

No. 18-280

IN THE

Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ROMOLO
COLANTONE, EFRAIN ALVAREZ and JOSE ANTHONY IRIZARRY,

Petitioners,

—v.—

THE CITY OF NEW YORK and THE NEW YORK CITY POLICE
DEPARTMENT-LICENSE DIVISION,

Respondents.

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

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

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INTEREST OF *AMICUS CURIAE*¹

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

¹ The parties have consented in writing to the participation of *amicus*. Their written consents have been filed with the Clerk of the Court. No party in this case authored this brief in whole or in part or made any monetary contribution to its preparation and submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the decision below, the Second Circuit upheld New York City's premises handgun licensing rule as substantially related to the government's important interests in public safety and crime prevention and thus permissible under the Second Amendment. That was the right outcome, and it was based on the right constitutional analysis.

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

The Second Circuit's decision is fully faithful to the Court's holdings in *Heller* and *McDonald* and

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

New York City’s experience demonstrates the wisdom of the Second Circuit’s framework and deference to legislative determinations. After decades of crime problems, the City is, by many metrics, one of the safest metropolitan areas in the country. That result is thanks in significant part to the City’s enactment of effective restrictions and limitations on the possession and use of firearms in public. Yet the City, like any other metropolitan area, remains a target for potential criminal activity, and its elected officials must have flexibility to continue to meet these challenges. As the Second Circuit correctly held, the since-repealed premises licensing rule was a proper and constitutional exercise of legislative discretion. Petitioners and *amici* advocate for a rule that would not only invalidate this already-repealed rule, but also

prevent New York City and other municipalities from taking the steps needed to protect their citizens from gun-related violence. This Court should reject Petitioners' invitation for the judiciary to entangle itself in sensitive, difficult policy judgments that go to the core of the police power and public safety concerns.

ARGUMENT

I. The Second Circuit's approach properly balances individual and governmental interests

In 2008, this Court held for the first time in *District of Columbia v. Heller* that the Second Amendment confers an “individual right to possess and carry weapons in case of confrontation.” 554 U.S. at 592. The District of Columbia law at issue in *Heller* categorically prohibited handgun possession in the home and provided that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable. *Id.* at 628. The Court held the law unconstitutional because it struck at the “inherent right of self-defense . . . central to the Second Amendment” through “prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for the lawful purpose of self-defense”—handguns—and extending that prohibition “to the home, where the need for defense of self, family, and property is most acute.” *Id.* at 628-29. Likewise, the disassembly and trigger-lock requirement “ma[de] it impossible for citizens to use [lawfully held firearms] for the core lawful purpose of self-defense” *Id.* at 630.

At the same time, *Heller* made clear that the Second Amendment does not speak in absolutes. The Court cautioned that it does not confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” specifically citing laws restricting the carrying of firearms in public, which were found lawful by the majority of 19th-century courts to consider them. *Id.* at 626. *Heller* also did not “establish a level of scrutiny for evaluating Second Amendment restrictions,” and it did not purport to “clarify the entire field” of permissible and impermissible gun regulations. *Id.* at 634-35. Rather, the Court held that, given the severity of the D.C. law at issue, it would fail “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights.” *Id.* at 628-29.

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

First, the Circuit asks whether the law impinges upon conduct protected by the Second Amendment. *See, e.g., United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2012). “Given *Heller*’s emphasis on the weight of the burden imposed” on the individual right, “heightened scrutiny is triggered only by those restrictions that . . . operate as a substantial burden on the ability of law-abiding citizens to possess and

use a firearm for self-defense (or for other lawful purposes).” *Id.*

Second, the Circuit looks to the severity of that burden, and how close it comes to the “core Second Amendment protection identified in *Heller*”—the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Kachalsky*, 701 F.3d at 93-94; *see also Heller*, 554 U.S. at 599, 628-29 (self-defense is “the central component” of the Second Amendment right and is “most acute” in the home). If the law does not burden the core protection of self-defense in the home, intermediate scrutiny applies and the government need only show that the law is “substantially related to the achievement of an important governmental interest,” giving “substantial deference” to the legislature’s predictive judgments and policy determinations. *Kachalsky*, 701 F.3d at 93-94, 97.

This focus in *Heller* on the “core” right to self-defense *within* the home necessarily means that the judiciary has a more limited role in reviewing, and the legislature has more discretion in crafting, laws restricting firearm possession and use *outside* of the home, in public. As the Second Circuit has observed, “[t]he state’s ability to regulate firearms and, for that matter, conduct, is qualitatively different in public than in the home,” and “[t]he historical prevalence of the regulation of firearms in public demonstrates that . . . states have long recognized a countervailing and competing set of concerns with regard to handgun ownership and use in public.” *Id.* at 94-96.

This Court's and the Second Circuit's recognition of the public-private distinction is exactly right given our Nation's longstanding tradition of regulating firearm possession and use in public. And, as set forth below, it is right as a matter of public policy. States and municipalities must have substantial discretion in determining the appropriate degree of firearm regulation to meet the challenge of guaranteeing public safety and preventing crime, as New York City's experience shows.

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

State and local governments' ability to regulate the possession and use of firearms in public is critical to the exercise of their police power to keep the community safe. *See, e.g., Cruikshank*, 92 U.S. at 553 (recognizing "the people" must look to local government to address abuses of the right to bear arms for lawful purposes). Indeed, colonial and State governments have long imposed limits on firearm possession and use in public as a result of the obvious dangers to public safety. *See, e.g., Kachalsky*, 701 F.3d at 94-96 (collecting examples and finding "our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public").²

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

The need for legislative discretion in this context is no less true today than it was at the time of our Nation's Founding. In 2017, the most recent year for which the Centers for Disease Control and Prevention has data, there were nearly 40,000 firearm-related deaths in the United States, more than 15,000 of which were related to homicides or law-enforcement intervention and more than 23,000 of which were suicides.³ 2017 also marked the highest number of firearm-related deaths in our country in at least 40 years and an 18% jump from firearm-related deaths in 2013.⁴ On average, 100,000 people are wounded by firearms each year.⁵ These figures for the United States are far higher than those of other wealthy countries.⁶

Firearm regulation is the tool by which local and state governments can stem this tide of gun-related violence. Petitioners and the *amici* who support them are wrong to suggest that there is no evidence that firearm restrictions like the City's premises rule

³ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal Injury Reports, National, Regional and State, 1981-2017*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (last visited Aug. 12, 2019).

⁴ *Id.*

⁵ Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Nonfatal Injury Reports, National, Regional and State, 1981-2017*, <https://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (last visited Aug. 12, 2019) (based on average of data from 2013 to 2017).

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

“actually further[] any public-safety interest.” Pet’rs Br. at 36; Br. of Amicus National Rifle Association at 30-31. The evidence of the efficacy of gun control laws is, in fact, plentiful and publicly available.

This is not a matter of opinion or speculation. The science is indisputable: Study after study demonstrates that states with stricter firearm laws experience lower rates of gun violence and gun-related death. In a 2015 article in the *American Journal of Public Health*, for instance, researchers analyzed data from hospitals in 18 states and concluded that stricter firearm legislation is associated with lower rates of non-fatal firearm injuries.⁷ A systematic review published in the *Journal of the American Medical Association* evaluated peer-reviewed articles from 1970 to 2016 on U.S. firearm laws and firearm homicide and similarly concluded that “[i]n the aggregate, stronger gun policies were associated with decreased rates of firearm homicide, even after adjusting for demographic and sociologic factors.”⁸

Studies have likewise found that states with stricter gun laws have lower rates of firearm-related mortality and suicide⁹ and that children in states

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

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

⁹ Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, *J. Am. Med. Ass’n*

with stricter firearm laws experience lower rates of non-fatal firearm injury and firearm mortality.¹⁰ By contrast, states with more lax firearm laws have significantly higher firearm-related injury and mortality rates.¹¹

Data compiled by the Giffords Law Center tells the same story. California, for example, has one of the strongest gun safety regimes in the country and one of the lowest firearm-related death rates—7.8 gun deaths per 100,000 residents, compared to a national average of 11.9 deaths.¹² New Jersey, Connecticut, Massachusetts, and New York, widely considered among the strongest regulators of firearms, also have gun death rates considerably below the national average.¹³ On the other hand,

Internal Med.,173(9):732–740 (May 13, 2013)
<https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1661390>; Michael D. Anestis & Joyce C. Anestis, *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, Am. J. Pub. Health 105(10):2049–2058 (Oct. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566524/>.

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

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

¹² Giffords Law Center to Prevent Gun Violence, *Annual Gun Law Scorecard*, <https://lawcenter.giffords.org/scorecard/> (last visited Aug. 12, 2019).

¹³ *Id.* (5.3 (New Jersey), 5.1 (Connecticut), 3.7 (Massachusetts) and 3.7 (New York) deaths per 100,000 residents).

Mississippi, Missouri, Alaska, Alabama, Montana, Arkansas, and Louisiana, all of which have very lax firearm regulation, have gun death rates near to or more than double the national average.¹⁴

Firearm regulations like the City's, including its premises handgun regulation, have been proven to work. That is not only the independent academic consensus, but also the clear lesson of experimentation among the states as "laboratories of democracy." *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2697 (2015) (Scalia, J., dissenting) (internal quotation marks omitted). States like New York should be permitted, consistent with *Heller*, to exercise their police power to protect their citizens, even if other states choose to elevate other priorities. The Court need look no further than the publicly available scientific data and research to see the close link between firearm regulation and increased public safety.

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

It is no coincidence that this appeal arises out of a rule that regulated firearms in New York City. The history of crime and gun violence in New York City demonstrates not only the efficacy of legislative initiatives like the City's premises licensing rule, but also the crucial role played by firearm restrictions in combating crime and violence in the unique urban

¹⁴ *Id.* (21.5 (Mississippi), 21.3 (Missouri), 24.5 (Alaska), 22.9 (Alabama), 22.6 (Montana), 20.2 (Arkansas), and 21.6 (Louisiana) deaths per 100,000 residents).

landscape of New York. The City has long used its firearm licensing scheme, and other reasonable restrictions, to stem the flow of firearms in public places and thereby promote public safety. Although this case involves a rule that is no longer in effect, the rule of law Petitioners and *amici* propose could reverse the success story of gun violence reduction in New York City.

As the Second Circuit has observed, “New York’s efforts in regulating the possession and use of firearms predate the Constitution,” and the City has enacted laws limiting when and where guns could be used throughout the Eighteenth and Nineteenth Centuries. *Kachalsky*, 701 F.3d at 84. New York’s modern licensing requirements began in 1911, when, in response to a marked “increase of homicide by shooting,” it enacted the landmark Sullivan Law. *Id.* at 84-85 (quoting *Revolver Killings Fast Increasing*, N.Y. Times, Jan. 30, 1911). The Sullivan Law required police-issued licenses for those wishing to possess concealable firearms, and in 1913 was amended to require a showing of “proper cause for the issuance” of a license to carry a concealed handgun in public. *See* 1911 Laws of N.Y., ch. 195, § 1, at 443 (codifying N.Y. Penal Law § 1897, ¶ 3); 1913 Laws of N.Y., ch. 608, at 1627-30. These laws remain the foundation of New York’s firearm regulatory scheme today. *See* N.Y. Penal Law § 400.00.

A. Since 1990, New York City has seen a dramatic drop in violent crimes involving firearms

It is easy for those who did not live in New York City in the 1980s to take for granted the relative safety of living in New York City today. But things were not always as they are now.¹⁵ In 1990, there were more than 2,200 homicides in New York City, a record high. Two-thirds of these homicides involved the use of guns, with 39 children under the age of 16 killed with guns, including 10 killed by stray bullets.¹⁶ It is clear that gun-related homicides drove this crime wave. One scholarly article explained that during this era, “the patterns for gun and nongun killings [were] sharply different.”¹⁷ In particular, during the late 1980s and early 1990s, non-gun homicides actually declined in New York, while gun homicides increased dramatically, doubling between 1985 and 1991.¹⁸ Young people were also especially hit by this scourge of gun violence, with “[t]he entire growth in homicides” in the United States between 1985 and 1993 being “attributable to young people with handguns.”¹⁹ In 1990, Thomas Reppetto, a

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

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

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

¹⁸ *Id.* at 1290.

¹⁹ Alfred Blumstein, *Youth, Guns and Violent Crime*, The Future of Children, Volume 12, Number 2, 39, 53 (2002), <https://www>.

former detective in the New York City Police Department who was then the director of *amicus curiae* the Crime Commission, expressed dismay over this state of affairs: “Who shot whom and why and where—you can’t keep track because there are so many. . . . This is a hell of a way to live.”²⁰

Since 1990, New York City has utilized an array of law enforcement techniques—including firearm regulation and enforcement—to transform itself from one of the Nation’s most dangerous cities to one of the safest. In the 1990s, the NYPD changed the way it policed gun violence and other crime, including by implementing its famous CompStat program, which used data analysis and sophisticated management techniques. As part of these initiatives, the City “strictly enforce[ed] gun laws to reduce firearm crimes.”²¹ The City also introduced the Firearms Investigation Unit, which “seeks to reduce the flow of guns onto the streets of New York City by identifying and pursuing guntraffickers.”²² Other innovative approaches to reducing gun violence included Operation Gun Stop, an anonymous tips program to reward citizens who provide information on illegal firearms; the Integrated Ballistics Imaging System, which allowed NYPD to image and match markings on bullets and cartridge casings; the Joint Firearms

jstor.org/stable/1602737.

²⁰ Lorch, *supra* note 16.

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

²² Megan Golden & Cari Almo, *Reducing Gun Violence: An Overview of New York City’s Strategies*, Vera Institute of Justice (March 2004) at 5.

Task Force, a partnership between NYPD and the Bureau of Alcohol, Tobacco, Firearms and Explosives aimed at stemming the flow of out-of-state guns into New York; a specialized Gun Court for people charged with gun possession; Triggerlock, a collaboration between federal prosecutors and NYPD to prosecute gun crimes; and Operation Impact, which used data to place additional law enforcement resources in high-crime areas.²³

Due to these efforts by police, prosecutors, and policy makers, across multiple mayoral administrations of both parties, the City has since seen an unprecedented decline in crime. From 1990 to 2016, the total number of major felony offences fell from 527,257 to 101,716: an 81 percent reduction.²⁴ From 1993 to 2018, shooting incidents decreased by 86 percent.²⁵ Between 1990 and 1999, the homicide rate dropped by 73 percent, the burglary rate dropped by 66 percent, and assault dropped by 40 percent.²⁶ And in 2015, the Economist's Safe Cities Index ranked New York the 10th safest city considered for its global Index, and the safest American city on the

²³ See generally *id.*

²⁴ N.Y.C. Police Dep't, *CompStat Report Covering the Week 5/1/2017 through 5/7/2017*, http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cs-en-us-city.pdf (last visited Aug. 12, 2019).

²⁵ N.Y.C. Mayor's Office of Criminal Justice, *Shooting Incidents in NYC*, https://criminaljustice.cityofnewyork.us/individual_charts/shooting-incident-in-nyc/ (last visited Aug. 12, 2019).

²⁶ Hope Corman & Naci Mocan, *Carrots, Sticks and Broken Windows*, Nat'l Bureau of Econ. Res., Working Paper 9061 (July 2002) at 22, <https://www.nber.org/papers/w9061>.

list.²⁷ While the City’s dramatic change has surely been caused by many factors, independent academic analysis gives substantial credit to “gun-oriented policing strategies.”²⁸

But the City’s successful approach to enforcing firearm regulation would not have been possible without the City and State’s comprehensive regulatory scheme. What began with 1911’s licensing requirement has blossomed into one of the country’s most effective set of gun laws, rated an “A-” by the Giffords Law Center.²⁹ As a reflection of the unique challenges posed by the country’s largest metropolis, New York State gun law treats the City differently from the rest of New York. For example, firearm licenses in New York are required to be recertified every five years, but have a fixed three-year duration in New York City.³⁰ Similarly, state firearm licenses are valid anywhere in the state *except* New York City, where a special local permit is required.³¹ And of course, the State has many laws restricting the types of guns available and the locations in which they may be carried that apply to the City as well as the rest of

²⁷ The Economist Intelligence Unit, *The Safe Cities Index 2015: Assessing Urban Security in the Digital Age*, <https://dkf1ato8y5dsg.cloudfront.net/uploads/5/82/eiu-safe-cities-index-2015-white-paper-1.pdf> (last visited Aug. 12, 2019).

²⁸ Fagan, *supra* note 17 at 1322; Corman & Mocan, *supra* note 26 at 22 (concluding that “the contribution of deterrence measures” to falling crime rates “is larger than those of economic variables”).

²⁹ See Giffords Law Center to Prevent Gun Violence, *New York Gun Laws Score an “A-”*, <https://lawcenter.giffords.org/gun-laws/state-law/new-york/> (last visited Aug. 12, 2019)

³⁰ N.Y. Penal Law § 400.00(10).

³¹ N.Y. Penal Law § 400.00(6).

the State.³² It is through this tapestry of interlocking gun regulations that the City and State have been able to reduce gun violence and promote public safety so successfully in New York City.

That New York law treats New York City differently from other, less populated areas within the State is not surprising given that the majority of gun regulations in the United States are “local” and tailored to the “particular risks of gun use in densely populated areas.”³³ “[T]he fifty metropolitan statistical areas [in the United States] with one million or more people ‘comprise only a small fraction of the nation’s land mass but include about 58% of the nation’s population’” and “suffer a disproportionate amount of the nation’s gun violence.”³⁴ New York City, as the largest metropolitan area in the United States, housing 8.6 million people, is particularly at risk of firearm-related violence.³⁵ The City’s former rule is one way in which locally tailored firearm regulation can

³² See, e.g., N.Y. Comp. Codes R. & Regs. tit. 18, § 441.19(f) (limiting firearm possession on the grounds of a residential child care facility); N.Y. Env’tl. Conserv. Law § 11-0931(2) (prohibiting possession of a loaded long gun in or on a motor vehicle); N.Y. Penal Law §§ 265.02(7), 265.10 (prohibiting manufacture, transport, disposal, and possession of assault weapons).

³³ Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 99-100 (2013).

³⁴ *Id.* at 92 (quoting Carl T. Bogus, *Gun Control and America’s Cities: Public Policy and Politics*, 1 Alb. Gov’t L. Rev. 440, 463 (2008)).

³⁵ Edward L. Glaeser, *Urban Colossus: Why is New York America’s Largest City?*, Harv. Inst. Econ. Res., Discussion Paper 2073 (June 2005) at 1, <https://scholar.harvard.edu/glaeser/publications/urban-colossus-why-new-york-americas-largest-city>.

provide additional safeguards in a densely populated area like New York City.

B. The movement of guns through New York City presents unique risks

The legal rule urged by Petitioners and their *amici* would allow guns to be transmitted more freely throughout the City and State, removing the barriers to the large numbers of out-of-state guns that already pass through the City's borders. Although the specific rule at issue in this appeal is no longer in effect, it remains a matter of concern that the City be permitted to take the actions necessary to protect its residents from sweeping gun violence.

While New York State and New York City have elected, in our federalist system, to exercise their police powers to pass and enforce stricter gun laws, other states have taken a different approach to their firearms regulation. This has had an impact on gun use and crime in New York. In 2017, 9,151 firearms were recovered and traced in New York State.³⁶ Of those, 5,004 (54%) were recovered in New York City.³⁷ In 2017, 75% of firearms recovered in New York State were originally sold outside of the State.³⁸

Unsurprisingly, states with lax gun laws are the highest contributors to gun crime in New York. In

³⁶ U.S. Dep't of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, *New York Data Source: Firearm Tracing System, January 1, 2017-December 31, 2017* at 3, <https://www.atf.gov/file/130211/download> (last visited Aug. 12, 2019).

³⁷ *Id.* at 10.

³⁸ *Id.* at 7.

2017 the top suppliers of firearms to New York were: Georgia (558); Florida (485); Pennsylvania (451); Virginia (426); North Carolina (377); South Carolina (340); Ohio (271); Alabama (127); and Texas (112).³⁹ In these states, concealed carry weapons (CCW) permits are granted with limited to no discretion.

Right-to-carry states are supplier of guns used in crimes in their own state as well as in other states.⁴⁰ A permit, however easily obtained, does not stop license holders from losing their guns. Concealed-carry permit holders lose an estimated 100,000 guns a year to theft.⁴¹ They also frequently have their guns stolen. There are 250,000 gun theft incidents each year, in which approximately 380,000 guns are stolen.⁴² The actual number of thefts is almost certainly higher since many gun thefts are never reported to police, and many gun owners who report thefts do not know the serial numbers on their firearms, data required to input weapons into the NCIC. Given the upward trend in reports to police, that figure likely understates the current level of gun thefts.⁴³

³⁹ *Id.* at 10.

⁴⁰ 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*, Nat'l Bureau of Econ. Res., Working Paper 23510 (June 2017) at 20, <https://www.nber.org/papers/w23510.pdf>.

⁴¹ *Id.* at 10.

⁴² David Hemenway et al., *Whose Guns are Stolen? The Epidemiology of Gun Theft Victims*, *Inj. Epidemiology* 4:11 (2017) <https://injepijournal.biomedcentral.com/track/pdf/10.1186/s40621-017-0109-8>.

⁴³ Donohue, *supra* note 40 at 10 & n.16.

When a state or municipality's licensing regulations are less stringent, gun thefts increase. This correlation is clear from the increase in gun thefts when open carry licenses are allowed in places like Tulsa, Oklahoma.⁴⁴ In areas where carrying a firearm is allowed without a license, the same is true—gun thefts increase.⁴⁵ Many such thefts involve guns in vehicles. For instance, after Memphis, Tennessee enacted a 2014 law allowing gun owners to carry firearms in their vehicles without a permit, gun thefts increased nearly threefold from 2013 to 2016, and more than 40% of guns reported stolen in 2016 were taken from cars.⁴⁶ As shown above, criminals who go on to commit violent crimes often obtain guns through theft.

Given the high likelihood that lost and stolen guns will be trafficked into New York City, it is not surprising that New York State and New York City attempted to further manage the travel of guns through the City. Although the rule has been repealed, New York City still needs the ability to employ reasonably tailored firearm laws to further reduce crime.⁴⁷

⁴⁴ Brian Freskos, *As Thefts of Guns from Cars Surge, Police Urge Residents to Leave Their Weapons at Home*, The Trace (March 6, 2017), <https://www.thetrace.org/2017/03/as-thefts-of-guns-from-cars-surge-police-urge-residents-to-leave-their-weapons-at-home/>.

⁴⁵ *Id.*; Jessica Gertler, *MPD director: State gun laws have 'unintended consequences'*, WREG Memphis (Feb. 10, 2017), <https://wreg.com/2017/02/10/mpd-director-state-gun-laws-have-unintended-consequences/>.

⁴⁶ *Id.*; Freskos, *supra* note 44.

⁴⁷ *See, e.g.*, NYC.gov, *Seven Major Felony Offenses*, <https://>

Striking down the former rule opens the door to further challenges to the regulations needed in a densely populated area like New York City. Without these regulations, New York risks an increase in the number of guns trafficked in and out of city limits, which in turn increases the likelihood of criminals obtaining guns. New York City has used its authority to decrease the odds of this chain of events occurring and to reduce the level of gun crime in the City. It should not be required to change its local laws and risk an increase in gun violence.

* * *

Under the proper framework set forth by the Second Circuit, the City's licensing handgun rule is constitutional because it is substantially related to the City's important interests in promoting public safety and preventing crime. As the Second Circuit has recognized, "New York's restriction on firearm possession in public has a number of close and longstanding cousins." *Kachalsky*, 701 F.3d at 91 (citing *Heller*, 554 U.S. at 629). The City and State have reasonably determined that the license scheme is necessary to limit firearm-related crimes, and as set forth in the affidavit of the City's former Commander of the NYPD License Division, the restrictions at hand are likely to result in the reduction of firearm-related crime. *N.Y. State Rifle & Pistol Ass'n v. City of New York*, 883 F.3d 45, 63-64 (2d Cir. 2018). The rule challenged in this case was thus a permissible way of addressing the serious

“problem of handgun violence.” *Heller*, 554 U.S. at 636.

CONCLUSION

For the reasons set forth above, should this Court determine that this appeal is not moot, this Court should affirm the Court of Appeals’ decision in this case.

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