially unconstitutional. The Court further determines

that Srour is entitled to injunctive relief enjoining the enforcement of subsections (a)(2) and (a)(9) of Section 10-303. The stay will remain in effect under midnight on October 26, 2023.

The parties shall file a joint letter as described in *supra* IV.H by October 30, 2023. The Clerk of Court is respectfully directed to close the motion pending at Docket Number 25.

SO ORDERED.

Dated: October 24, 2023
New York, New York

JOHN P. CRONAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH SROUR, Plaintiff, -v- NEW YORK CITY, New York, and EDWARD A. CABAN, In His Official Capacity as NYPD Police Commissioner, Defendants.	22 Civ. 3 (JPC) ORDER

JOHN P. CRONAN, United States District Judge:

On October 24, 2023, the Court issued an Opinion and Order in which it, *inter alia*, declared subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 to be facially unconstitutional and also permanently enjoined Defendants New York City and Edward A. Caban in his official capacity as the Commissioner of the New York Police Department ("NYPD") from enforcing these two provisions. Dkt. 43 ("Opinion") at 47-48. The Court temporarily stayed the injunction until midnight on October 26, 2023. *Id.* at 48. Defendants have since filed a notice of appeal of the Opinion to the United States Court of Appeals for the Second Circuit. Dkt. 47.

Before the Court is Defendants' request, dated October 25, 2023, that the Court either stay the declaratory judgment and permanent injunction pending appeal pursuant to Federal Rule of Procedure 62(c) and (d), or, in the alternative, extend the temporary stay for an additional seven days from the date of Defendants' filing. Dkt. 45 ("Motion"). Plaintiff Joseph Srour responded the following day. Dkt. 48 ("Opposition"). As detailed below, the Court denies the stay pending appeal but will grant an extension of the temporary stay through 11:59 p.m. on October 30, 2023,

to afford Defendants an opportunity to seek a stay from the Second Circuit pursuant to Federal Rule of Appellate Procedure 8(a). If Defendants apply for a stay pending appeal before the Second Circuit prior to 11:59 p.m. on October 30, 2023, the temporary stay will further remain in effect until the Second Circuit decides the stay motion.

I. Stay Pending Appeal

Federal Rule of Civil Procedure 62 grants district courts the discretion to issue a stay pending appeal. "The factors relevant to granting a stay pending appeal are the applicant's 'strong showing that he is likely to succeed on the merits,' irreparable injury to the applicant in the absence of a stay, substantial injury to the nonmoving party if a stay is issued, and the public interest." *Uniformed Fire Officers Ass'n v. de Blasio*, 973 F.3d 41, 48 (2d Cir. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). While "[t]he first two factors are the most critical," *id.*, the Second Circuit has also held that "these criteria [are] somewhat like a sliding scale," *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006). "[T]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay. Simply stated, more of one excuses less of the other." *Id.* (internal quotation marks omitted). Nevertheless, when the "likelihood of success [is] totally lacking, the aggregate assessment of the factors bearing on issuance of a stay pending appeal cannot possibly support a stay." *Uniformed Fire Officers Ass'n*, 973 F.3d at 49.

A. Likelihood of Success on the Merits

The Court concludes that a stay pending appeal is not warranted in this case under the standards discussed above. Starting with likelihood of success on the merits, the Court explained in detail in the Opinion why subsections (a)(2) and (a)(9) run afoul of the Second Amendment. *See, e.g.*, Opinion at 39-40. Defendants' arguments to the contrary are unpersuasive. Defendants claim that the Court failed to take into account the current version of Section 3-03 of Title 38 of

the Rules of the City of New York, which—per Defendants—now "defines 'good moral character' and the factors which are to be used in making that determination, and does not include any consideration of 'other good cause' not contained in the provision." Motion at 3. However, the Court did not take the current version of Section 3-03 into account in the Opinion because Srour lacks standing to challenge that provision, Opinion at 21, "[a]nd federal courts do not issue advisory opinions," *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Moreover, subsections (a)(2) and (a)(9) of New York City Administrative Code Section 10-303 have not been amended, and the constitutionally problematic language identified by this Court remains on the books. The amendments to Section 3-03 that Defendants point to did not also amend Section 10-303. Further, Defendants' argument that the current version of Section 3-03 provides objective criteria that somehow constrain a licensing officer's discretion under Section 10-303(a)(2)—particularly given the deletion of the "other good cause" language—is unpersuasive for another reason. As the Court explained in the Opinion, the inclusion of objective components does not cure the constitutional defects in allowing a licensing officer to deny individuals their Second Amendment rights based on "good moral character" in the first place. Opinion at 28. As the Court noted, "the very *notion*[] of 'good moral character' . . . [is] inherently exceedingly broad and discretionary." *Id.* at 29 (emphasis added). "Someone may be deemed to have good moral character by one person, yet a very morally flawed character by another." *Id.* And Defendants were likewise unable to demonstrate a tradition of similar regulations, as *Bruen* requires. *Id.* at 32; *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) ("To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.").

Defendants' other arguments for their likelihood of success fare no better. The Court did

not "conclu[de] that only applicants who are 'dangerous' may be denied a license." Motion at 3. To the contrary, the Opinion did not reach a number of criteria for rifle or shotgun permit denials under Section 10-303 based on factors at least not directly related to dangerousness, including the limitations on people under the age of twenty-one and those with certain criminal convictions. Opinion at 45 ("[T]he other provisions of Section 10-303 remain valid and enforceable."); *see* N.Y.C. Admin. Code § 10-303(a)(1) (age limitation); *id.* § 10-303(a)(3) (convictions limitation). Finally, while the desire to "prevent inconsistent decisions among District Courts in this Circuit," Motion at 3, may have bearing on the other prongs of the stay analysis, this factor simply does not bear on the likelihood of success on the merits. In the absence of other arguments, and for all the reasons stated in the Opinion, the Court concludes that Defendants have failed to make a "strong showing that [they are] likely to succeed on the merits." *Uniformed Fire Officers Ass'n*, 973 F.3d at 48 (internal quotation marks omitted).

B. Irreparable Harm

Turning to irreparable harm, the Court will credit Defendants' assertion that they may feel obligated to alter aspects of the Section 10-303 permitting scheme in order to comply with the injunction, a process which ostensibly would "complicat[e] and slow[] [NYPD's] ability to determine applications in the short term." Motion at 2. However, the Court notes that all the injunction requires Defendants to do is to simply stop denying permits on two unconstitutional grounds; it does not by its own terms require any additional revisiting of the Section 10-303 permitting scheme writ large.

The speculative nature of Defendants' stated concerns also undermines the notion that the denial of a stay would cause them irreparable harm. After all, "an applicant for a stay pending appeal must demonstrate threatened irreparable injury that is imminent or certain, not a matter of speculation." *United States v. Stein*, 452 F. Supp. 2d 281, 284 (S.D.N.Y. 2006). The same is true

of Defendants' stated concern over permits that would be issued under a hypothetical "interim procedure." Motion at 2. Defendants posit that "[g]iven the [ostensible] likelihood of success for defendants on appeal, this process would ultimately be in vain following an appellate decision and the determinations issued during the pendency of appeal might be inconsistent with those issued before and after." *Id.* But such a scenario would only occur *if* the NYPD adopts an interim procedure and *if* the Second Circuit ultimately rules in Defendants' favor. Far from showing "imminent or certain" harm, Defendants' arguments related thereto instead rest on one contingency after another. Accordingly, Defendants have not demonstrated irreparable harm.

C. Remaining Factors

Turning to the remaining factors, the public interest also squarely weighs against a stay pending appeal. As the Court explained in its Opinion, "'the public interest is best served by ensuring the constitutional rights of persons within the United States are upheld,' a proposition that certainly rings true for rights as 'fundamental' as those protected by the Second Amendment." Opinion at 45 (first quoting *Coronel v. Decker*, 449 F. Supp. 3d 274, 287 (S.D.N.Y. 2020) (internal quotation marks omitted), then quoting *Bruen*, 142 S. Ct. at 2151). Defendants correctly point to the need to protect "public safety and well-being." Motion at 2. However, "noble ends cannot justify the deployment of constitutionally impermissible means." *Wessmann v. Gittens*, 160 F.3d 790, 809 (1st Cir. 1998). As for substantial injury to Srour as the nonmoving party, he points to the fact that his Second Amendment rights may continue to be infringed upon if the Court grants a stay pending appeal, especially given that he "is now beginning the process of reapplying for a license." Opposition at 3. Defendants correctly point out that the Court never passed on Srour's as-applied challenge, Motion at 3, and it is indeed difficult to predict exactly how a stay might affect any new permit application on Srour's part. *See also* Opinion at 2 (explaining that Srour abandoned his as-applied challenges). But the Court also need not resolve this dispute—the fact

that the other factors weigh so clearly against a stay pending appeal militates toward the overall conclusion that such a request should be denied.

On a final note, Defendants make much of the fact that the Second Circuit's decision in *Antonyuk v. Hochul*, No. 22-2908 (2d Cir. argued Mar. 20, 2023), remains pending. *See, e.g.*, Motion at 2-3. While the Court can appreciate Defendants' arguments, the proper forum for them is the Second Circuit, rather than this Court. After all, just as this Court has "the inherent authority to manage [its] docket[] and courtroom[]," so does the Second Circuit. *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). Defendants have now appealed to the Circuit, and it would be neither appropriate nor justified for this Court to weigh in on how the Circuit should handle this case in tandem with *Antonyuk*.

II. Temporary Stay and Conclusion

For the foregoing reasons, the Court denies Defendants' request for a stay pending appeal. However, the Court will grant in part Defendants' alternative request to extend the temporary stay of the injunction in order to afford them an opportunity to seek a stay before the Second Circuit under Federal Rule of Appellate Procedure 8(a). The temporary stay will therefore continue through 11:59 p.m. on October 30, 2023. As stated above, if Defendants apply for a stay pending appeal before the Second Circuit prior to 11:59 p.m. on October 30, 2023, the temporary stay will remain in effect until the Second Circuit decides the stay motion. The Clerk of Court is respectfully directed to close Docket Number 45.

SO ORDERED.

Dated: October 26, 2023
New York, New York

JOHN P. CRONAN
United States District Judge

U.S.C.A. Const. Amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

§ 10-303 Permits for possession and purchase of rifles and shotguns.

It shall be unlawful to dispose of any rifle or shotgun to any person unless said person is the holder of a permit for possession and purchase of rifles and shotguns; it shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns. The disposition of a rifle or shotgun, by any licensed dealer in rifles and shotguns, to any person presenting a valid rifle and shotgun permit issued to such person, shall be conclusive proof of the legality of such disposition by the dealer.

a. *Requirements.* No person shall be denied a permit to purchase and possess a rifle or shotgun unless the applicant:

(1) is under the age of twenty-one; or

(2) is not of good moral character; or

(3) has been convicted anywhere of a felony; of a serious offense as defined in §265.00 (17) of the New York State Penal Law; of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a); of a misdemeanor crime of assault as defined in the penal law where the applicant was convicted of such assault within the ten years preceding the submission of the application; or of any three misdemeanors as defined in local, state or federal law, however nothing in this paragraph shall preclude the denial of a permit to an applicant with fewer than three misdemeanor convictions; or

(4) has not stated whether he or she has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; or

(5) is not now free from any mental disorders, defects or diseases that would impair the ability safely to possess or use a rifle or shotgun; or

(6) has been the subject of a suspension or ineligibility order issue pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act; or

(7) who is subject to a court order that

(a) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate;

(b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

(d) For purposes of this section only, "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person; or

(8) has been convicted of violating section 10-303.1 of this chapter; or

(9) unless good cause exists for the denial of the permit.

b. *Application.* Application for a rifle and shotgun permit shall be made to the police commissioner, shall be signed and affirmed by the applicant and shall state his or her full name, date of birth, residence, physical condition, occupation and whether he or she complies with each requirement specified in subdivision a of this section, and any other information required by the police commissioner to process the application. Each applicant shall submit with his or her application a photograph of himself or herself in duplicate, which shall have been taken within thirty days prior to the filing of the application. Any willful or material omission or false statement shall be a violation of this section and grounds for denial of the application.

c. Before a permit is issued or renewed, the police department shall investigate all statements required in the application. For that purpose, the records of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police department. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation. When completed, one standard card shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the police department. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the permit, and the other remain on file with the police department. No such fingerprints may be inspected by any person other than a peace officer, when acting pursuant to his or her special duties, or a police officer, except on order of a justice of a court of record either upon notice to the permittee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police department shall report the results to the police commissioner without unnecessary delay.

d. *Fees.* The fee for an application for a rifle and shotgun permit or renewal thereof shall be one hundred forty dollars.

e. *Issuance.*

(1) Upon completion of the investigation, and in no event later than thirty days from the submission of the application, unless the police commissioner determines more time is needed for an investigation and then it shall not exceed sixty days, the commissioner shall issue the permit or shall notify the applicant of the denial of the application and the reason or reasons therefor. The applicant shall have the right to appeal said denial pursuant to procedures established by the police commissioner for administrative review.

(2) Any person holding a valid license to carry a concealed weapon in accordance with the provisions of the penal law, shall be issued such permit upon filing an application and upon paying the established fee therefor, without the necessity of any further investigation, affidavits or fingerprinting, unless the police commissioner has reason to believe that the status of the applicant has changed since the issuance of the prior license.

f. *Validity.* Any person to whom a rifle and shotgun permit has been validly issued pursuant to this chapter may possess a rifle or shotgun. No permit shall be transferred to any other person. Every person carrying a rifle or shotgun shall have on his or her person a permit which shall be exhibited for inspection to any peace officer or police officer upon demand. Failure of any such person to so exhibit his or her permit shall be presumptive evidence that he or she is not duly authorized to possess a rifle or shotgun and the same may be considered by the police commissioner as cause for revocation or suspension of such permit. A permit shall be valid for three (3) years and shall be subject to automatic renewal, upon sworn application, and without investigation, unless the police commissioner has reason to believe that the status of the applicant has changed since the previous application.

g. *Revocation or suspension.* A permit shall be revoked upon the conviction in this state, or elsewhere, of a person holding a rifle or shotgun permit, of a felony or a serious offense. A permit may be revoked or suspended at any time upon evidence of any other disqualification set forth in subdivision a of this section. Upon revocation or suspension of a permit for any reason, the police commissioner shall immediately notify the New York state division of criminal justice services. The police commissioner shall from time to time send a notice and supplemental report hereof, containing the names, addresses and permit numbers of each person whose rifle and shotgun permit has been revoked or suspended to all licensed dealers in rifles and

shotguns throughout the city for the purpose of notifying such dealers that no rifles or shotguns may be issued or sold or in any way disposed of to any such persons. The police commissioner or any police officer acting at the police commissioner's direction shall forthwith seize any rifle and shotgun permit which has been revoked or suspended hereunder and shall seize any rifle or shotgun possessed by such person, provided that the person whose rifle or shotgun permit has been revoked or suspended, or such person's appointee or legal representative, shall have the right at any time up to one year after such seizure to dispose of such rifle or shotgun to any licensed dealer or any other person legally permitted to purchase or take possession of such rifle or shotgun. The permittee shall have the right to appeal any suspension or revocation pursuant to procedures established by the commissioner for administrative review.

h. *Non-residents.* Non-residents of the city of New York may apply for a rifle or shotgun permit subject to the same conditions, regulations and requirements as residents of the city of New York.

Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 1991/078.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
JOSEPH SROUR,

Plaintiff,

Case No.: 22 Civ. 3

-against-

COMPLAINT

NEW YORK CITY, New York,
KEECHANT SEWELL, in her Official
Capacity as NYPD Police Commissioner,

Defendants.
----------x

Plaintiff, JOSEPH SROUR, by and through his attorneys, states his complaint against Defendants as follows:

NATURE OF THE ACTION

1. This is an action for compensatory, declaratory and injunctive relief, to include presumed monetary damages in at least a nominal amount, costs, disbursements, and reasonable statutory attorney's fees pursuant to 42 U.S.C. § 1988, for continuing and irreparable harm to Plaintiff and all similarly situated individuals residing New York City arising from violations to their constitutional rights as protected by the Second Amendment.

2. This action seeks a declaration that (i) New York City's discretionary and permissive licensing of handguns under 38 RCNY 5; and rifles and shotguns under 38 RCNY 3; and New York City Administrative Code 10-303 violate the Second Amendment facially and as applied to Plaintiff.; (ii) 38 RCNY 3-03(a), (e), (h), and (n) violate the Second Amendment facially and as applied to Plaintiff; (iii) 38 RCNY 5-10(a), (e), (h), and (n) violate the Second Amendment facially and as applied to Plaintiff; (iv) New York City Administrative Code 10-303(2) and (9) violate the Second Amendment facially and as applied to Plaintiff; (v) New York City

Administrative Code 10-310 violates the Second Amendment facially and as applied to Plaintiff by criminalizing the possession of rifles, shotguns, and ammunition; and (vi) 38 RCNY 3-03(a), (e), (h), and (n) and 38 RCNY 3-03(a), (e), (h), and (n), and New York City Administrative Code 10-303(2) and (9) are null and void as preempted by New York State statutes, including Penal Law § 265.00, *et seq.* and § 400.00, *et seq.*, which preempt the field of firearm regulation.

3. This action further seeks to permanently enjoin Defendants, their officers, agents, servants, employees, and all persons acting in concert with Defendants who receive actual notice of the injunction, from enforcing and implementing 38 RCNY 3-03(a), (e), (h), and (n); 38 RCNY 5-10(a), (e), (h), and (n); and New York City Administrative Code 10-303(2), (9); and 10-310 against individuals, like Plaintiff, who have no longstanding, historically established prohibitors to the purchase, possession, receipt and/or ownership of handguns, rifles, and shotguns.

4. New York City's implementation and enforcement of a discretionary licensing scheme for all firearms - handguns, rifles, and shotguns - violates the preexisting individual right of non-prohibited individuals like Plaintiff to self-defense and bans the free exercise of the right to and carry weapons for self-defense, as guaranteed by the Second Amendment.

5. By requiring the City's permission before a non-prohibited person may possess handguns, rifles and/or shotguns, New York City violates the Second Amendment.

6. By allowing the discretionary denial of the exercise of such rights based on factors with no longstanding, historical basis as a disqualifier to firearm possession, New York City violates the Second Amendment.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, § 1343, § 2201, § 2202 and 42 U.S.C. § 1983 and § 1988. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

PARTIES

8. Plaintiff, Joseph Srour, is a natural person, a United States citizen, and a resident of Brooklyn, New York City, New York.

9. Defendant, New York City, New York is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of the State.

10. Defendant, Keechant Sewell, is the New York City Police Commissioner. In that capacity, Commissioner Sewell is the statutory handgun licensing officer for the five boroughs that comprise New York City. Commissioner Sewell implements his licensing authority through the NYPD License Division.

STATEMENT OF LAW

The Second Amendment

11. The Second Amendment to the United States Constitution provides: "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

12. The Second Amendment does not *bestow* any rights to the individual to possess and carry weapons to protect himself; it *prohibits the government* from infringing upon the basic, fundamental right of the individual to keep and bear arms for self-defense in the event of a violent confrontation. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. (2016).

13. "Individual self-defense is the central component of the Second Amendment right." *McDonald v City of Chicago*, 561 U.S. at 767, citing, *District of Columbia v. Heller*, 554 U.S. 570, 599 (internal quotations omitted). The Second Amendment protects the core right of the individual to self-protection. *District of Columbia v. Heller*, 554 U.S. at 595-599, 628.

14. The Second Amendment is "deeply rooted in this Nation's history and tradition" and fundamental to our scheme of ordered liberty". *McDonald v City of Chicago*, 561 U.S. 742, 768 (2010).

15. The right of law-abiding responsible citizens to use arms in the defense of hearth and home is a fundamental right protected by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

16. Second Amendment guarantees are at their zenith within the home. *Kachalsky v County of Westchester*, 701 F3d 81, 89 (2d Cir 2012) citing, *Heller*, 554 U.S. at 628-29.

17. The Second Amendment's protections are fully applicable to the states through the Fourteenth Amendment. *McDonald v. City of Chicago*, supra.

New York Statutory Scheme for Lawful Handgun Possession

18. New York Penal Law § 400, *et seq.* is the enabling statute regulating the possession and licensing of firearms in the State of New York.

19. Penal Law § 400, *et seq.* preempts any and all local laws, codes, and regulations relating to firearm possession and licensing. The comprehensive and detailed regulatory language and scheme of § 400.00 demonstrates the legislature's intent to preempt the field of firearm regulation in the state. See, *Matter of Chwick v Mulvey*, 81 AD3d 161, 163 (2d Dept 2010) (holding that Penal Law § 400 preempts Nassau County's local ordinance criminalizing the possession of certain types of handguns because where, as here, the state "legislature

demonstrate[s] its intent to preempt the field, all local ordinances are preempted regardless of whether they actually conflict with the state law").

20. Where an individual has no prohibitors to the possession of firearms, New York State Penal Law § 400.00(2) provides, "A license for a pistol or revolver, other than an assault weapon or a disguised gun, ***shall be issued*** to (a) have and possess in his dwelling by a householder." (emphasis added).

21. Under Penal Law § 400.00(1), "No license shall be issued or renewed except for an applicant who meets the eligibility requirements of (a) – (n), which include for example [in the negative] an applicant who does not have a conviction for a felony or serious offense; is not an unlawful user of or addicted to any controlled substances; is not a fugitive from justice; has not been dishonorably discharged from the military; has not been adjudicated mentally defective or involuntarily committed to a mental institution; who has not had a license revoked or who is not under a suspension or ineligibility order issued related to an Order of Protection; who has not had a guardian appointed for them as a result of mental incapacity (and the like); and "(n) concerning whom no good cause exists for the denial of the license".

22. Similarly, federal law prohibits possession of firearms by individuals who have the same infirmities: dishonorably discharged from the military; felony conviction; misdemeanor conviction for domestic violence; fugitive from justice; unlawful user of or addicted to any controlled substance; is subject to a Court Order of Protection; and *inter alia*, has been adjudicated as a mental defective or who has been committed to a mental institution. See, 18 U.S.C. 922(g).

23. In *District of Columbia v. Heller*, 554 U.S. at 627 n.26, the Supreme Court recognized that "laws prohibiting the exercise of the right to bear arms by felons and the mentally ill are 'presumptively lawful'".

24. A *conviction* of a felony or serious offense is the result of a plea of guilty or a trial on the merits of the charge; an *adjudication* as a mental defective results from a formal court process; a dishonorable discharge from the military occurs after a court-martial proceeding; having a guardian *appointed* by the court as a result of a formal hearing; being subject to a court's Order of Protection (which, though issuable *ex parte* can be immediately challenged under the Family Court Act and/or Criminal Procedure Law depending on the jurisdiction of the issuing court).

25. None of the enumerated prohibitors to handgun possession – state or federal - are based on a mere accusation without any subsequent judicial process adjudicating the underlying statutory infirmity.

26. Neither the text and history of the Second Amendment, nor federal law, prohibits or contemplates the prohibition of, firearm possession by individuals based on an arrest, dismissed charges, petty summonses, or traffic infractions.

State Regulation of Firearms Does not Reduce the Second Amendment to a "Privilege"

27. Throughout the State of New York, the possession of a handgun requires the issuance of a pistol license.

28. A non-prohibited person who possesses a handgun in New York State, loaded or unloaded, without having been issued a handgun license is subject to criminal prosecution, including incarceration, fines, and the loss of the right to possess firearms in the future.

29. A non-prohibited person who possesses a handgun, rifle, or shotgun in any of the 5 boroughs of New York City, loaded or unloaded, without having been issued a license to possess such firearm by the NYPD, is subject to criminal prosecution, including incarceration, fines, and the loss of the right to possess firearms in the future. Penal Law § 265.00, *et seq.*; New York City Admin. Code 10-310.

The Ability of the States to Regulate Firearms Does Not Reduce the Right to a 'Privilege'

30. While the courts have recognized the states' authority to regulate firearms within the state, New York State's requirement that handguns be licensed for possession one's residence does not reduce the right to possess a handgun in the home to a mere 'privilege'. See, e.g., *United States v Laurent*, 861 F Supp 2d 71, 100 (EDNY 2011) citing, *United States v. Barton*, 633 F.3d 168, 170-71 (3d Cir. 2011) ("At the 'core' of the Second Amendment is the right of law-abiding, responsible citizens to use arms in defense of hearth and home."); *Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011) ("there now exists a clearly-defined fundamental right to possess firearms for self-defense within the home").

31. Denial of an application for a license to possess a handgun, rifle and/or shotgun implicates an enumerated and cognizable Constitutional right falling within the scope of Second Amendment protections. See, *Heller*, 554 US 570 (2008). The right to use handguns for the purpose of self-defense in the home falls within the scope of Second Amendment protections. *Id.*

32. Strict scrutiny is warranted where the government burdens a fundamental, core right to self-defense in the home by a law-abiding citizen. *Kachalsky v Cacace*, 817 F Supp 2d 235, 268 (SDNY 2011) (internal citations omitted) (applying intermediate scrutiny to §400 concealed carry provisions, while the court simultaneously noted that Penal Law § 400.00(2)

requires pistol permits to be issued to eligible individuals for home possession - "shall be issued to . . . have and possess in his dwelling by a householder".).

38 RCNY 5-10: Grounds for Denial of Handgun License

33. Handguns are the most common, and the preferred modality and means of self-protection in the home. *District of Columbia v Heller*, 554 U.S. at 628, citing, *Parker v District of Columbia*, 375 US App DC 140, 169, 478 F3d 370, 400 (2007).

34. 38 RCNY 5-10, entitled "Grounds for Denial of Handgun License", provides:

> "In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law § 400.00 (1). Such a determination shall be made based upon consideration of the following factors:
>
> (a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.
>
> (b) The applicant has been other than honorably discharged from the Armed Forces of this country.
>
> (c) The applicant has or is reasonably believed to have a disability or condition that may affect the ability to safely possess or use a handgun, including but not limited to alcoholism, drug use or mental illness.
>
> (d) The applicant is or has been an unlawful user of, or addicted to, a controlled substance or marijuana.
>
> (e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun.
>
> (f) The applicant is the subject of an order of protection or a temporary order of protection.
>
> (g) The applicant has a history of one or more incidents of domestic violence.

> (h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.
>
> (i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of firearms, rifles, shotguns or ammunition.
>
> (j) The applicant has been terminated from employment under circumstances that demonstrate lack of good judgment or lack of good moral character.
>
> (k) The applicant has demonstrated an inability to safely store firearms, such as through a history of lost/stolen firearms.
>
> (l) The applicant has failed to pay legally required debts such as child support, taxes, fines or penalties imposed by governmental authorities.
>
> (m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.
>
> (n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license. In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings."

35. Defendants' adherence to, and enforcement of, 38 RCNY 5-10 poses a substantial and significant burden on Mr. Srour's guaranteed right to possess handguns for self-defense - the individual right that is guaranteed by the Second Amendment. *Heller*, 554 U.S. at 592-93.

38 RCNY 3-03: Grounds for Denial of Rifle/Shotgun Permit

36. 38 RCNY 3-03, entitled "Grounds for Denial of Permit", mirrors the grounds for the denial of a handgun license under 38 RCNY 5-10:

> In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an application for a rifle/shotgun permit may be denied where it is determined that an applicant lacks good moral character or that other

good cause exists for denial, pursuant to § 10-303 of the Administrative Code of the City of New York. Such a determination shall be made based upon consideration of the following factors:

(a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.

(b) The applicant has been other than honorably discharged from the Armed Forces of this country.

(c) The applicant has or is reasonably believed to have a disability or condition that may affect the ability to safely possess or use a rifle or shotgun, including but not limited to alcoholism, drug use or mental illness.

(d) The applicant is or has been an unlawful user of, or addicted to, a controlled substance or marijuana.

(e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a permit to possess a gun.

(f) The applicant is the subject of an order of protection or a temporary order of protection.

(g) The applicant has a history of one or more incidents of domestic violence.

(h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.

(i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of handguns, rifles, shotguns or ammunition.

(j) The applicant has been terminated from employment under circumstances that demonstrate lack of good judgment or lack of good moral character.

(k) The applicant has demonstrated an inability to safely store firearms, such as through a history of lost/stolen firearms.

(l) The applicant has failed to pay legally required debts such as child support, taxes, fines or penalties imposed by governmental authorities.

(m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.

(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the permit. In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.

NYC Administrative Code § 10-303: Permits for Possession and Purchase of Rifles and Shotguns

37. NYC Admin. Code § 10-303, entitled "Permits for Possession and Purchase of Rifles and Shotguns provides:

It shall be unlawful to dispose of any rifle or shotgun to any person unless said person is the holder of a permit for possession and purchase of rifles and shotguns; it shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns.
The disposition of a rifle or shotgun, by any licensed dealer in rifles and shotguns, to any person presenting a valid rifle and shotgun permit issued to such person, shall be conclusive proof of the legality of such disposition by the dealer.

a. Requirements. No person shall be denied a permit to purchase and possess a rifle or shotgun unless the applicant:
(1) is under the age of twenty-one; or
(2) **is not of good moral character;** or
(3) has been convicted anywhere of a felony; of a serious offense as defined in § 265.00 (17) of the New York State Penal Law; of a misdemeanor crime of domestic violence as defined in § 921 (a) of title 18, United States Code; of a misdemeanor crime of assault as defined in the penal law where the applicant was convicted of such assault within the ten years preceding the submission of the application; or of any three misdemeanors as defined in local, state or federal law, however nothing in this paragraph shall preclude the denial of a permit to an applicant with fewer than three misdemeanor convictions; or
(4) has not stated whether he or she has ever suffered any mental

> illness or been confined to any hospital or institution, public or private, for mental illness; or
> (5) is not now free from any mental disorders, defects or diseases that would impair the ability safely to possess or use a rifle or shotgun; or
> (6) has been the subject of a suspension or ineligibility order issued pursuant to § 530.14 of the New York State Criminal Procedure Law or § 842-a of the New York State Family Court Act; or
> (7) who is subject to a court order that
> (a) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate;
> (b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
> (c)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;
> (d) For purposes of this section only, "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person; or
> (8) has been convicted of violating section 10-303.1 of this chapter; or
> (9) **unless good cause exists for the denial of the permit**.

38 RCNY 5-10, 38 RCNY 3-03, and NYC Administrative Code § 10-303 are Preempted By the New York State Safe Act, Including Penal Law § 400.00, *et seq.*

38. "A local law regulating the same subject matter [as a state law] is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute." *Matter of Chwick v Mulvey*, 81 A.D.3d at 169 citing, *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 N.Y.2d at 377; *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 N.Y.2d at 401; *DJL Rest. Corp. v City of New York*, 96 N.Y.2d at 95; *Jancyn Mfg. Corp. v County of Suffolk*, 71 N.Y.2d at 97-98; *Dougal v County of Suffolk*, 102 A.D.2d at 532-533; *Matter of Ames v Smoot*, 98 A.D.2d at 218-219). "Such [local]

laws, were they permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns." *Id.* citing, *Jancyn Mfg. Corp. v County of Suffolk*, 71 N.Y.2d at 97; *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 N.Y.2d at 377.

39. Penal Law § 400 is the exclusive statutory mechanism for the licensing of firearms in New York State. *Matter of O'Connor v Scarpino*, 83 N.Y.2d 919, 920 (1994).

40. Penal Law § 400.00 imposes certain eligibility requirements, including that an applicant must be at least 21 years of age and that the applicant has never committed "a felony or a serious offense". Penal Law § 400.00(1).

41. The only authority granted to the licensing authority in the City of New York, the police commissioner, is set forth in §400.00(6), which requires an individual with a non-restricted license who resides outside of the 5 boroughs of New York City to apply for an endorsement of their NYS Pistol License – permission from the police commissioner - should they desire to carry concealed within New York City, subject to certain exemptions:

> "A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city…"
>
> P.L. §400.00(6).

42. Defendants are subject to all provisions of § 400.00, *et seq.* with regard to their implementation of procedures for licensing handguns for the residents of New York City.

43. Section 400.00 evinces an intent to set forth a uniform system of licensing; it is the "exclusive statutory mechanism" for such licensing. As such, no locality may supplant that

licensing requirement, since doing so would undermine the uniformity of the system. *Matter of Chwick v Mulvey*, supra.

44. If a local ordinance imposed additional requirements for lawful firearms possession, and if each county enacted additional restrictions, the uniformity of the scheme would be destroyed. The state statute, by its detailed nature, left no room for local ordinances to operate. Thus, when the Legislature demonstrated its intent to preempt the field, all local ordinances were preempted, regardless of whether they actually conflicted with the state law. *Matter of Chwick v Mulvey*, 81 AD3d at 163.

45. The New York SAFE Act [2013] reconfirmed the State's interest in preempting the field of firearm regulation in New York State.

46. There is ample evidence to demonstrate that the Legislature intended Penal Law § 400.00 to preempt local laws with respect to firearm licensing. First, Penal Law § 400.00 evinces an intent to set forth a uniform system of firearm licensing in the state and is the exclusive statutory mechanism for the licensing of firearms in New York State. *Matter of Chwick v Mulvey*, 81 A.D.3d at 171-172 citing, *Matter of O'Connor v Scarpino*, supra.

47. No locality may supplant the licensing requirements provided by Penal Law § 400.00, since to do so would undermine the system of uniform firearm licensing. *Id.*

48. 38 RCNY 5-10 interrupts this uniformity by imposing additional requirements for lawful possession of a valid firearms license beyond the State's requirements under § 400 by creating additional burdens over and above those intended by the Legislature. See, e.g., *Matter of Chwick v Mulvey*, 81 A.D.3d at 171-172.

49. "Further evidence of the intent to pre-empt is . . . provided by the complete and detailed nature of the State scheme. Comprehensiveness and detail are important in determining

the existence of an intent to pre-empt…the more comprehensive a statutory scheme, the less room for local ordinances to operate. *Matter of Chwick v Mulvey*, 81 A.D.3d at 171-172 (internal citations and quotations omitted).

50. Penal Law § 400.00 restricts the realms in which local laws may operate and is very comprehensive. For instance, Penal Law § 400.00 governs, among other things, the eligibility for a firearms license, the types of available firearms licenses, the application process for obtaining a firearms license, the investigation process for each firearms license application, the filing of approved applications, the validity of issued firearms licenses, the form of each firearms license, and how firearms licenses must be exhibited and displayed (see Penal Law § 400.00 [1]-[8]). In sum, Penal Law § 400.00 leaves no room for local ordinances to operate. Instead, the State statutes give localities detailed instructions concerning the procedures to be employed in licensing firearms. *Matter of Chwick v Mulvey*, 81 A.D.3d at 171-172 citing, *Dougal v County of Suffolk*, 102 AD2d at 533.

51. Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute. *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d at 377. When the Legislature has demonstrated its intent to preempt the field, all local ordinances are preempted, regardless of whether they actually conflict with the state law. *Matter of Chwick v Mulvey*, 81 A.D.3d at 171-172 citing, *Jancyn Mfg. Corp. v County of Suffolk*, 71 N.Y.2d at 97; *People v De Jesus*, 54 N.Y.2d at 468-470; *Matter of Ames v Smoot*, 98 A.D.2d at 217-219).

52. New York State Law does not require a license to possess rifles and shotguns.

53. New York City requires a license to lawfully possess rifles and/or shotguns.

54. New York City's license requirement for rifles and shotguns is preempted by New York State, which preempts the field of firearm regulations for New York State.

55. In that connection, the NYS Legislature enacted § 265.01, which criminalized the possession of rifles and shotguns by individuals who have been convicted of a felony or serious offense misdemeanors.

56. No disqualifier based on a mere arrest, traffic infractions, or summonses constitutes a prohibiting factor to the possession of handguns, rifles or shotguns under the Penal Law.

57. 38 RCNY 5-10 interrupts the uniformity of the statute by imposing additional requirements for lawful possession of a valid firearms license beyond the State's requirements. See, *Matter of Chwick v Mulvey*, 81 A.D.3d at 171.

58. 38 RCNY 5-10 incorrectly purports to be consist with the authorization under § 400 to deny a handgun license application "where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law § 400.00(1)."

59. 38 RCNY 5-10 (a) through (n) and 38 RCNY 3-03 (a) through (n) contain factors that Defendants determine to be 'other good cause' to deny an application for a handgun license.

60. The factors contained in 38 RCNY 5-10 (a) through (n) are an unconstitutional discretionary judgment that an applicant lacks the 'good moral character' to be eligible to possess firearms under § 400.00(1).

61. 38 RCNY 5-10 (a), (e), (h), and (n) and 38 RCNY 3-03 (a), (e), (h), and (n) improperly create additional classes of *per se* ineligibility separate and apart from those enumerated by the State Legislature under § 400.00(1).

62. Defendants' enforcement and implementation of 38 RCNY 5-10 (a), (e), (h), and (n) is preempted by § 400.00, *et seq.* and should be declared a nullity.

63. 38 RCNY 3 should be declared a nullity as preempted by the New York SAFE Act because the New York State Legislature has chosen not to license the purchase and/or possession of rifles and shotguns in this State.

64. Apart from the overarching regulation of handguns and long guns under the SAFE Act, the NYS Legislature has regulated the possession of rifles and shotguns through Penal Law § 265.00, *et seq.* See, § 265.00(16); § 265.01(4).

MATERIAL FACTS

65. Joseph Srour has no prohibitors to the purchase, receipt, possession, and/or ownership of firearms under federal law or New York State law.

66. Mr. Srour cannot exercise his right to self-defense – whether in his home or otherwise – without first obtaining the permission of the NYPD License Division.

67. If Mr. Srour does exercise his right to possess handguns, rifles, and/or shotguns – all weapons in common use for self-defense – he will be subject to arrest, incarceration, prosecution, the loss of his Second Amendment rights and inability to obtain a firearm license in the future.

68. Before a resident of New York City may purchase and/or possess any type of gun in common use for self-defense – handguns, rifles, shotguns, and "other firearms"[1] – or ammunition, they are required to seek and obtain the permission of the NYPD License Division.

[1] Collectively referred to as "firearms" herein.

Rifles and Shotguns

69. In every county outside of New York City, the purchase and possession of rifles and shotguns may freely be exercised without seeking permission from the government by any person having no prohibitors to the purchase and/or possession of firearms under federal or New York State law[2] after passing a federal background check through the National Instant Criminal Background Check System ("NICS").

70. In New York City, every non-prohibited resident, like Mr. Srour, must seek and obtain the permission of the NYPD License Division before lawfully purchasing and/or possessing a rifle, shotgun, and/or ammunition.

71. A non-prohibited person, like Mr. Srour, who exercises the right to possess rifles and shotguns for self-defense without having received Defendants' permission is subject to incarceration, criminal charges, and prosecution, and *inter alia*, the loss of one's Second Amendment rights.

72. The mere possession of a rifle and/or shotgun for self-defense by a non-prohibited resident of New York City, like Mr. Srour, subjects that person to incarceration, criminal charges and prosecution, and *inter alia*, the loss of one's Second Amendment rights.

73. Every non-prohibited resident of New York City, including Mr. Srour, must seek and obtain Defendants' permission before lawfully purchasing, possessing, receiving, and/or using rifles and shotguns for self-defense in New York City.

Handguns

74. New York State regulates the possession of handguns throughout the State, including the 5 boroughs of New York City.

[2] 18 U.S.C. 922(g), Penal Law §§ 265.00(16); 265.00(17); 265.01(4).

75. Non-prohibited individuals cannot lawfully possess a handgun for self-defense without seeking and obtaining permission from the statutory licensing officer.

76. New York State's licensing scheme is permissive and discretionary and imbues "broad discretion" to the licensing officer.

77. The purchase and/or possession of a handgun for self-defense requires seeking and obtaining permission from a statutory licensing officer under Penal Law § 400.00, *et seq.*

78. Every non-prohibited resident of New York City, including Mr. Srour, must seek and obtain Defendants' permission before lawfully purchasing, possessing, receiving, and/or using a handgun for self-defense in New York City.

79. Every non-prohibited resident of New York City, including Mr. Srour, must seek and obtain Defendants' permission before exercising their guaranteed right to possess and/or carry weapons in common use for self-defense in New York City.

Mr. Srour's Applications for a Permit to Possess Handguns, Rifles, and Shotguns in His Home for Self-Protection

80. In 2018, Mr. Srour applied to the NYPD License Division for a permit to possess rifles and shotguns in his home for self-protection ("Rifle/Shotgun Permit").

81. Mr. Srour's application for a Rifle/Shotgun Permit was denied.

82. In 2019, Mr. Srour applied to the NYPD License Division for a permit to possess handguns in his home for self-protection ("Handgun License").

83. Mr. Srour's application for a Handgun License was denied.

84. Mr. Srour timely filed an internal appeal of the denial of his application for a Rifle/Shotgun Permit with the NYPD License Division, Appeals Unit.

85. Mr. Srour timely filed an internal appeal of the disapproval of his application for a Handgun Permit with the NYPD License Division, Appeals Unit ("License Division").

86. In accordance with the NYPD Appeals Unit requirements, Mr. Srour's internal appeals included a written statement that was Notarized and Verified by Mr. Srour under the penalty of perjury.

Defendants' Denial of Mr. Srour's Right to Possess Handguns, Rifles, and Shotguns

87. On November 7, 2019, the NYPD License Division notified Mr. Srour that his appeal of the disapproval of his applications for a Handgun License and Rifle/Shotgun Permit were both denied.

88. The License Division denied Mr. Srour's right to possess handguns for self-defense in reliance on 38 RCNY 5-10 (a) and the right to possess rifles and shotguns for self-defense in reliance on 38 RCNY 3-03 (a), each based on his arrest in 1996, which was terminated in favor of the accused under N.Y. Criminal Procedure Law § 160.50, dismissed and sealed; and an arrest in 1995 that was also dismissed.

89. Mr. Srour has no criminal convictions and no convictions for a non-criminal violation.

90. Mr. Srour did not commit any violation of the New York State Penal Law.

91. The License Division denied Mr. Srour's right to possess handguns for self-defense under 38 RCNY 5-10 (e) and the right to possess rifles and shotguns for self-defense in reliance on 38 RCNY 3-03 (e) for an alleged failure to cooperate/lack of candor during the application process for not disclosing charges that were dismissed, sealed, and terminated in his favor.

92. Every applicant for a handgun license and rifle/shotgun permit is fingerprinted; all prior arrests revealed to the License Division upon the return of the applicant's criminal history

report from the New York State Division of Criminal Justice Services and/or the Federal Bureau of Investigation.

93. The License Division denied Mr. Srour's right to possess handguns for self-defense under 38 RCNY 5-10 (h) and the right to possess rifles and shotguns for self-defense under 38 RCNY 5-10 (h) based on his driving history.

94. An individual's driving history does not constitute a prohibitor to firearm possession, purchase, or ownership of firearms.

95. Mr. Srour had no vehicle and traffic violations after the year 2000.

96. Mr. Srour's violations of the Navigational Law in 2012 and 2015 were for creating a "wake" in the water while operating a jet ski.

97. Mr. Srour did not fail to cooperate with the License Division, nor did he lack candor during the application process.

98. Mr. Srour did disclose to the investigators in each application process the details of each arrest and their dispositions.

99. Mr. Srour intends to exercise his Second Amendment right to possess handguns, rifles, and/or shotgun in his home for self-protection notwithstanding New York City's unconstitutional regulations, Defendants' enforcement and implementation of such regulations, and the absence of a handgun license.

100. Mr. Srour's exercise of his Second Amendment right to the possession of firearms will subject him to criminal prosecution, including incarceration and fines.

101. If Mr. Srour is convicted of unlawful possession of a firearm, such conviction will prohibit his lawful possession of a firearm in the future, as it will constitute either a felony or "serious offense" under New York Penal Law § 265.00, *et seq.*

102. Mr. Srour should not be forced to choose between exercising his fundamental and pre-existing right to possess firearms in his home for self-defense and being subjected to criminal prosecution.

NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10 (a), (e), (h) and (n) and 38 RCNY 3-03 (a), (e), (h) and (n) Violate And Substantially Burden The Second Amendment

103. Facially and as applied to Mr. Srour, 38 RCNY 5-10 (a), (e), (h) and (n) and 38 RCNY 3-03 (a), (e), (h), and (n) constitute an unlawful violation of the Second Amendment because they ban the possession of firearms using discretionary powers on grounds that have no cognizable, historically accepted roots to the prohibition of firearms.

104. Heightened scrutiny is triggered by restrictions that, like the complete prohibition on handguns struck down in *Heller*, 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. *NY State Rifle & Pistol Assn. v. City of NY*, 883 F3d 45, 56 (2d Cir 2018) citing, *United States v Decastro*, 682 F3d 160, 166 (2d Cir 2012).

105. As a direct result of the challenged regulations, Mr. Srour is completely banned from possessing any type of firearm for self-defense, with no available alternatives. See, *United States v Decastro*, 682 F.3d 160, 166 (2d Cir 2012).

106. Core Second Amendment rights, like the right to possess firearms in the home for self-defense, are not subject to 'interest balancing'. *Heller*, 554 U.S. at 634 ("We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach. The very enumeration of the right takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is really worth insisting upon.").

107. "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad. We would not apply an 'interest-balancing' approach to the prohibition of a peaceful neo-Nazi march through Skokie. See *National Socialist Party of America v. Skokie*, 432 U.S. 43, 97 S. Ct. 2205, 53 L. Ed. 2d 96 (1977) (per curiam). The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong headed views. The Second Amendment is no different. Like the First, it is the very product of an interest balancing by the people--which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 634-635.

NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10(a) and 38 RCNY 3-03(a) – Denial Based on Arrest/Dismissed Criminal Charges Substantially Burdens Core Second Amendment Rights

108. Under NYC Admin. Code 10-303(2) and (9), 38 RCNY 5, and 38 RCNY 3, Defendant may deny an application for a Handgun License or Rifle/Shotgun Permit where a government employee in the Licensing Division believes the applicant "lacks good moral character" or "that other good cause" exists for denial.

109. Defendants make such determinations based upon consideration of whether an applicant has been arrested, indicted, or convicted for a crime or violation, in any federal, state or local jurisdiction. See, 38 RCNY 5-10(a); 38 RCNY 3-03(a).

110. The NYS Legislature enacted specific enumerated factors of ineligibility for the issuance of a pistol license, as codified in Penal Law § 400.00(1).

111. Had the NYS Legislature intended an arrest in and of itself and/or a criminal charge that has been dismissed or reduced to a non-criminal violation, sufficient to render an individual ineligible to possess handguns, rifles, and/or shotguns, it would have enacted such language, which it did not.

112. The NYS Legislature confined ineligibility to possess handguns and long guns related to criminal acts to adjudicated convictions for felonies and certain misdemeanors listed as "serious offenses" under Penal Law § 265.00(17). See also, Penal Law § 265.01(4); § 400.00(1)

113. Mr. Srour does not have a rifle/shotgun license and, therefore, has no other means of possessing a firearm for home protection.

114. It is beyond cavil that an arrest, in and of itself, has little to no probative value with regard to an individual's character. *People v Smith*, 27 NY3d 652, 662, n 1 (2016), citing, *People v Miller*, 91 N.Y.2d 372, 380 (1998); *People v Rodriguez*, 38 N.Y.2d 95, 101 (1975); *People v Morrison*, 194 N.Y. 175, 178 (1909); *Michael v. Arato Safir*, INDEX No. 109242/99 (Sup. Ct., NY Co., Zweibel, J.) (holding that the NYPD acted arbitrarily and capriciously in revoking licensee's handgun permit, because it irrationally narrowed its attention to one long-ago dismissed charge instead of reviewing the full record); see also, Fed. R. Evid. 609(b).

115. Defendants denied Mr. Srour's application for a Residence Handgun License under 38 RCNY 5-10(a) and for a residence Rifle/Shotgun Permit based on an arrest that occurred over 22 years ago.

116. Mr. Srour has committed no act that forfeited the preexisting and guaranteed right to possess weapons for self-defense. See, *Heller*, supra.

117. Preventing an individual from lawfully exercising his/her right to possess a handgun for self-defense in the home based on an unproven arrest/charge unlawfully burdens core pre-existing rights falling within the scope of Second Amendment protections.

118. Defendants' enforcement and implementation of NYS Admin. Code 10-303 (2) and (9), 38 RCNY 10-5(a) and 38 RCNY 3-03(a) violates and substantially burdens Mr. Srour's fundamental right to self-protection as guaranteed by the Second Amendment. See, *Heller*, 554 U.S. at 592.

NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10(h) and 38 RCNY 3-03(h) – Denial Based on Driving History Violate and Substantially Burden the Second Amendment

119. Under NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5 and 38 RCNY 3, a poor driving history constitutes grounds for denying an enumerated constitutional right.

120. Defendants may deny an application for a Handgun License and/or Rifle/Shotgun Permit where a government employee believes that an applicant lacks good moral character or that other good cause exists for denial.

121. Defendants make such determinations based upon consideration of whether the applicant "has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles."

121. The NYS Legislature's enumerated factors for ineligibility to possess handguns, as codified in Penal Law § 400.00(1), do not contain, or even contemplate, rendering an individual ineligible for the issuance of a pistol license because of their driving history, scofflaws, or similar infractions. Had the NYS Legislature intended an arrest in and of itself and/or a criminal charge that has been dismissed or reduced to a non-criminal violation, sufficient to render an individual ineligible for the issuance of a pistol license, they would have incorporated such language.

122. There is no New York State law that prohibits the possession of rifles or shotguns based on an individual's driving history.

123. An individual's driving history has no cognizable, historically recognized basis as a prohibitor to the possession, purchase, or use of firearms.

124. Mr. Srour's driving history has not stripped him of his *privilege* to possess a *driver's* license – which is not a constitutional right; it certainly does not rise to the level of seriousness as with the *sui generis* prohibitors to firearm possession, i.e., felony convictions, dishonorable discharge, involuntary commitment to a mental health facility, and the like.

125. When Mr. Srour's driver's license was suspended for failure to pay fines, he was not thereafter denied the privilege of having a driver's license thereafter, nor was his vehicle forfeited. Once Mr. Srour became current with the financial obligations related to his driver's license, his driving privileges were reinstated.

126. Unlike a driver's license, the right to possess firearms – handguns, rifles, and shotguns - is a guaranteed constitutionally protected right – it is not a "privilege".

127. Preventing an individual, like Mr. Srour, from possessing handguns rifles, and shotguns, because of his driving history unlawfully and substantially burdens the Second Amendment.

128. Defendants' enforcement and implementation of NYC Admin. Code 10-303(2) and (9), 38 RCNY 5-10(h) and 38 RCNY 3-03 (h) violates and substantially burdens Mr. Srour's fundamental right to self-defense.

NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10(e) and 38 RCNY 3-03 (e) – Denial Based on Non-Disclosure of Arrest History Violate and Substantially Burden the Second Amendment

129. Under NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5 and 38 RCNY 3, Defendants may deny an application for a Handgun License and/or Rifle/Shotgun Permit where a government employee believes an applicant lacks good moral character or that other good cause exists for denial.

130. Under 38 RCNY 5-10(e) and 38 RCNY 3-03(e), the right to possess handguns, rifles, and/or shotguns may be denied where a government employee feels that the applicant "failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun."

131. NYC Admin. Code 10-303(2)(and (9), 38 RCNY 5-10(e) and 38 RCNY 3-03(e) are unconstitutional facially and as applied to Mr. Srour.

132. NYC Admin. Code 10-303(2) and (9), 38 RCNY 5-10(e) and 38 RCNY 3-03(e) allow the discretionary denial of the right to possess handguns, rifles, and/or shotguns based on factors that do not constitute longstanding, historically accepted prohibitors to firearm possession.

133. Defendants' enforcement of NYC Admin. Code 10-303(2) and (9), 38 RCNY 5-10(e) and 38 RCNY 3-03(e) permits the denial of the right to possess a handgun, rifle, and/or a shotgun based on non-prohibiting factors.

134. Every applicant for a license to possess a handgun, rifle, and/or shotgun is required to submit their fingerprints for a background check.

135. Every background investigation involves a criminal history a check with the New York State Division of Criminal Justice Services ("DCJS") and the Federal Bureau of

Investigations ("FBI") to identify whether the individual is a person prohibited from the possession, purchase, and/or use of a firearm.

136. Irrespective of what arrest information is placed on the application, any conviction-based prohibitor, order of protection, and/or mental health disqualifier will be revealed to the License Division by DCJS and/or the FBI.

137. Dismissed charges, sealed adjudications, and convictions for non-criminal offenses are not disqualifiers to firearm possession.

138. An applicant's disclosure or non-disclosure of such information is irrelevant to whether s/he is a prohibited person for purposes of firearm possession.

139. Defendants' enforcement of NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10(e) and 38 RCNY 3-03 (e) substantially burden the fundamental right to possess arms for self-defense, as guaranteed by the Second Amendment.

140. NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10 (a), (e), (h), and (n), and 38 RCNY 3-03 (a), (e), (h), and (n) *de facto* improperly create additional classes of *per se* ineligibility for handgun possession not enumerated in Penal Law §400.00(1) nor contemplated by the NYS Legislature.

141. NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10 (a), (e), (h), and (n), and 38 RCNY 3-03 (a), (e), (h), and (n) are facially unconstitutional, and unconstitutional as applied to Mr. Srour as they substantially burden a fundamental right protected by the Second Amendment.

Article 78 Does Not Provide a Viable Recourse for Mr. Srour

142. A government decision challenged under New York Civil Practice Law and Rules (CPLR) 7803(3) will be upheld unless it is found to be "arbitrary and capricious". See, *O'Brien*

v. Keegan, 87 N.Y.2d 436, 439-40, 663 N.E.2d 316, 639 N.Y.S.2d 1004 (1996)(citing N.Y. Penal Law § 400.00) (A licensing officer's decision will not be disturbed unless it is arbitrary and capricious).

143. An Article 78 proceeding is not a viable option for Mr. Srour to seek recourse for violations of the rights protected by the Constitution, including his preexisting right to self-defense in his home.

144. The "arbitrary and capricious standard" is itself unconstitutional as applied to Second Amendment challenges generally and as applied to Mr. Srour.

154. The "arbitrary and capricious" standard akin to the "interest balancing inquiry" affirmatively rejected by the United States Supreme Court in the context of Second Amendment challenges. See, *Heller*, 554 U.S. at 634-35.

155. In *Heller*, the Supreme Court held that the ban of firearm possession could not withstand *any* level of constitutional scrutiny. Neither can the challenged regulations herein.

156. The statutorily defined and limited scope of an Article 78 proceeding precludes and prevents a court from considering whether the government's actions violate a preexisting, fundamental right protected by the United States Constitution.

INJUNCTIVE RELIEF ALLEGATIONS

157. Mr. Srour is being continuously injured, in fact, by Defendants' enforcement of NYC Admin. Code 10-303 (2) and (9), 38 RCNY 5-10 (a), (e), (h), and (n); and 38 RCNY 3-03 (a), (e), (h), and (n), and New York City Admin. Code 10-310which ban his ability to exercise the individual rights protected and guaranteed by the Second Amendment.

158. Mr. Srour is suffering irreparable harm by having to choose between exercising his Second Amendment rights and being subject to criminal prosecution. Mr. Srour should not

have to risk criminal prosecution in order to exercise his core fundamental right to possess arms for self-defense.

159. Mr. Srour will continue to suffer such harm without the requested relief.

160. Defendants deny the allegations stated herein.

AS AND FOR A FIRST CAUSE OF ACTION
NYC ADMIN. CODE 10-303 (2) and (9)
[Second Amendment]

161. Repeats and realleges paragraphs "1" through and including "160" as if set forth in their entirety herein.

162. NYC Admin. Code 10-303(2) and (9) individually and collectively substantially burden and violate the pre-existing individual right protected by the Second Amendment, to wit, the right to possess firearms for self-defense.

163. NYC Admin. Code 10-303(2) and (9) individually and collectively should be enjoined and stricken as unconstitutional on their face, and as applied to the plaintiff, as they violate preexisting rights protected by the Second Amendment, 42 U.S.C. §1983.

AS AND FOR A SECOND CAUSE OF ACTION
38 RCNY 5-10
[Second Amendment]

164. Repeats and realleges paragraphs "1" through and including "163" as if set forth in their entirety herein.

165. 38 RCNY 5-10 (a), (e), (h), and (n) individually and collectively substantially burden and violate the pre-existing individual right protected by the Second Amendment, to wit, the right to possess firearms for self-defense.

166. 38 RCNY 5-10 (a), (e), (h), and (n) individually and collectively should be enjoined and stricken as unconstitutional on their face, and as applied to the plaintiff, as they violate preexisting rights protected by the Second Amendment, 42 U.S.C. §1983.

AS AND FOR A THIRD CAUSE OF ACTION
38 RCNY 3-03
[Second Amendment]

167. Repeats and realleges paragraphs "1" through and including "166" as if set forth in their entirety herein.

168. 38 RCNY 3-03 (a), (e), (h), and (n) individually and collectively substantially burden and violate the pre-existing individual right protected by the Second Amendment, to wit, the right to possess firearms for self-defense.

169. 38 RCNY 3-03 (a), (e), (h), and (n) individually and collectively should be enjoined and stricken as unconstitutional on their face, and as applied to the plaintiff, as they violate preexisting rights protected by the Second Amendment, 42 U.S.C. §1983.

AS AND FOR A FOURTH CAUSE OF ACTION
New York City Administrative Code 10-310
[Second Amendment]

170. Repeats and realleges paragraphs "1" through and including "169" as if set forth in their entirety herein.

171. NYC Admin. Code 10-310 substantially burdens and violates the pre-existing individual right protected by the Second Amendment, to wit, the right to possess firearms for self-defense.

172. NYC Admin. Code 10-310 should be enjoined and stricken as unconstitutional on its face, and as applied to the plaintiff, as it violates preexisting rights protected by the Second Amendment, 42 U.S.C. §1983.

AS AND FOR A FIFTH CAUSE OF ACTION
STATE PREEMPTION

173. Repeats and realleges paragraphs "1" through and including "172" as if set forth in their entirety herein.

174. New York State has preempted the field of firearms regulation in New York State. See, e.g., *Matter of Chwick v Mulvey*, 81 AD3d 161, 163 (2d Dept 2010); New York State Secure Ammunition And Firearm Enforcement Act; Penal Law § 265.00, *et seq.*, Penal Law § 400.00, *et seq.*

175. New York Penal Law § 400.00, *et seq.* is the exclusive statutory mechanism for firearm licensing in New York State.

176. NYC Admin. Code 10-303, 38 RCNY 5-10, 38 RCNY 3-03, and NYC Admin. Code 10-310 are preempted by New York State Law and should be declared nullities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendants as follows:

- An Order preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons acting in concert with Defendants who receive actual notice of the injunction, from enforcing and implementing NYC Admin. Code 10-303(2), (9); 38 RCNY 5-10 (a), (e), (h), and (n); 38 RCNY 3-03 (a), (e), (h), and/or (n); and NYC Admin. Code 10-310 collectively and individually;
- A Declaration that NYC Admin. Code 10-303(2), (9); 38 RCNY 5-10 (a), (e), (h), and/or (n); 38 RCNY 3-03 (a), (e), (h), and/or (n); and NYC Admin. Code 10-310 individually and collectively are facially unconstitutional, and as applied to the

plaintiff, as they unduly burden and violate fundamental preexisting individual rights protected by the Second Amendment to the United States Constitution;

- A Declaration that NYC Admin. Code 10-303(2), (9); 38 RCNY 5-10 (a), (e), (h), and/or (n); 38 RCNY 3-03 (a), (e), (h), and/or (n); and NYC Admin. Code 10-310 are nullities and preempted by the New York SAFE Act, including Penal Law § 265.00, *et seq.* and § 400.00, *et seq.*;
- Granting an award of presumed compensatory damages in at least a nominal amount for the constitutional violations incurred by Plaintiff;
- A Declaration that Plaintiff is a prevailing party for purposes of an award of reasonable attorney's fees under 42 U.S.C. § 1988;
- Granting an award of reasonable statutory attorney's fees under 42 U.S.C. § 1988 and any other applicable law;
- Granting costs and disbursements to Plaintiff;
- Granting such other, further, and different relief as the Court deems just and proper.

Dated: January 2, 2022
Scarsdale, New York

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GOVERNOR'S BILL JACKET

1963

CHAPTER 136

72 PAGES

NYLS added the last 46 pages.

PENAL LAW

Firearms

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We accept the following:

CHAPTER 136

Print. 136 Intro. 136

IN SENATE

(Prefiled)

January 9, 1963

Introduced by Mr. BERKOWITZ—(at request of the Joint Legislative Committee on Firearms and Ammunition)—read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT

To amend the penal law, in relation to the carrying, sale, possession and use of firearms and other dangerous weapons, the issuance of licenses therefor, and the surrendering, destruction, checking and recording of same, and repealing certain sections of such law relating thereto

Compared by _____

Approved MR. BERK[illegible]

Date 6/26/17

No. of pr[illegible]

Time expire[illegible] 26

hibited by state law; it is criminal, however, under the Federal Firearms Act (15 U. S. C. § 902(c)) to make such shipments to an unlicensed person in a state that requires a license.

With respect to rifles and shotguns, New York along with a significant number of jurisdictions, prohibit possession by minors under sixteen and aliens. But for other well-defined categories of persons, New York does not extend this prohibition, as many other states do in the case of persons convicted of felonies or crimes of violence (Alabama, Arizona, California, Georgia, Hawaii, Massachusetts, North Dakota), persons who are insane or incompetent (Georgia), drug addicts or peddlers (Alabama, California, Hawaii, Massachusetts, North Dakota) and even habitual drunkards (Alabama, North Dakota). In these fifty-one American jurisdictions, provisions for licensing or registering rifles or shotguns are virtually non-existent. Under a unique provision, one state (Florida) requires a license for a certain type of rifle described as a Winchester or repeating rifle. In another state (Hawaii), in the unlikely case of a rifle or shotgun with barrel less than eighteen inches in length, a license is required. In New York, any sawed-off shotgun is flatly outlawed.

The estimate of twenty to forty million rifles and shotguns in the hands of the civilian population of the United States is entirely credible. In recent years, hundreds of thousands of military rifles have been imported from Europe, with the *pro forma* approval of the United States Department of State. Thousands of other such rifles have been released by the Department of Defense. By statute since 1927 (18 U. S. C. § 1715), pistols and revolvers have been declared nonmailable with certain exceptions, but the Post Office Department accepts rifles and shotguns in the mails. Under the Federal Firearms Act (15 U. S. C. § § 901–909), such shipments are prohibited to convicts, persons under indictment and fugitives from justice in other states, but the statute appears to be complied with by any signature that the purchaser is not a convict, under indictment or a fugitive. States surrounding New York have no restrictions, except those already pointed out, on rifles and shotguns. Under these circumstances, any proposal to register rifles and shotguns in the single State of New York would not only impose a governmental burden of Augean proportions but also would in all probability not prevent their possession by persons dangerously likely to use them in the commission of crimes.

Law enforcement officials have often expressed the belief that more consistent enforcement of adequate statutes governing firearms and weapons would reduce the incidence of certain serious crimes (*Role of the Police,* IACP Committee on Juvenile Delinquency p. 15; *New York Times,* September 12, 1956, p. 1). Yet this enforcement has yet to come to pass. Although the rate per 100,000 population in the United States for serious crimes committed with weapons is estimated for 1962 at 130.8, the rate of arrests for violations of weapons laws is only 35.1.

PROPOSED AMENDMENTS

With respect to rifles and shotguns, the Committee has proposed that it be a felony for any person to possess such guns if he has previously been convicted of a felony or any of the misdemeanors or offenses sufficient to deny bail unless such person has a certificate of good conduct. The bill also provides that whenever the director or physician in charge of a mental institution certifies to the police that a person adjudicated incompetent or who has been confined for mental illness pursuant to judicial authority, upon his release, is not suitable to possess a rifle or shotgun, the police shall seize any rifle or shotgun in his possession. Refusal to yield possession constitutes a misdemeanor. The rifle or shotgun so seized is not to be destroyed but disposed of by court order. Enactment of this bill would incorporate in the New York statute each and every category of persons to whom possession of rifles and shotguns is prohibited in any American jurisdiction, except the habitual drunkard.

Another bill proposed by the Committee undertakes to eliminate an absurdity of long standing in the law. It is a misdemeanor to carry a loaded pistol or revolver in one's hand, even when cocked and ready for instant action; but it is a felony to carry such gun in one's pocket or tucked away in a suitcase. The proposed bill makes all such unauthorized possession a felony.

Other bills approved by the Committee require a licensee to report in writing any change of address within ten days; require a person in the military service of the State to have a license for a pistol or revolver unless he is authorized by regulation to possess the same; permit with proper safeguards disposition of the pistols or revolvers of a decedent by the estate representative; provide for the issuance of a duplicate license upon proof of loss or despoliation of the original; permit duly licensed persons to transport their authorized pistols or revolvers through the City of New York in locked containers on a continuous and uninterrupted trip enroute to matches in which they are participating; and permit persons under sixteen to possess harmless toy pistols.

RECOMMENDATIONS

A myriad of other reforms of a substantive nature are presently under consideration by the Committee. For example, one state (Texas) denies possession of a rifle or shotgun to no one, regardless of his background. Similarly, no one, regardless of his background, is denied possession of a pistol or revolver in his home. Away from home, any person may carry a pistol or revolver without license unless he has (a) been convicted of a felony; and (b) the particular felony of which he has been convicted must involve a crime of violence; and (c) the particular act of violence must have been committed with a firearm.

On the other hand, 28 American jurisdictions, including New York, require licenses to possess or carry pistols or revolvers. Customarily, full age, good character and absence of a criminal record

are required for a license. In addition, a number of these jurisdictions require that a proper purpose be established, usually fear of injury to person or property, but occasionally simply target shooting. Whether or not licenses are required for pistols or revolvers, a substantial number of American jurisdictions deny possession of any gun to persons in certain categories: minors under a given age; persons convicted of certain crimes, such as any felony, or a crime involving violence, or a crime involving narcotics; incompetents; occasionally, habitual drunkards; and, for some reason, aliens. Are any of the persons in these categories more dangerously likely than the generality of mankind to commit a serious crime with a gun? Are there other categories of such dangerous persons which can be sufficiently identified for legislative purposes? Certainly, thorough investigation of the circumstances and persons involved in the almost one-quarter million crimes estimated to have been committed with weapons in the United States in 1962 would be fruitful. Such investigation might indicate that there are no characteristics ascertainable in advance, of such persons that indicate they are dangerous; or, that some of the categories widely believed to be dangerous at present—such as aliens—are without basis in fact; or, that there are characteristics, both ascertainable in advance and sufficiently well-defined for legislative purposes, to point out with sufficient probability to command general attention that certain persons are dangerous; or, finally, that there are times and circumstances, similarly ascertainable and definable, under which it is dangerous to permit possession of weapons.

Respectfully submitted,

ALBERT BERKOWITZ, *Chairman*
JULIUS VOLKER, *Vice-Chairman*
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