

No. 18-280

In the Supreme Court of the United States

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

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 FORMER COMMISSIONER
OF THE NEW YORK CITY POLICE DEPARTMENT
WILLIAM J. BRATTON AS AMICUS CURIAE
SUPPORTING RESPONDENTS**

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**BRIEF FOR FORMER COMMISSIONER
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SUPPORTING RESPONDENTS**

INTEREST OF AMICUS CURIAE

Amicus, former New York City Police Department (NYPD) Commissioner William J. Bratton, has almost fifty years of law enforcement experience, beginning in 1970.¹ Over his long career of service, Commissioner

¹ Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief, in whole or in part, and that no person other than amicus or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief. The

Bratton has led six police departments, including departments in New York, Los Angeles, and Boston. Commissioner Bratton is the only person ever to have led the police departments of both of the nation's two largest cities: New York and Los Angeles. From his long years of service, Commissioner Bratton knows intimately the particular public-safety needs of New York City and other large cities like it.

SUMMARY OF ARGUMENT

Petitioners are not coy in announcing that they desire this Court to step far beyond the narrow relief that they sued for—the right to transport their handguns to second homes and cities outside the City, a right which they already freely enjoy—and instead declare a sweeping re-interpretation and unprecedented expansion of the Second Amendment that would afford broad possession and carry rights even in the most crowded and chaotic city in America. Though Amicus agrees with Respondents that the recent changes to City and State law have granted Petitioners all of the relief that they seek and render this case moot, he submits this brief in order to provide the Court with context and support for the City's broader licensing scheme, including its use of premise-specific licenses and the high standards it imposes on the issuing of carry licenses.

This Court has long recognized that every provision in the Constitution must be construed to accommodate the paramount government interest in protecting the public. Public-safety considerations are deeply embedded in the doctrines of the First, Fourth, Fifth, and Sixth Amendments. In *District of Columbia v. Heller*, 554 U.S.

parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk.

570 (2008), this Court recognized that the individual’s right to bear arms in self-defense under the Second Amendment likewise must exist alongside, and not in opposition to, the public’s right to safety and security, especially in “sensitive places such as schools and government buildings.” Petitioners’ position would not only upend a critical part of *Heller*, but would make the Second Amendment an outlier in a Constitutional regime that otherwise gives due respect for the critical role of state and local regulations to protect public safety. This Court should resist Petitioners’ invitation.

New York City and other dense urban centers—where no resident is ever truly alone and every individual’s actions necessarily impact those around her—present many of the same heightened regulatory needs that characterize the “sensitive places” that *Heller* recognized. Neither New York City’s former rule nor its current regulatory and licensing scheme are overreaching and unconstitutional limitations on a fundamental right, but are instead a response to the unavoidable reality that any gun in New York City, even when lawfully and responsibly possessed or carried, poses grave dangers to neighbors and passersby. Petitioners’ briefing ignores this reality in its entirety.

With a population of 8,622,700 people and a density of 28,600 residents per square mile, New York is by far the nation’s largest and most crowded city.² Even when inside the privacy of her own home, a New Yorker is likely mere feet from a neighbor. When on the street or in the subway, no one is ever far from a crowd. In this context, any gun use—whether it be accidental, criminal, or in

² NYU Furman Ctr., *State of New York City’s Housing & Neighborhoods 2018*, at 34 (2018), https://furmancenter.org/files/sotc/SOC_2018_Full_2018-05-22.pdf (*State of Housing 2018*).

lawful self-defense, at home or on the street—necessarily impacts the safety of neighbors and passersby as much as it does the safety of the gun owner herself. A gun owner who fires her weapon in self-defense during a confrontation on the streets of New York City will likely do so in the presence of dozens, hundreds, or even thousands of passersby. Given the reality that even trained shooters must typically fire multiple shots with a less than fifty percent accuracy rate in order to subdue an attacker, injury to bystanders is not a trivial concern; it is a near inevitability. New York's restrictions on the public carry and transport of firearms throughout the City therefore prevent disputes between two people from turning into multi-casualty or mass-casualty events.

New York City's requirement that residents obtain premises licenses even for in-home possession, as well as its strict vetting of those applying for such licenses, is an equally necessary response to the public-safety concerns inherent to the presence of firearms in a uniquely dense city. The vast majority of New Yorkers live in multi-unit buildings, many in buildings with 100 units or more. Even single-family homes are typically spaced with little or no yardage between them. With such proximity, a firearm can easily pierce the confines of one home to maim or kill the inhabitants of another. This risk is hardly limited to instances in which a gun owner fires her weapon to protect herself and her family from an intruder; well-established public health data shows that a gun kept in the home is far more likely to be fired by accident, in suicide, or against the home's own inhabitants than it is to be fired against an intruder.

New York City's regulations restricting public transport by premise-license holders and carefully vetting the grant of carry licenses are no less essential to prevent firearm theft. Guns stolen from lawful gun

owners outside the City already plague the community and contribute to crime, from petty theft to homicide. An increase in the number of legal guns on New York City's streets, and a relaxation of the restrictions under which such guns can be carried, would necessarily lead to a rise in the number of illegal guns as well.

Contrary to Petitioners' contention that the former rule is "without historical analog," New York City is hardly the first city in American history to strictly limit public carry and possession within city limits. Indeed, dating back to the founding and through the nearly two and a half centuries since, the historical record is replete with such examples, including of cities that went much further than New York has here.

ARGUMENT

I. THIS COURT HAS LONG RECOGNIZED THAT CONSTITUTIONAL RIGHTS MUST BE CONSTRUED SO AS NOT TO IMPERIL PUBLIC SAFETY.

This Court's jurisprudence teaches that every provision in the Constitution must be construed in light of the paramount government interest in the protection of the public—an interest whose advancement often calls for nuanced, context-specific analysis even where the constitutional text may appear on its face to brook no exception. Indeed, accommodation of public-safety interests is deeply embedded in the doctrines of the First, Second, Fourth, Fifth, and Sixth Amendments, and this Court should not depart from this approach in this case.

Consider, for example, this Court's well-developed jurisprudence on exigent circumstances that may warrant an exception from the requirements of the Fourth Amendment. Even though "the home is first among equals" as a place generally protected from warrantless intrusions, *Florida v. Jardines*, 569 U. S. 1, 6 (2013), "the

Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.” *Warden v. Hayden*, 387 U.S. 294, 298–89 (1967). Thus, the police may search a house without a warrant while in pursuit of a suspected armed robber last seen entering the residence because “only a thorough search of the house for persons and weapons could have insured that [the robber] was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.” *Id.* at 299. Similarly, officer- and public-safety rationales allow for protective searches for weapons on persons and in vehicles without requiring probable cause. See *Terry v. Ohio*, 392 U.S. 1, 24 (1968); *Michigan v. Long*, 463 U.S. 1032, 1051–53 (1983). Each of these lines of authority show that the protections of the Fourth Amendment do not operate in a vacuum, and that the government interest in public safety need not give way simply because a fundamental right is at stake. As Justice Alito noted in *Mitchell v. Wisconsin*, this is particularly true in situations in which public-safety risks may build on one another and create further need for police action. 139 S. Ct. 2525, 2537–38 (2019) (discussing how unconscious drivers create “pressing health, safety, or law enforcement needs” that could generate further emergencies, such as in the event of a car crash, that may require law enforcement attention and make it objectively reasonable to not seek a warrant).

Other constitutional doctrines offer further examples of accommodation of public-safety interests. Consider the status of interrogations under the Sixth Amendment’s Confrontation Clause, which bars “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.”

Crawford v. Washington, 541 U.S. 36, 53–54 (2006). This Court has held that statements are nontestimonial when “the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency,” such as responding to a 911 call reporting a domestic disturbance. *Davis v. Washington*, 547 U.S. 813, 822 (2006). The Constitution there, too, does not compel a one-size-fits-all approach that would, in practice, compromise first responders’ ability to respond to volatile situations in which members of the public may be endangered.

Likewise, this Court has long recognized a public-safety exception to the prophylactic rules that govern the Fifth Amendment privilege against self-incrimination in the custodial interrogation setting. Indeed, pressing public-safety risks that arise in certain contexts may, and often do, permissibly outweigh the need to provide the warnings contemplated by *Miranda v. Arizona*, 384 U.S. 436 (1996). The paradigmatic example of a situation presenting such untenable risks involves the arrest of a suspect at a crowded supermarket whose gun holster was visibly empty, leading officers reasonably to believe that he had discarded or concealed a weapon on the premises. *New York v. Quarles*, 467 U.S. 649, 651–52, 657 (1984). As Justice Rehnquist explained, the Constitution did not require that officers ignore the many dangers the missing gun posed while its whereabouts were unknown, including the possibility that “an accomplice might make use of it, [or] a customer or employee might later come upon it.” *Id.* at 657. Thus, this Court dispensed with the requirement that *Miranda* warnings be given upon acknowledging that their recital may deter suspects from answering questions that may be critical to safeguarding the public from danger. *Id.* at 657–58. And, in an effort to avoid introducing uncertainty into officers’ decision-making at a

time when swift action may be required, this Court further held that the failure to give such *Miranda* warnings did not render the suspect's statements inadmissible. *Ibid.*

While law enforcement encounters provide myriad examples of apparent collisions between the interest in safeguarding the public and the limitations on government action imposed by the Fourth, Fifth, and Sixth Amendments, the principle that context-specific public-safety concerns inform how courts construe fundamental rights applies more generally. Indeed, even though this Court has held that some false statements enjoy the protection of the First Amendment, *United States v. Alvarez*, 567 U.S. 709, 730 (2012), it is axiomatic that the Bill of Rights would not shield someone who falsely yells fire in a crowded theater precisely because of the dangers created by the ensuing panic. *Schenck v. United States*, 249 U.S. 47, 52 (1919). Consistent with the paramount interest in the protection of the public, the First Amendment has historically never interfered with states' police powers to regulate or proscribe speech that is integral to criminal conduct or speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action," among others. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); see also *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). The First Amendment's unqualified textual command that "Congress shall make no law * * * abridging the freedom of speech" has never compelled a different result.

Nor should the invocation of the Second Amendment here trump all legitimate government concerns about public safety, which turn on context-specific facts about life in New York City. "Like most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). And,

indeed, nothing in the Court’s Second Amendment jurisprudence has “cast doubt on * * * laws forbidding the carrying of firearms in sensitive places.” *Ibid.*; see also *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010). To the contrary, *Heller* condoned such longstanding regulations, recognizing their necessity to ensure the public safety and limit circumstances in which there is heightened risk that the exercise of the right to bear arms will harm collateral victims—for example, in schools or government buildings. Dense urban centers such as New York City present similar risks of unintended consequences and collateral damage if significantly more individuals are able to carry guns in such close quarters on a daily basis.³ As explained below, the peculiar challenges of ensuring public safety in a high-population, high-density city such as New York City amply support the City’s regulatory and licensing scheme, including the former rule at the heart of this case. To adopt the Petitioners’ position would be to make the Second Amendment a true outlier in our constitutional regime that discounts public-safety risks even where—as here—local circumstances make them particularly pronounced.

³ See Darrell A.H. Miller, *Institutions and the Second Amendment*, 66 Duke L.J. 69, 100–01 (2016) (arguing for an institutional approach to the Second Amendment and characterizing cities as institutions with regulatory needs similar to those of schools or churches).

II. GUNS IN NEW YORK CITY PRESENT UNIQUE PUBLIC-SAFETY AND LAW ENFORCEMENT CONCERNS.

A. New York City's Population Density Presents Unique Public-Safety Concerns That Make the Regulation of Handgun Possession and Carry Necessary.

In a city of 8,622,700 (not counting commuters and tourists), with 28,600 residents crammed into every square mile,⁴ no New Yorker is an island. As Amicus understands from his nearly fifty years in law enforcement—and as Commanding Officer of the NYPD Licensing Division, Andrew Lunetta, reflected in his affidavit filed in the proceedings below—even license-holders are susceptible to the “stressful situations” that pervade life in New York City, including “crowd situations,” “road rage,” “disputes,” and “accidents.” J.A. 77. No New Yorker’s right to possess or carry a firearm—even were that New Yorker highly trained, responsible, and law-abiding—can exist in a vacuum separate from its impact on the community around her.

Nowhere is this truer than in the Petitioners’ advocacy for a right to carry on the streets of New York in “case of confrontation.” See *Petrs. Br.* 41–42. In New York City, where the streets and subways are saturated with cars and people, any use of a firearm, even in lawful self-defense, poses grave risks to bystanders and amplifies the harm caused by any initial threat.

The reality is that armed confrontations are rarely clean or precise affairs. Even the most highly trained shooters struggle to hit their targets when firing under stress. The NYPD is no exception: Between 1998 and

⁴ *State of Housing 2018*, at 34.

2006, the average hit rate for NYPD officers during gun-fights was only 18%; when there was no return fire, officers still hit their targets only 30% of the time.⁵ Even the NRA cautions its members training for armed self-defense outside the home that attackers will rarely be subdued with a single shot:

Even when the first shot is well-placed * * * incapacitation usually results only after several shots—and several seconds. Hitting a vital area on your assailant may not immediately cause a cessation of the attack[.] * * * Even when the heart stops, sufficient fresh oxygen remains in the brain and muscles to continue activity for up to 30 seconds—more than enough time for an aggressor to resume or continue an attack. You should assume that your first shot will not immediately stop an attack. This is one of the reasons you need to continue to fire at the assailant until there is no longer any imminent deadly threat.

Nat'l Rifle Ass'n of Am., *NRA Guide to the Basics of Personal Protection Outside the Home* 65 (2006).

If only 30% or fewer of shots fired by highly trained professionals hit their intended target in real-life confrontations, then it is a near certainty that at least some of the multiple shots one fires to subdue an attacker will miss. In New York City, those stray bullets are likely to hit

⁵ See Bernard D. Rostker et al., *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* 14 (2008), http://www.nyc.gov/html/nypd/downloads/pdf/public_information/RAND_FirearmEvaluation.pdf.

somebody else,⁶ and turn a confrontation between two people into a multi-casualty or even a mass casualty event. To take one example, NYPD officers in 2012 engaged a gunman who had shot and killed a former co-worker outside the Empire State Building.⁷ The officers fired on the gunman for a mere 10 seconds before he fell to the ground, but in that time they shot nine innocent bystanders.⁸ If the NYPD cannot engage a threat on the New York City streets without posing serious risks to bystanders, there is no reason to believe that civilians can.

The fact that New York's crowds are often condensed into captive spaces adds additional dangers to gun use in the City beyond the near inevitability of collateral victims. Every day, millions of New Yorkers descend onto overflowing subway platforms to enter cramped subway cars.⁹

⁶ See, e.g., *13-Year-Old Girl Becomes Latest Child Struck by Stray Bullet in NYC*, CBS N.Y. (July 25, 2019), <https://newyork.cbslocal.com/2019/07/25/13-year-old-girl-stray-bullet-shooting/>; *2 Women Wounded by Stray Bullets in Separate NYC Shootings*, Associated Press News (July 13, 2019), <https://www.apnews.com/8ed939d5b1694f4e95bfb65166949744>; *Woman Hurt by Stray Bullet While Leaving NYC Subway Stations*, Associated Press News (Jan. 26, 2018), <https://www.apnews.com/f22d49731a724173ba8d2a9737160672>; Matthew Haag & Angela Macropoulos, *Boy Is Critically Wounded on His 5th Birthday by a Stray Bullet in the Bronx*, N.Y. Times (June 5, 2017), <https://www.nytimes.com/2017/06/05/nyregion/boy-shot-birthday-bronx.html>.

⁷ See Louis Lanzano, *In Killing New York Gunman, Police Also Shot Bystanders*, Nat'l Pub. Radio (Aug. 25, 2012), <https://www.npr.org/sections/thetwo-way/2012/08/25/160040813/in-killing-new-york-gunman-police-also-shot-bystanders>.

⁸ *Ibid.*

⁹ See *Introduction to Subway Ridership*, MTA, <http://web.mta.info/nyct/facts/ridership/> (last accessed Aug. 12, 2019) (indicating that 5,437,587 people rode the subway on an average weekday in 2018); see

Millions more spill onto congested sidewalks sandwiched between slow moving traffic and towering buildings. New York City also plays frequent host to parades, parties, and demonstrations attracting crowds often numbering into the millions.¹⁰ These spaces have limited exits, and, even in times of calm, bottlenecks are frequent.¹¹ This problem is particularly acute for New York’s most vulnerable residents—the elderly, disabled, and families with young children—who already must contend with a transit system in which a full 75% of stations lack sufficient handicap access.¹² Plainly, these spaces are particularly vulnerable

also *State of Housing 2018* at 34 (showing that 70% of New Yorkers relied on car-free commuting in 2018, including by subway and bus, and spent an average of 41.8 minutes each way).

¹⁰ See, e.g., Karma Allen, *About 5 Million People Attended WorldPride in NYC, Mayor Says*, ABC News (July 2, 2019), <https://abcnews.go.com/US/million-people-crowed-nyc-worldpride-mayor/story?id=64090338> (stating that a crowd of 5 million people attended the 2019 WorldPride event in New York City).

¹¹ See, e.g., Katie Hinds & Alan Palazzolo, *No Exit: What Closed Subway Entrances Have to Do with Delays and Crowding*, WNYC (Nov. 10, 2015), <https://www.wnyc.org/story/no-exit/> (quoting a community leader who attributes delays to “forcing people to enter at one or two access points,” passengers’ “tend[ency] to congregate on the platforms near the stairways,” and “bottlenecks” when disembarking from trains).

¹² See Brit McCandless Farmer, *The New York Subway’s Accessibility Problem*, CBS News (Oct. 21, 2018), <https://www.cbsnews.com/news/the-new-york-city-subway-accessibility-problem-60-minutes/> (“With 472 stations in total, the New York City subway is one of the largest rapid transit systems in the world. It’s also one of the least accessible: Only 25 percent of the stations are designated wheelchair accessible, the lowest rate of wheelchair accessibility for any heavy rail system in the U.S.”).

to the horrors of a mass shooting. But even a simple accident¹³ or misfired weapon¹⁴ on a subway platform, at a tourist hotspot, or at another crowded space could easily set off mass panic and lead to a dangerous stampede.¹⁵

Life in a city of 8 million people stacked one on top of the other also involves constant friction with strangers

¹³ See, e.g., *Chicago Cop Accidentally Shoots Own Finger While Cleaning Gun on South Side*, Fox 32 (Aug. 2, 2019), <http://www.fox32chicago.com/news/local/chicago-cop-accidentally-shoots-own-finger-while-cleaning-gun-on-south-side>; James J. Rowe & Lewis Tingler, *GDP: Shooting Outside of Walmart in Butler Plaza Found to Be Accidental and Self-Inflicted*, 20 WCJB (Aug. 5, 2019), <https://www.wcjb.com/content/news/GPD-investigating-shooting-outside-of-Walmart-in-Butler-Plaza-515014861.html>; KATV, *Police: Little Rock Woman Fatally Shot Boyfriend, Said it Was Accidental*, ABC 7 On Your Side (Aug. 2, 2019), <https://katv.com/news/local/little-rock-man-dead-after-being-accidentally-shot-by-girlfriend>; Katie Cox, *Shooting That Injured Teen Near Elementary School Ruled Accidental*, 6 RTV5 Indianapolis (Aug. 5, 2019), <https://www.theindychannel.com/news/local-news/crime/shooting-that-injured-teen-near-elementary-school-ruled-accidental>.

¹⁴ See, e.g., Bob D'Angelo, *Florida Man Shot in Checkout Lane When Gun in Wife's Purse Accidentally Fires*, WFTV 9 ABC (May 7, 2019), <https://www.wftv.com/news/trending-now/florida-man-shot-in-checkout-lane-when-gun-in-wifes-purse-accidentally-fires/947186236>; Jessica Terrones, *Child Injured in Accidental Shooting in Southwest Las Vegas*, Las Vegas Rev.-J. (May 11, 2019), <http://bit.ly/2Q4r7JR>; Katherine Barrier, *Police Shooting in over-the-Rhine Store Appears Unintentional*, Local 12 (May 10, 2019), <http://bit.ly/2Q2j4NV>.

¹⁵ See, e.g., Ashley Southall & Ali Winston, *They Thought It Was a Shooting. The Real Danger Was Mass Panic*, N.Y. Times (Oct. 3, 2018), <https://www.nytimes.com/2018/10/03/nyregion/central-park-concert-stampede.html>; Anthony Dilorenzo, *9 Injured in Times Square Panic After Motorcycle Backfire Mistaken for Gunshots*, PIX 11 (Aug. 6, 2019), <https://pix11.com/2019/08/06/motorcycle-backfires-causes-panic-in-times-square/>.

and frequent frustrations. New York drivers must jostle with cars, bikes, and pedestrians as they squeeze through idling traffic. Pedestrians weave around each other to rush through clogged sidewalks. Commuters pile into packed subway cars and frequently enter the personal space of strangers. Minor annoyances frequently transform into tense encounters and altercations. In this climate New Yorkers work hard to keep the peace. Injecting firearms on a large scale—beyond the limited carry licensing scheme that already exists—would wreak havoc on this delicate balance, at the expense of safety and peace for all New Yorkers.¹⁶ Even if only those persons vetted and licensed to keep a handgun in their New York homes were permitted to carry their arms around New York City, there would be a substantial number of instances in which they would turn to their weapons—or others would obtain them—in the frequent frustrations, annoyances, and altercations that characterize life in a dense urban center.

Finally, New York City's density means that even possession for self-defense within the home is fraught with unique public-safety concerns. Approximately 84% of New York's dwellings are in multi-unit buildings.¹⁷ In Manhattan, single-family homes account for less than 2% of dwellings.¹⁸ More than one million homes, accounting

¹⁶ See, e.g., *Man Shot in Head During Caught-on-Camera Road Rage Shooting in Brooklyn*, Eyewitness News ABC 7 NY (June 25, 2019), <https://abc7ny.com/man-shot-in-head-during-caught-on-camera-nyc-road-rage-shooting/5363195/>.

¹⁷ NYU Furman Ctr., *2017 Focus: Changes in New York City's Housing Stock* 5 (2017), https://furmancenter.org/files/sotc/SOC_2017_FOCUS_Changes_in_NYC_Housing_Stock_1JUN2018.pdf.

¹⁸ *Ibid.*

for a third of all homes in the City, are in buildings with fifty units or more.¹⁹ Just as a gun fired on New York City's streets is likely to strike any number of passersby, a gun fired in an apartment or a neighborhood with closely spaced houses can easily pierce walls, ceilings, or floors and strike inhabitants of other homes.²⁰ This risk is not limited to instances where a gun is fired in self-defense. On the contrary, the risks posed by guns in the home are well documented.²¹ Gun owners are far more likely to

¹⁹ *Ibid.*

²⁰ See, e.g., Sandra Jones, *Chesterfield Mother Hit in Face by Bullet from Neighbor's Gun*, CBS 6 (Nov. 16, 2017), <https://wtvr.com/2017/11/16/chesterfield-mother-hit-in-face-by-bullet-from-neighbors-gun/>; Aileen Wingblad, *Man Accidentally Fires Gun, Hits Neighbor's House in Springfield Township*, Oakland Press (Jan. 18, 2018), https://www.theoaklandpress.com/news/nation-world-news/man-accidentally-fires-gun-hits-neighbor-s-house-in-springfield/article_2b191e5a-edc9-5111-b9b1-9c8770d200f1.html; Grace Griffaton, *Police: Neighbor Accidentally Fires Weapon, Shoots Woman Living Next Door in Head*, Fox 43 (Apr. 16, 2018), <https://fox43.com/2018/04/16/police-neighbor-accidentally-fires-weapon-shoots-woman-living-next-door-in-head/>.

²¹ See David A. Geier, Janet K. Kern & Mark R. Geier, *A Longitudinal Ecological Study of Household Firearm Ownership and Firearm-Related Deaths in the United States from 1999 Through 2014: A Specific Focus on Gender, Race, and Geographic Variables*, 6 Preventive Med. Rep. 329, 330, 332 (2017) (finding significant direct correlations between increasing home firearm ownership and increasing firearm related deaths); David Hemenway, *Risks and Benefits of a Gun in the Home*, 5 Am. J. Lifestyle Med. 502, 503–08 (2011) (summarizing research on the extensive risks of guns in the home, comparing it with the unreliable, limited data on self-defense gun use, and noting that guns in the home increase the risk for all members of the family, particularly children); Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 New Eng. J. Med. 1084, 1084, 1089 (1993) (finding that having a gun in the home substantially increases the risk of criminal

shoot themselves accidentally,²² commit suicide,²³ or shoot a family member or romantic partner²⁴ than they are to fire a gun to defend hearth and home.²⁵ While a gun owner elsewhere may assume that risk to himself, in New York such risks are automatically passed on to countless others.

homicide for everyone living in the home by an adjusted odds ratio of 2.7).

²² See Douglas J. Wiebe, *Firearms in US Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711, 713–14 (2003) (finding that individuals with one handgun stored in their homes are 5.3 times more likely to die as a result of an accidental shooting).

²³ See Arthur L. Kellermann et al., *Suicide in the Home in Relation to Gun Ownership*, 327 *New Eng. J. Med.* 467, 471 (1992) (noting that having a gun in the home elevates the risk of completed suicide three- to five-fold).

²⁴ See Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Study*, 93 *Am. J. Pub. Health* 1089, 1092 (2003) (finding that the risk of homicide for victims of domestic violence is five times higher in homes where the abusive intimate partner owns or is living in a household with a gun).

²⁵ See Arthur L. Kellermann et al., *Injuries and Deaths Due to Firearms in the Home*, 45 *J. Trauma* 263, 263, 265 (1998) (finding that, for every instance in which a gun in the home was used in successful self-defense, there were seven criminal assaults or homicides); David Hemenway & Sara J. Solnick, *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007–2011*, 79 *Preventive Med.* 22, 23, 27 (2015) (finding that only 0.9% of crime victims actually make defensive use of a gun and noting that “[h]alf of the self-defense uses occur in what appear to be non-violent crimes (e.g., verbal threats”).

B. More Legal Guns on the Streets of New York City Would Result in More Firearm Thefts.

Petitioners' frequent invocation of the law-abiding nature of premises license holders, and of carry permit holders throughout the nation, ignores the reality that lawful gun owners' guns do not always remain with lawful gun owners. See Petrs. Br. 1, 9, 11, 18, 21–22, 28, 34, 51; see also Nat'l Sheriffs' Ass'n Br. 7, 14, 21, 28, 30, 32. The majority of gun crimes in large cities like New York City are committed with stolen guns,²⁶ and the majority of stolen guns are stolen from lawful owners.²⁷ Gun owners are especially likely to have their guns stolen if they carry outside the home.²⁸ In fact, gun owners who carried a gun within the last month were more than three times more likely to have a gun stolen compared to owners who did not carry.²⁹ Theft from cars is particularly common,³⁰ but

²⁶ In one study analyzing crime in Pittsburgh, Pennsylvania, more than 30% of guns recovered at crime scenes had been reported stolen and the majority of perpetrators—79%—were carrying a gun that did not belong to them. See Anthony Fabio et al., *Gaps Continue in Firearm Surveillance: Evidence from a Large U.S. City Bureau of Police*, 10 Soc. Med. 13, 13, 17, 20 (2016).

²⁷ See *Stolen Guns Pose a Tremendous Risk to Public Safety*, Everytown for Gun Safety (Mar. 6, 2019), https://everytownresearch.org/stolen-guns-pose-tremendous-risk-public-safety/#foot_note_anchor_2.

²⁸ See David Hemenway et al., *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4 Inj. Epidemiology 4, at 1, 3 (2017).

²⁹ See *ibid.*

³⁰ See Brian Freskos, *As Thefts of Guns from Cars Surge, Police Urge Residents to Leave Their Weapons at Home*, The Trace (Mar. 6, 2017), <https://www.thetrace.org/2017/03/as-thefts-of-guns-from-cars-surge-police-urge-residents-to-leave-their-weapons-at-home/>;

gun owners carrying their guns on their person or in their purse are also liable to theft. Many gun owners, including trained professionals, simply drop or misplace their guns.³¹

Theft is a particularly serious concern in a city like New York. Petty theft is more prevalent in big cities,³² and New York is no exception.³³ With millions of pedestrians and thousands of cars parked on the street, the city presents ample opportunities for pickpocketing and car break-ins. Indeed, car break-ins and carjackings are so common that dangerous or valuable items cannot be left in vehicles. Gun owners who carry their handguns on

see also Martin Kaste, *More Guns in Cars Mean More Guns Stolen from Cars*, Nat'l Pub. Radio (May 9, 2019, 5:02 AM), <https://www.npr.org/2019/05/09/717178960/more-guns-in-cars-mean-more-guns-stolen-from-cars>.

³¹ See Associated Press, *Adults Misplaced, Mistakenly Fired Guns Taken to School, AP Finds*, *The Oregonian* (May 5, 2018), https://www.oregonlive.com/today/2018/05/adults_misplaced_mistakenly_fi.html; Tom Dinki, *New York State Police's AR-Style Rifle Still Missing from Olean*, *Olean Times Herald* (Nov. 6, 2018), http://www.oleantimesherald.com/news/new-york-state-police-s-ar-style-rifle-still-missing/article_f1811058-e239-11e8-8575-93850b9b9354.html; Marsha McLeod & Brian Freskos, *Law Enforcement's Lost and Stolen Gun Problem*, *The Trace* (Nov. 26, 2018), <https://www.thetrace.org/2018/11/lost-and-stolen-police-guns/>.

³² In 2017, urban communities had a robbery rate of 110.1 per 100,000 inhabitants, compared to a mere 11.5 robberies per 100,000 inhabitants in nonmetropolitan counties. See *Crime in the United States, by Community, 2017*, FBI: UCR, tbl. 2, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-2> (last visited Aug. 11, 2019).

³³ See *id.*, tbl. 8 (showing that, in 2017, New York City experienced 124,815 instances of property crime, 13,995 robberies, 107,976 instances of theft or larceny, and 5,735 car thefts).

their person are equally susceptible to pickpocketing and purse snatching, both of which are prevalent in the city. Though the NYPD cannot keep stolen guns out of New York City entirely, the ability to enact regulations like those that existed at the outset of the case go a long way to help. The limits on public carry ensure that gun owners will not accidentally leave guns in public spaces where the guns would be available to children and criminals alike. The transport restrictions help ensure that guns do not become easy prey for car thieves and burglars. The efficacy of the City's regulations in preventing gun theft is evidenced by fact that the vast majority of guns recovered in New York City originated in localities with far more lax gun laws.³⁴ Thus, while it is true that the majority of gun crimes committed in New York City are committed with trafficked guns, it is equally true that an increase in the number of legal guns in the city would lead to an increase in the number of illegal guns.

C. More Firearms on New York City's Streets Would Interfere with Law Enforcement's Duty to Keep New Yorkers Safe and Would Put Police Officers in Danger.

Any broad expansion of New York City's licensing scheme that would lead to a significant increase in guns on the streets of New York City would also pose a danger to law enforcement, as well as a serious impediment to their job of keeping New Yorkers safe. Across the country, law enforcement officers killed in the line of duty are

³⁴ See Office of Att'y Gen. N.Y., *Target on Trafficking: New York Crime Gun Analysis* 28–31 (Oct. 24, 2016), <https://targettrafficking.ag.ny.gov/>.

most often killed by gunfire.³⁵ Even in New York, with its robust gun regulations, police officers are not immune to this danger.³⁶ Police officers must navigate dangerous and fast-moving situations with uncertainty over whether the suspects they encounter are armed, and with what. This reality has resulted in tragic mistakes throughout the country.³⁷ Adding a significant number of additional guns to the streets of New York City would increase this uncertainty for law enforcement, putting both officers and civilians at risk.³⁸

³⁵ See Doug Sterling, *144 Police Officers Died in the Line of Duty in 2018, Reversing a One-Year Decline*, USA Today (Dec. 27, 2018), <https://www.usatoday.com/story/news/2018/12/27/police-deaths-144-killed-line-duty-2018/2423797002/>.

³⁶ See, e.g., Corey Kilgannon et al., *New York City Detective Killed by ‘Friendly Fire’ During Queens Robbery*, N.Y. Times (Feb. 12, 2019), <https://www.nytimes.com/2019/02/12/nyregion/cop-shot-queens.html>; Benjamin Mueller & Al Baker, *2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide*, N.Y. Times (Dec. 20, 2014), <https://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html>.

³⁷ See, e.g., Ray Sanchez, *Police: N.Y. Officer Fatally Shoots ‘Innocent’ Unarmed Man*, CNN (Dec. 8, 2014), <https://www.cnn.com/2014/11/21/us/new-york-police-shooting/index.html>; Mihir Zaveri, *Black Man Killed by Officer in Alabama Mall Shooting Was Not the Gunman, Police Now Say*, N.Y. Times (Nov. 24, 2018), <https://www.nytimes.com/2018/11/24/us/alabama-mall-shooting.html>.

³⁸ See Melissa Healy, *Study: States with Lenient Gun Laws See More Fatal Officer-Involved Shootings*, PoliceOne (May 27, 2017) (citing Aaron Kivisto et al., *Firearm Legislation and Fatal Police Shootings in the United States*, 107 Am. J. Pub. Health 1068, 1070, 1073 (2017)), <https://www.policeone.com/gun-legislation-law-enforcement/articles/350635006-Study-States-with-lenient-gun-laws-see-more-fatal-officer-involved-shootings/> (finding that fatal police shootings were “about half as common in states whose gun laws place them in the top 25 percent of stringency than they were in states

Allowing more guns on New York City streets would also complicate the NYPD's already herculean task of crowd control. New York City plays frequent host to massive public events like parades and marches, but even its everyday crowds can easily number in the tens of thousands in some parts of the city.³⁹ Managing such crowds safely and peacefully requires extensive and delicate coordination⁴⁰ and allowing more New Yorkers to carry guns in such situations would make the task exponentially more difficult. Absent current restrictions on carry, police would need to resort to roadblocks and checkpoints

where such restrictions ranked in the bottom 25 percent"); see also David I. Swedler et al., *Firearm Prevalence and Homicides of Law Enforcement Officers in the United States*, 105 *Am. J. Pub. Health* 2042, 2042 (2015) ("High public gun ownership is a risk for occupational mortality for [law enforcement officers] in the United States. States could consider methods for reducing firearm ownership as a way to reduce occupational deaths of law enforcement officers.").

³⁹ David Owen, *The Psychology of Space—Can a Norwegian Firm Solve the Problems of Times Square?*, *The New Yorker* (Jan. 21, 2013), <https://www.newyorker.com/magazine/2013/01/21/the-psychology-of-space> (noting that approximately a third of a million people pass through Times Square daily).

⁴⁰ See Wendy Joan Biddlecombe, *EXCLUSIVE: NYPD Counterterrorism Unit to Receive Bike and Scooter Training, Bratton Says*, *Metro* (Oct. 19, 2015), <https://www.metro.us/new-york/exclusive-nypd-unit-tasked-with-counterterrorism-community-relations-to-receive-bicycle-and-scooter-training-bratton-says/zsJojp--GOHIMmbuXBHEA> (describing how the NYPD uses a combination of bikes, scooters, helicopters, and foot patrol in order to manage large crowds safely and effectively while still ensuring that officers respect the First Amendment rights of demonstrators).

that would stifle New Yorkers’ fundamental rights to congregate, demonstrate, and otherwise move freely throughout their community.

III. STATES AND CITIES HAVE STRICTLY REGULATED GUNS IN THE INTEREST OF PUBLIC SAFETY THROUGHOUT AMERICAN HISTORY.

States and communities—particularly urban ones—have imposed strict regulations on the possession and carry of guns since before the adoption of the Second Amendment.⁴¹ Such regulations have included broad-based prohibitions on all gun possession as well as regulations on public carry. And, given the particular concerns related to public carry—particularly concealed carry—and the transfer of weapons in dense urban areas, such regulations have consistently been upheld by courts, as

⁴¹ Some courts looking to the historical record to evaluate state and local gun regulations under the Second Amendment and *Heller* have held that the relevant time period for comparison is not 1791, when the Constitution was ratified, but the ratification of the Fourteenth Amendment in 1873 since that is when the Second Amendment was incorporated against the states. See *Ezell v. City of Chicago*, 651 F.3d 684, 702–03 (7th Cir. 2011); see also *Worman v. Healey*, 922 F.3d 26 n.4 (1st Cir. 2019) (noting that the First Circuit had recognized the latter time frame, but finding in that matter that “the historical record would be the same regardless of which ratification date was used”). Others have looked to regulations from the colonial period. See *Teixiera v. County of Alameda*, 873 F.3d 670, 684–85, 690 (9th Cir. 2017) (holding that regulations imposing certain restrictions on the sale of firearms were constitutional under the Second Amendment, in part because “colonial government regulation included some restrictions on the commercial sale of firearms” and “[a]t least two colonies * * * controlled more generally where colonial settlers could transport or sell guns”). No matter what period of U.S. history is considered most relevant, however, it is clear that American communities, and particularly cities, have long regulated guns to promote public safety.

this Court acknowledged in *Heller*. 554 U.S. at 626 (“[T]he majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.”).

After the colonies were established in America, at least two quickly restricted travel with weapons—including Virginia, which restricted travel with arms or ammunition near Native American towns or English plantations in the mid-1670s.⁴² See *Teixeira v. County of Alameda*, 873 F.3d 670, 684–85 (9th Cir. 2017); Joseph Blocher, *Firearm Localism*, 123 *Yale L.J.* 82, 113 n.163 (2013). During the Founding era, urban centers including Philadelphia, New York, and Boston “regulated or prohibited the firing of weapons and storage of gunpowder within city limits, even while the possession and use of guns and gunpowder were permitted in rural areas.” Blocher, 123 *Yale L.J.* at 85. A 1783 law in “Boston, for example, provided that the depositing of loaded Arms in the Houses of the Town of Boston, is dangerous and that no loaded fire-arms were allowed in any Dwelling-House, Stable, Barn, Out-house, Store, Ware-house, Shop or other Building.”

⁴² Regulations on the carrying and transporting of weapons within urban communities date back to ancient Athens, where “every Athenian was finable who walked about [the] city in armour.” Blocher, 123 *Yale L.J.* at 113. As early as the thirteenth and fourteenth centuries, they were adopted in densely populated areas such as London and Northampton. *Id.* at 112; Miller, 66 *Duke L.J.* at 100–01. For example, the Statute of Northampton, enacted in 1328, provided that “no Man great nor small, of what Condition soever he be [shall] ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King’s pleasure.” Statute of Northampton, 1328, 2 *Edw. 3, c. 3* (Eng.).

Id. at 115 (citing Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 218).

Southern states in the early 1800s similarly enacted laws regulating the concealed carry of weapons, particularly guns. Matt Jancer, *Gun Control Is as Old as the Old West*, Smithsonian (Feb. 5, 2018), <https://www.smithsonianmag.com/history/gun-control-old-west-180968013/>.

Many courts considering challenges to these laws upheld them, acknowledging the authority of the Legislature “to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals.” See *State v. Reid*, 1 Ala. 612, 613 (1840) (considering Alabama’s 1839 restriction on “carrying weapons secretly”). Cities like Cleveland passed ordinances prohibiting the discharge of firearms within city limits as early as 1820, and states including Florida, New Jersey, Nebraska, and Tennessee gave newly incorporated towns the power to restrict “shooting and carrying guns” throughout the mid-1800s. See Blocher, 123 Yale L.J. at 116.

Even in the “Wild West,” local sheriffs enacted strict prohibitions on carrying guns within town limits throughout the 1880s, recognizing that “cultivating a reputation of peace and stability was necessary * * * if [a town] were to become anything more transient than a one-industry boom town.” Jancer, *supra*. These laws reflected the common sense notion that, although “[h]aving a firearm to protect yourself in the lawless wilderness from wild animals, hostile native tribes, and outlaws was a wise idea[,] * * * when you came into town, you had to either check your guns if you were a visitor or keep your guns at home if you were a resident.” *Ibid.* Indeed, such laws explicitly recognized the particular public-safety concerns that separated urban communities from their more rural neighbors. An 1889 Arizona law, for example, forbade certain

weapons such as knives and pistols “within any settlement, town, village or city.” An Act Defining and Punishing Certain Offenses Against the Public Peace, No. 13, § 1, 1889 Ariz. Sess. Laws 30, 30 (West); see also Miller, 66 Duke L.J. at 101. Similarly, an 1888 Idaho law forbade all weapons from being carried in the city, except those carried by law enforcement. An Act Regulating the Use and Carrying of Deadly Weapons in Idaho Territory, § 1, 1888 Idaho Sess. Laws 23, 23 (West); Miller, 66 Duke L.J. at 101. Even those cities most notorious for mayhem in the West, such as Dodge City and Tombstone, “required people to leave their weapons at the city limits when arriving in town.” See Blocher, 123 Yale L.J. at 117; Jancer, *supra*.

As the myriad examples discussed above make clear, local governments have consistently recognized the unique needs of their communities and regulated accordingly—just as they have recognized the specific regulatory needs of settings such as schools and government buildings. See *Heller*, 554 U.S. at 626–27. Together, they demonstrate that gun regulations in cities have been ubiquitous throughout American history, with local governments consistently recognizing the specific needs of urban communities and imposing reasonable constraints on the possession, carry, and transfer of guns in those communities.

CONCLUSION

For the reasons explained in Respondents’ brief and Suggestion of Mootness, the Court should vacate and remand with instructions to dismiss or with instructions to apply Article III principles in the first instance. If the Court nevertheless reaches the questions presented, it should hold that the City’s former rule was constitutional.

Respectfully submitted.

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