

No. 18-280

IN THE
Supreme Court of the United States

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

v.

CITY OF NEW YORK, NEW YORK, ET AL.,
Respondents.

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

**BRIEF OF THE NATIONAL EDUCATION
ASSOCIATION AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE

This *amicus curiae* brief is submitted, with consent of the parties,¹ on behalf of the National Education Association (“NEA”). NEA is the nation’s largest professional association representing over three million members, the vast majority of whom serve as educators, counselors, and education support professionals in our nation’s public schools. NEA has a deep and longstanding commitment to ensuring that every child has access to a high-quality public education. The provision of a quality education depends on many factors, but most fundamentally on student safety. All students and education employees must be able to learn and work and live in environments free of the threats posed by gun violence. NEA’s highest governing body has affirmed its unequivocal commitment to this priority. See NEA Resolution I-32, http://www.nea.org/assets/docs/Resolutions_NEA_HB_2019.pdf. The interests at stake here—students’ abilities to learn and thrive—are core to NEA’s mission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Just over a decade ago, this Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), first construed the Second Amendment to confer an individual right to bear arms. Regardless of whether that holding is correct and should continue to be followed,

¹ Letters of consent are on file with the Clerk. *Amicus* states that no party’s counsel authored the brief in whole or in part; no party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amicus*—contributed money that was intended to fund preparing or submitting the brief.

the *Heller* Court properly acknowledged both that “laws forbidding the carrying of firearms in sensitive places” are presumptively constitutional and that schools are quintessentially “sensitive places.” *Id.* at 626–27 & n.26.

Petitioners and their supporting *amici* now urge this Court to effectively disregard the assurances made in *Heller* about the validity of these important gun-violence prevention measures and, instead, to read the Second Amendment to invalidate *any* firearm restriction that does not have a close historical analog or that otherwise fails so-called “strict scrutiny.” Such an expansive conception of each individual’s right to bear arms would imperil longstanding restrictions—including those on the carrying of firearms in and around schools—that protect children and the educators who teach them from harm. After all, the strict scrutiny that Petitioners and their supporting *amici* call for has famously “proven automatically fatal.” *Missouri v. Jenkins*, 515 U.S. 70, 121 (1995) (Thomas, J., concurring).

Amicus NEA submits that such an approach to the constitutional validity of sensible firearms regulations is both dangerous and unwarranted. Children are uniquely vulnerable to gun violence. Those who are exposed to gun violence suffer physically, emotionally, and academically. And such harms are not limited to those children who suffer, or even witness, gun violence directly; they extend to all children in a community affected by gun violence.

As a result, any standard of review that this Court might adopt for constitutional challenges to gun regulations must retain *Heller*’s presumption of constitutionality for “laws forbidding the carrying of firearms in sensitive places such as schools.” 554 U.S. at 626. In order to protect both children and the insti-

tution of education itself, laws regulating the carrying and possession of guns in schools must remain “presumptively lawful regulatory measures.” *See id.* at 627 n.26.

More broadly, this Court should reject any constitutional standard—especially the strict-scrutiny and historical-analog standards advocated by Petitioners and their supporting *amici*—that would inhibit the ability of state and local legislatures and school boards around the country to grapple with how to best protect students from the threat of gun violence. To do so effectively, these legislative bodies must have the latitude to craft solutions that are tailored to the specific needs of their local school communities. In *Heller*, this Court noted that “[t]he Constitution leaves the District of Columbia a variety of tools for combating th[e] problem [of handgun violence], including some measures regulating handguns.” *Id.* at 636. The ability to select among these tools provides state and local legislatures the greatest chance of succeeding in their efforts to curb gun violence.

Moreover, it is a quintessentially legislative function to craft such policies following deliberation among legislators who speak for their diverse communities and best know the challenges presented. If this Court accepts the position urged by Petitioners and adopts an inflexible constitutional standard to the regulation of guns, the latitude necessary to best evaluate and address gun violence will be off the table.

As long as this Court continues to recognize an individual right to bear arms, *Amicus* NEA submits that the proper standard for evaluating firearms regulations under the Second Amendment must remain a flexible one. As state local bodies struggle to decide among various, specific tools for combatting gun vio-

lence—whether they involve “Red Flag” laws, safety gun storage requirements, age limits for the purchase of firearms, or closing loopholes on background checks—they cannot be expected to find the “perfect” response to the problem or be prevented from experimenting to adapt to complex and changing conditions. *See Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). Educators, administrators, and elected school board leaders must have the latitude to adopt solutions for their communities to protect them against the epidemic of gun violence in our country and our schools.

ARGUMENT

I. School-aged Children Are Particularly Susceptible to the Harms of Gun Violence.

Gun-related violence in the United States can be “characterized as an epidemic and a public health crisis” that imposes not only “substantial financial burden[s]” on the nation, but incalculable human costs for those affected. Antonis Katsiyannis et al., *Historical Examination of United States Intentional Mass School Shootings in the 20th and 21st Centuries: Implications for Students, Schools, and Society*, 27 J. CHILD & FAMILY STUDIES 2562, 2562 (2018), <https://bit.ly/2YPsPpa>. For example, in 2015, there were a total of 36,252 gun-related fatalities—among which were 142 children ages 5–12 and 1851 adolescents ages 13–18. *Id.*

This epidemic of gun violence has even taken root in the nation’s schools. From 2013 to 2018, 405 incidents of gunfire occurred on school grounds. *See* Everytown for Gun Safety, National Education Association, and American Federation of Teachers, *Keeping Our Schools Safe: A Plan to Stop Mass Shootings and End Gun Violence in American Schools* 8 (Feb. 11,

2019), <https://bit.ly/2MZPXJi>. Of these, 260 occurred on the grounds of an elementary, middle, or high school, resulting in 109 deaths and 219 injuries.² *Id.*

The effects of gun violence on school-aged children are significant and far reaching. They not only have potentially ruinous consequences for their physical and mental well-being, but they greatly affect children's ability to reap the crucial and lasting benefits of their education.

A. Gun violence causes devastating harm to children's psychological and emotional well-being.

It is a matter of common sense and lived experience that children suffer devastating harm when exposed to gun violence, and countless studies have confirmed it. "Exposure to gun violence can traumatize children and youth not just physically, but emotionally as well. Studies have documented that young people exposed to gun violence experience lasting emotional scars. Some children may develop posttraumatic stress disorder (PTSD), which can affect brain development."³ James Garbarino et al., *Mitigating the*

² The burden of gun violence has a particularly outsized impact on Black students. Among 253 shooting incidents at K-12 schools where the racial demographic information of the student body was known, 64% of them occurred in schools with a majority minority student population. *See* Everytown for Gun Safety, *supra*, at 13. Moreover, while Black students represent just 15% of the total K-12 student population in the United States, they constitute 24% of the victims of K-12 student victims in the instances where the race of the victim was known. *See id.*

³ Posttraumatic Stress Disorder, or PTSD, is recognized by the American Psychiatric Association as a mental disorder caused by exposure to trauma. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed.

(continued . . .)

Effects of Gun Violence on Children and Youth, 12 FUTURE CHILD. 72, 74 (2002); see also David J. Harding, *Collateral Consequences of Violence in Disadvantaged Neighborhoods*, 88 SOC. FORCES 757, 760 (2009) (“Violence has been linked to post traumatic stress disorder (“PTSD”), anxiety, depression and aggressive behavior, and is thought to disrupt the developmental trajectories of children.”). Echoing these conclusions, a study of children in third through eighth grade demonstrated that children exposed to gun violence reported significantly higher levels of anger, withdrawal, and posttraumatic stress. Garbarino, *supra*, at 74 (citing Karen Slovak and Mark Singer, *Gun Violence Exposure and Trauma Among Rural Youth*, 16 VIOLENCE & VICTIMS 389 (2001)). These harmful effects are profound and enduring.

These effects are caused not only by gun violence that occurs at school, but by violence in the community more broadly, as students carry to school the trauma they experience elsewhere. In a meta-analysis of 114 studies, the authors concluded that exposure to community violence, defined as violence occurring outside the home, represents “a unique form of trauma that is particularly associated with the development of PTSD symptoms, especially among children and adolescents.” Patrick J. Fowler et al., *Community Violence: A Meta-analysis on the Ef-*

2013). Sufferers exhibit a professionally recognized combination of enumerated symptoms. In children under six, these may include screaming, dramatic weight loss, and extraordinary fear of separation. For school-aged children, it may mean difficulty concentrating and insomnia. Teenagers may self-harm, develop eating disorders, or act out impulsively. See Matthew Tull, *Understanding PTSD in Children*, VERYWELL MIND (July 25, 2019), <https://www.verywellmind.com/dsm-5-ptsd-criteria-for-children-2797288>.

fect of Exposure and Mental Health Outcomes of Children and Adolescents, 21 DEV. & PSYCHOPATHOLOGY 227, 248 (2009). Young children are especially at risk of lasting injury because they “may have more trouble regulating emotions . . . given their limited verbal abilities.” *Id.* at 250. Less able to express themselves, young children may have greater difficulty developing coping strategies or seeking help from adults. *Id.*; see also SUPPORTING AND EDUCATING TRAUMATIZED STUDENTS: A GUIDE FOR SCHOOL-BASED PROFESSIONALS 98 (Eric Rossen & Robert Hull eds., 2013) (“Adults frequently believe young children are oblivious to events and conversations, particularly given that children may be less verbal about their fears and concerns, so their distress may go unnoticed.”).

Nor are the harmful and lasting effects of gun violence limited to those children who experience it first-hand. The troubling fact is that “[c]hildren do not have to witness gun violence directly to develop symptoms of traumatic stress.” Garbarino, *supra*, at 76. To the contrary, “hearing about and witnessing community violence predict[s] PTSD symptoms to the same extent as victimization.” Fowler, *supra*, at 249; see also Garbarino, *supra*, at 76; Dana Charles McCoy et al., *Children’s Cognitive Performance and Selective Attention Following Recent Community Violence*, 56 J. HEALTH & SOC. BEHAVIOR 19, 21 (2015). Children exposed to violence both in and out of school, either directly or indirectly, are at risk of post-trauma symptoms, resulting in behaviors they display in school.

Teachers from around the country see students suffering the emotional costs of gun violence. An Oregon teacher described one of her students, a shooting survivor, in this way:

I remember a student who survived a shooting in his early teens. By the end of his high school career, he was still moving through the world like a ghost, quiet, withdrawn. He refused to write with a pen. He made the lines with a pencil only, as if he didn't believe he could make a permanent mark on the world.

Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary, 113th Cong. (2013) (written statement of the National Education Association), <http://www.nea.org/home/54528.htm>.

Middle school teacher Sherry Zelsdorf—who was teaching her seventh-grade science class when a twelve-year-old girl fired a handgun, apparently by accident—described similar traumatic effects of gun violence on her students. Zelsdorf said, “I had never feared for my safety at school, and I didn't think that kids did either. It's supposed to be like their safe space.” Several students were struck by the bullet or shrapnel, including Zelsdorf. She remembers the day her students came back, albeit to a new room. One of her students said he wanted to sit in the back of the room, so he “wouldn't get shot.” Evie Blad, *After Surviving Classroom Shooting, L.A. Teacher Reconsiders What School Safety Means*, EDUCATION WEEK, Apr. 13, 2018, <https://bit.ly/2HtefLB>.

Exposure to community violence is a leading concern for Illinois high school teacher Lindsay Aikman. In her town, gun violence has increased in recent years. “We have kids walking around with chronic PTSD. We have kids repressing the violence they've seen, the fear they have of not graduating,” Aikman said. Lee V. Gaines, *How Schools Can Help Kids*

Traumatized by Gun Violence, ILLINOIS NEWSROOM, May 14, 2018, <https://bit.ly/2KvXBdQ>. Illinois mental health counselor Karen Simms points to “[f]ights at schools, increased truancy or lots of disruption . . . [such as] kids raging on the floor for 15 minutes and teachers being injured,” as behavior often driven by untreated trauma. The result, Simms says, will be that the education system “will leave significant numbers of students behind.” *Id.*

B. The emotional costs of exposure to gun violence have a direct, negative effect on all children’s ability to learn and develop in school.

Exposure to violence also affects vital learning skills—such as concentration—and manifests itself in disruptive behaviors that harm the classroom climate and other students’ ability to learn. Affected children exhibit “slowed cognitive development, poor academic achievement or trouble forming relationships with peers and others, all risk factors for school dropout.” Harding, *supra*, at 760 (citation omitted). Gun violence, in particular, commonly causes children and youth to “experience difficulty concentrating in the classroom, declines in academic performance, and lower educational and career aspirations. Other outcomes associated with exposure to violent trauma include increased delinquency” Garbarino, *supra*, at 75; *see also* Hallam Hurt et al., *Exposure to Violence: Psychological and Academic Correlates in Child Witnesses*, 155 ARCH PEDIATRIC ADOLESCENT MED. 1351, 1352 (2001) (study found that exposure to violence was associated with increased anxiety, depression, lower self-esteem, lower grade point average, and more days of absence from school).

Predictably, students are more likely to act out behaviorally when they have been exposed to violence

in the community. Fowler, *supra*, at 248. And these behavioral problems “are directly related to classroom learning.” Julia Burdick-Will, *Neighborhood Violence, Peer Effects, and Academic Achievement in Chicago*, 91 SOC. EDUC. 205, 218 (2018). These consequences are not limited to the affected child, but impact entire classrooms and schools, as evidenced in both quantifiable academic performance and qualitative conditions of the school environment. When students experience higher levels of violence, “the whole school reports feeling less safe, having more disciplinary problems, and feeling less trust in their teachers.” *Id.* at 219. “Stressed, distracted, disengaged, and poorly behaved students . . . disrupt instruction and drain resources in ways that make schools less functional.” *Id.* at 207. Exposure to gun violence can erode the educational function of an entire school. It thus comes as no surprise that in classrooms in which many students have been exposed to violence all students’ test scores drop. *Id.* at 213; *see also* Patrick Sharkey, *The Acute Effect of Local Homicides on Children’s Cognitive Performance*, 107 PROC. NAT’L ACAD. SCI. 11733 (2010), <https://doi.org/10.1073/pnas.1000690107> (exposure to a local homicide before cognitive assessment reduces performance substantially).

Given the magnitude of harm that gun violence imposes on the nation’s children and schools, this Court should tread very carefully in considering Petitioners’ claim here. In particular, the Court should reject any call for imposing a rigid standard of constitutional scrutiny under the Second Amendment that could threaten to invalidate reasonable restrictions that protect the lives and well-being of children.

II. This Court Should Not Disturb Its Assurance in *Heller* that Restrictions on Guns Near Schools Are “Presumptively Lawful.”

Any standard of review that this Court might adopt for constitutional challenges to gun regulations should retain *Heller*’s presumption of constitutionality for “laws forbidding the carrying of firearms in sensitive places such as schools.” *Heller*, 554 U.S. at 626. In *Heller*, the Court recognized that “the right secured by the Second Amendment is not unlimited.” *Id.* The Court then cautioned that

nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626–27. The Court characterized these examples as “presumptively lawful regulatory measures.” *Id.* at 627 n.26.

To the extent the arguments of Petitioners or their supporting *amici* call any of that into question, they should be rejected.⁴ The Court in *Heller* was right to designate schools as “sensitive places” because they are populated by a uniquely vulnerable group—children—and provide an essential function

⁴ Indeed, given that Respondents’ have already shown that this case has become moot, it would be inappropriate for this Court to entertain these arguments at all. *See Hall v. Beals*, 396 U.S. 45, 48 (1969) (explaining that when a case has “lost its character as a present, live controversy,” this Court must “avoid advisory opinions on abstract propositions of law”).

in our society—education. Each day, children gather in neighborhood schools to receive instruction, grow peer relationships, exercise, develop life skills, and advance their learning. Like the children themselves, the enterprise of education is both invaluable and fragile. Therefore, laws regulating the carrying and possession of guns in schools are rightly considered “presumptively lawful regulatory measures.” *See id.* at 627 n.26.

Petitioner places extraordinary emphasis on the notion that subjecting all firearm regulations to the highest degrees of constitutional scrutiny is necessary to ensure a right to self-defense and protection against both public and private violence. *See* Br. Pet’rs at 19, 27–28; *see also Heller*, 554 U.S. at 628 (“[T]he inherent right of self-defense has been central to the Second Amendment right.”). Empirically speaking, the idea that greater access to firearms makes an individual safer is dubious enough in society at large. *See generally* John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J. EMPIRICAL L. STUDIES 198 (2019) (concluding that there are persistent increases in rates of violent assaults and other violent crimes in states with more lenient right-to-carry laws). But in the context of schools where children are present, it is entirely inappropriate.

This is made abundantly clear by the problems associated with the “dangerous” yet persistent suggestion that arming teachers or school staff is an effective solution to in-school gun violence. Everytown for Gun Safety, *supra*, at 30. Far from making students or schools safer, arming teachers would put “our children at greater risk” and would do “nothing to stop active shooters or other forms of school gun

violence.” *Id.* Classroom teachers lack the training to make the “split-second, life-or-death decisions to protect children and themselves” while attempting to neutralize a shooter. *See id.* at 32 (discussing the minimal amount of firearms training teachers would receive and noting that “even some of the most highly trained law enforcement officers in the country . . . see their ability to shoot accurately decrease significantly when engaged in gunfights with perpetrators”). Moreover, when a greater number of guns are placed in schools to arm teachers, children are more likely to access them. *See id.* at 32–33 (detailing research that shows that children are frequently aware of the presence of firearms and access them, that adults are often unaware that children have handled guns that they maintain, and that access to firearms “triples the risk of death by suicide and doubles the risk of death by homicide”). And child access is not the only risk: Adults who carry firearms are at risk of unintentionally discharging their guns, and their presence can complicate and confuse law enforcement’s response in the already-chaotic scenario of an active shooter incident. *See id.* at 33–34 (discussing examples of guns that were accidentally discharged at school and where police responding to a shooting incident did not “know who the good guy is versus the bad guy when everyone starts shooting”).

As the Court recognized in *Heller*, schools are indeed “sensitive places.” 554 U.S. at 626. Because of the immense importance of protecting our nation’s children, as well as education itself, laws regulating guns in schools are considered “presumptively lawful regulatory measures.” *Id.* at 627 n.26. Under any standard of review applicable to constitutional challenges to gun regulations, this presumption of lawfulness must be retained.

III. The Court Should Refrain from Imposing a Rigid Standard of Constitutional Scrutiny on the Regulation of Firearm Safety.

In addition to retaining *Heller*'s assurance that the Second Amendment presumptively allows guns to be prohibited in school areas, this Court should reject any requirement that other firearms regulations satisfy strict scrutiny or have a historically significant analog in order to survive a constitutional challenge. To hold otherwise would severely and unduly constrain the options available to lawmakers—and specifically to local legislative bodies and school boards—attempting to devise solutions to gun violence in their communities. To be sure, “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 636. But state and local lawmakers must retain a multitude of options for implementing policies that are responsive to the specific needs of their particular school communities. *See id.* (“The Constitution leaves the District of Columbia a variety of tools for combating th[e] problem [of handgun violence], including some measures regulating handguns.”).

A. Rejecting Petitioners’ rigid standard of constitutional scrutiny is consistent with the need for state and local legislative bodies to devise their own solutions to the problem of gun violence.

Legislative bodies—including local legislatures and school boards—are “far better equipped than the judiciary” to consider competing options and to devise solutions that are responsive to their communities’ specific needs. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665 (1994) (plurality opinion). “Such complicated multi-factor judgments require trade-offs that courts are not institutionally equipped to make.

Legislatures, by contrast, are structured to make precisely those kinds of determinations.” Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 715 (2007). That is especially true because, unlike an isolated and unaccountable judiciary, legislatures and school boards are able to engage directly with significant stakeholders to assess the potential benefits or demerits to a particular regulatory approach to reducing gun violence. For example, school boards are able to meet with union representatives that can efficiently convey valuable information from teachers and support personnel that will help secure the safety of students from gun violence.⁵ By contrast, requiring all gun regulations to satisfy an inflexible constitutional standard would allow judges to strike down any regulation that is deemed not suffi-

⁵ A prime example of the importance of local decisionmaking can be seen in the Florida legislature’s response to the horrific school shooting in Parkland, Florida on February 14, 2018, where a former student murdered fourteen high school students and three staff members and wounded another seventeen people. Shortly after the shooting, the legislature enacted the Marjory Stoneman Douglas High School Public Safety Act (“MSD Public Safety Act”). One provision of this comprehensive Act authorized the establishment of “guardian programs,” regardless of whether the local school board and its constituents believed such a program was the best way to protect their students from gun violence. 2018 Fla. Sess. Law Serv. Ch. 2018-3 § 5 (C.S.S.B. 7026). The guardian program provides training to school employees who volunteer to serve as armed guards on school premises. This year, however, the Florida legislature amended the MSD Public Safety Act to add a provision that requires local school boards to approve the guardian program by a majority vote before the program can be implemented. 2019 Fla. Sess. Law Serv. Ch. 2019-22 § 30.15(1)(k)(1)(a) (C.S.C.S.B. 7030). Thus, the 2019 amendment to the Act recognized the importance of deferring to local education legislators when deciding which of a wide array of school safety options to implement.

ciently analogous to historical restrictions on guns or not “the least restrictive means” of addressing the problem of gun violence.

As long as this Court continues to recognize an individual right to bear arms, a more flexible standard of scrutiny is necessary to provide state and local legislatures, including school boards, with the necessary latitude to respond to the needs of their particular communities. Indeed, in holding that the Second Amendment is binding on the States, this Court acknowledged that “conditions and problems differ from locality to locality” and recognized the importance of maintaining the “ability to devise solutions to social problems that suit local needs and values.” *McDonald v. City of Chicago*, 561 U.S. 742, 783, 785 (2010) (plurality opinion). The *McDonald* plurality then assured local lawmakers that “[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment.” *Id.* (alteration in original) (internal quotation marks omitted). As Judge Wilkinson of the Fourth Circuit has commented, if the Court instead “establishes a national set of restrictions on gun regulations, it will limit the space in which states and cities can innovate.” Hon. J. Harvie Wilkinson III, *Of Guns, Abortions, and the Unraveling Rule of Law*, 95 VA. L. REV. 253, 320 (2009).

For example, an inflexible constitutional standard would potentially eliminate the necessary differences between urban and rural communities in their approaches to regulating guns. See Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 105 (2013) (“A rigid national standard would flatten these deep differences, potentially to the detriment of both [urban and rural] gun cultures.”). “[T]he costs of gun violence and the government interest in preventing it are gen-

erally higher in urban areas than in rural areas.” *Id.* at 122. In contrast, the individual’s interest in armed self-defense may be higher in rural areas, where police response times are likely to be longer. Additionally, the individual’s interest in possessing guns for other lawful purposes, such as recreation and hunting, is likely to be much higher in rural areas. “Rural residents should not have to weigh their desire to own hunting rifles against the possibility that urban youth will use handguns to shoot each other. And advocates of urban gun control should not have to denigrate the cultural salience of hunting in Montana when their goal is to limit cheap pistols in Manhattan.” *Id.* at 104–05. Requiring all gun regulations to satisfy an inflexible constitutional standard would leave little room for local legislatures, including school boards, to consider these varied needs and interests when enacting their regulations.

And the longstanding history of gun regulations in this country demonstrates that courts have traditionally been willing to show considerable deference to such local concerns. Dating back to the colonial era, “gun control has remained consistently stronger and more stringent in cities and towns than in rural areas.” *Id.* at 120. In fact, “the urban/rural divide [in regulating guns] predates the Second Amendment itself.” *Id.* at 112. Thus, this Court should continue the tradition of deferring to local governments on the issue of gun violence by adopting a standard that will allow local lawmakers to tailor their regulations to suit their communities’ needs.

Allowing experimentation to continue at both the state and local levels is essential. “[S]tate and local governments need the freedom to improvise and innovate and, in particular, to adapt their solutions to

the unique circumstances in their own community.” Wilkinson, *supra*, at 318.

B. Petitioners’ rigid standard of constitutional scrutiny threatens to invalidate the very kinds of measures that most effectively ensure the safety of children and schools.

As this Court has recognized, establishing education policy and promoting the general welfare of children have always been quintessentially state and local functions. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) (“There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. Providing public schools ranks at the very apex of the function of a State.” (citation omitted)); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (“By and large, public education in our Nation is committed to the control of state and local authorities.”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“Today, education is perhaps the most important function of state and local governments.”). Flexibility in this context is particularly important because, when it comes the protection of students and schools from harm of gun violence, the most effective solutions are not necessarily limited to the kinds of restrictions on carrying firearms in “sensitive places” that this Court approved in *Heller*.

The most effective measures against school gun violence are ones that “enable intervention before a prospective shooter can get his or her hands on a gun.” Everytown for Gun Safety, *supra*, at 14. On Petitioners’ view, such measures would be subject to the highest degree of constitutional scrutiny. And it is well known that such scrutiny has generally “proven

automatically fatal.” *Jenkins*, 515 U.S. at 121 (Thomas, J., concurring).

Accepting Petitioners’ position would therefore jeopardize so-called “Red Flag” laws that create a legal process by which law enforcement and family members can petition a court to prevent a person from having access to firearms when there is evidence that they are at risk of harming themselves or others. *See* *Everytown for Gun Safety, supra*, at 15. Often times, there are warning signs that presage a school shooting. *See id.* at 14 (discussing an example that, prior to the Parkland High School shooting, “[n]early 30 people knew about the shooter’s violent behavior and law enforcement had been called to incidents involving the shooter on more than 20 occasions”). Red Flag laws can therefore be a critical intervention tool that can prevent acts of violence before they happen. In Maryland, for example, a recently passed Red Flag law has been invoked in at least four cases involving “significant threats” against schools. *See id.* at 15. And in Florida, a similar law has been invoked in multiple cases of potential school violence. *See id.*

Accepting Petitioners’ argument could also jeopardize gun storage laws that protect children and schools. The “most common source of guns used in school shootings and across all school gun violence is from the shooter’s home, the homes of friends, or the homes of relatives.” *Id.* at 16. Child-access prevention laws—which require adults to store firearms responsibly when they are not in their possession—can have a strong positive effect on preventing gun violence, especially with unintentional shootings and firearm suicide. *Id.* at 17 (noting that one study that households that locked both firearms and ammunition were associated with a 78% lower risk of self-inflicted fire-

arm injuries and an 85% lower risk of unintentional firearm injuries among children and teenagers). The evidence suggests that such laws can “help prevent underage shooters from accessing irresponsibly stored guns in homes and prevent mass shootings and other violent incidents.” *Id.*

Accepting Petitioners’ argument could also jeopardize beneficial laws that limit the age at which certain firearms can be lawfully purchased. “Despite the research that suggests most active shooters are school-aged and have a connection to the school and data that show that 18 to 20-year-olds commit gun homicides at a rate four times higher than adults 21 and older, few states have stepped in to close gaps that allow minors to legally purchase high-powered firearms.” *Id.* at 18. For example, the Parkland shooter was under 21 years old and therefore would have been too young to have gone into a gun store and bought a handgun, but he was able to legally buy the AR-15 he used in the shooting. *See id.* at 19. Following the shooting, however, Florida changed its law to raise the age to 21 for the purchase of all firearms. *See id.* Such minimum age laws can work in conjunction with responsible storage and Red Flag laws to cut off an easy way to obtain firearms that might be used at schools. *See id.*

Finally, accepting Petitioners’ argument could potentially jeopardize expansions of background-check laws that eliminate existing loopholes. Under current federal law, background checks are not required for sales between unlicensed parties. *See id.* This means that people with dangerous histories can easily circumvent background-check requirements. And this kind of circumvention has been facilitated on a mass scale by certain online platforms: A recent investigation showed that as many as one person out of nine

who arranges to buy a firearm on Armslist.com—the nation’s largest online gun marketplace—is someone who cannot legally have firearms. *See id.* at 20. Effective background checks, however, are an important part of any school safety plan because they are the comprehensive strategy to prevent firearm access by minors, those subject to Red Flag orders, and others who should not have guns. State laws that require background checks for all handgun sales are associated with lower firearm homicide rates, lower firearm suicide rates, and lower firearm trafficking. *See id.*

In deciding this case, the Court should refrain from implementing an inflexible constitutional standard for all gun regulations that would limit the ability of state and local lawmakers to reach compromises on the issue of gun control, including the important measures discussed above. Educators, in particular, must have the opportunity to contribute their expertise and first-hand experience to deliberations over how to respond to the problem of gun violence in schools. A uniform national gun policy that fails to account for the local and regional disparities regarding problems, interests, and conditions surrounding guns would leave little room for local legislatures, including school boards, to address their communities’ needs.

CONCLUSION

The disastrous consequences posed by gun violence in school communities, the unique expertise of education leaders, and the suitability of fact-specific policy-making by legislative bodies, all militate in favor of restraint by the Court. Schools are quintessentially “sensitive places,” as this Court has recognized, which call for reasonable gun regulations informed by state and local legislatures. The Petitioners’ invitation to impose a national gun policy should therefore

be declined. Accordingly, the judgment below should be affirmed.

Respectfully submitted,

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