

No. 19-27

In the
Supreme Court of the United States

MARK CHEESEMAN,
Petitioner,

v.

JOHN POLILLO, CHIEF OF THE GLASSBORO, NEW JERSEY
POLICE DEPARTMENT; AND KEVIN T. SMITH, SUPERIOR
COURT JUDGE, GLOUCESTER COUNTY, NEW JERSEY,
Respondents.

**On Petition for Writ of Certiorari to the
Superior Court of New Jersey Appellate Division**

**BRIEF OF *AMICUS CURIAE* COALITION OF
NEW JERSEY FIREARM OWNERS IN
SUPPORT OF PETITIONER**

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CORPORATE DISCLOSURE STATEMENT

The Coalition of New Jersey Firearms Owners is a nonprofit corporation with no parent corporation, and no publicly held corporation owns its stock.

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INTEREST OF THE AMICUS CURIAE

The Coalition of New Jersey Firearm Owners (“CNJFO”) is a New Jersey non-profit and a tax exempt 501(c)(3) non-profit organization.¹ CNJFO was formed to eliminate “justifiable need” in New Jersey and to advocate for lawful, safe and responsible firearms ownership in New Jersey. CNJFO strives to return to the citizens of New Jersey the basic human right to self-defense, a right that is guaranteed to all Americans by the Constitution but denied to New Jersey residents by the Executive, Legislative and Judicial branches of New Jersey government.

SUMMARY OF THE ARGUMENT

New Jersey’s urgent necessity and justifiable need scheme for allowing its citizens to carry pursuant to a fundamental and enumerated right cannot stand. First, the permit issuance based on urgent necessity is neither longstanding nor presumptively lawful. Secondly, New Jersey has perverted the legislative intent of the Gun Control Law and, as currently applied, does not comport with the legislative intent of when it was passed. Thirdly, it is a mathematical impossibility for New Jersey to claim that its scheme of urgent necessity is presumptively lawful or longstanding. For the following reasons, this Court

¹ No counsel for any party authored this brief in whole or in part, nor did any counsel or party make any monetary contribution intended to fund the preparation or submission of this brief. All parties’ counsel of record received timely notice of the intended filing of this brief, and all consented to its filing.

should grant the Petition of Mark Cheeseman and grant certiorari in this case.

ARGUMENT

1. New Jersey’s URGENT NECESSITY requirement of “specific threats or previous attacks” for 2C:58-4 permit issuance is neither “longstanding” or “presumptively lawful.”

In *Siccardi v. State*, 59 N.J. 545, 284 A.2d 533 (1971), the New Jersey Supreme Court would explain that “(t)he constitutionality of the (Gun Control) Law was upheld in [*Burton v. Sills*, 53 N.J. 86, 248 A.2d 521 (1968)], but the opinion in that case did not cite nor did it have occasion to deal with N.J.S.A. 2A:151-44² which is the specific statutory provision applicable to the issuance of permits for the carrying of handguns.”

Twenty years after *Siccardi*, the New Jersey Supreme Court would explain that:

...the most relevant definition of “justifiable need” was set forth in *Siccardi* ... the Court also took notice of an internal policy of Assignment Judges, which wisely confines the issuance of carrying permits to ... limited personnel who can establish an urgent necessity for carrying guns for self-protection. One whose life is in real danger, as evidenced by serious threats or earlier attacks, may perhaps qualify... [*In re Preis*, 118 NJ 564, 571 (1990) citing *Siccardi* at 557.]

²The former designation of today’s 2C:58-4 prior to recodification.

Since *Siccardi* upheld URGENT NECESSITY in 1971, the New Jersey Attorney General's Office, "has been on record for a long time as opposing the carrying privileges of any person." [Testimony of Victoria Bramson, Esq., Deputy Attorney General, Division of Criminal Justice. SUBCOMMITTEE ON ADMINISTRATION OF FIREARMS STATUTES, ASSEMBLY JUDICIARY COMMITTEE, New Jersey Legislature, State House Annex, Trenton NJ 08625. Second Public Hearing, Tuesday September 22, 1987, Page 23.]

And like Bramson, *Siccardi* revealed New Jersey's antithesis to the right to bear arms. In 1966 New Jersey revised its Gun Control Law to include handgun carry permits³ regardless of mode of carry. Attorney General Sills explained in the press why he changed the 2C:58-4 carry permit law from concealed, to all forms of carry:

[Sills] said there is no law against walking down the street with a weapon in your hand or on your body as long as it isn't concealed. He cited the case a few years ago of a Paterson restaurant owner who was refused a permit to carry a concealed weapon so he strapped two pistols on his hips, in plain view, and walked down the street. Police stopped him and called Mr. Bergin to find out how he should be charged. "We couldn't charge him with a darn thing", Mr. Bergin said. [*Sills Demand Curbs on Sale of Firearms*, Asbury park Evening Press, Thursday Dec. 5, 1963. Pg. 27.]

³ Formerly NJSA 2A:141-44, now 2C:58-4.

Prior to 1966, as long as the weapon wasn't concealed, there was no crime. *See State v. Gratz*, 86 N.J.L. 482, 92 A. 88 (1914).

Attorney General Sills, the drafter of the Gun Control Law, explained in documented testimony in both 1965 and 1966, why he changed the carry permit law from concealed to all forms of carry. In 1965, to the SENATE COMMITTEE ON THE JUDICIARY, Sills he explained the Newark via Maryland straw purchasing ring where handguns, without purchase permits, were coming across New Jersey's borders diminishing the effect New Jersey's laws have against criminals:

Although under present New Jersey law a permit to carry a pistol or revolver is required, there is no way to detect weapons which are smuggled into New Jersey without a permit to purchase or carry ... Our experience with the State of Maryland highlights ... the urgency of this measure. Chairman Dodd pointed out in his opening statement ... that our State police, in cooperation with Maryland authorities, had revealed the purchase of handguns by New Jersey residents in that State.

These people were able to buy 65 handguns from 3 retail stores located in Aberdeen, Md. Eight of these persons used fictitious names or addresses, and five of the eight used the same address ... one Hector Gomez, later found to have had a lengthy police record for such offenses as extortion, robbery, assault, and attempted rape, purchased 12 handguns in the

same store on locations within a period of 12 days and 3 more in another store....

It is apparent that ... the purchases by Gomez were made for illegal resale.

...business records indicated that he had sold ... handguns ... with 29 having been purchased by New Jersey residents.

The sales ledger of the second proprietor ... indicated ...18 having been purchased by New Jersey residents. This proprietor stated ... Hector Gomez had bought an estimated 200 handguns ... in the Aberdeen area.

Records of the third establishment showed ... that 18 (handguns) having been sold to New Jerseyites. [HEARINGS BEFORE THE SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY OF THE COMMITTEE ON THE JUDICIARY. US Senate, 89th Congress, First Session. US Govt. Printing Office. Washington 1965. Hereinafter 1965 *Dodd Hearings*. Testimony of AG Sills at 404-405. See Testimony of AG Sills PL 90-618 H.R. 510, 89th Cong., 1st Sess. (1965). As introduced and referred to the House Committee on Ways and Means on PROPOSED AMENDMENTS TO THE NATIONAL FIREARMS ACT. January 4, 1965. Part 1. US Govt. Printing Office, Washington 1965. Pg. 57. ¶3. (Hereinafter "H.R. 510 Testimony").].

Sills also explained the problem he was having with mail order guns being shipped to New Jersey "with no permits issued":

Our experience in Maryland ... involved the purchase of handguns for illegal importation in New Jersey. We have had similar problems with dealers in California who ... have been accomplices to the mail-order sale of guns illegally purchased and shipped into our State ... It was discovered that of the 126 guns sold and shipped by mail by Seaport Traders Inc., of Los Angeles, Calif., ... no permits were issued for 56. Of the 28 handguns sold and shipped by Weapons Inc., ... no permits were issued for 5. Of the 154 guns sold and mailed by these two outfits, 61 were sold and mailed without permits being issued. It was also ascertained that 26 persons with criminal records were among those who had the 61 weapons from these 2 mail-order houses. I trust that the testimony I have offered to the subcommittee has given some indication of the problem we face in New Jersey. This problem derives not only from the wanton and indiscriminate importation and resale of lethal weapons of all varieties which we cannot legally control with the legislation we now have, but also from the violation of existing laws which cannot be prevented without Federal assistance. [*Dodd Hearings supra* at 404-405; Testimony of AG Sills; *See* Testimony of AG Sills H.R. 510 Testimony *supra* pg. 57. ¶3.]

Sills' testimony, "there is no way to detect weapons which are smuggled into New Jersey without a permit to purchase or carry," in the 1965 *Dodd Hearings* must be read in tandem with Sills' testimony in the PUBLIC HEARING ON ASSEMBLY BILL NO. 165. Assembly

Chamber, State House, Trenton NJ. March, 2, 1966
(hereinafter “A-165 Debates”):

For those who wish to obtain the permits ... it will be necessary ... to be fingerprinted in order to determine if they are any of the unfit persons described in the bill. ***This is the only effective way I know of checking an individual’s background...*** [emphasis added].

This was the only way for Sills to include pre-1966 purchased handguns with both the illegal Maryland and mail order handguns into the licensing scheme. Simply changing 2C:58-4’s wording, by removing “concealed” from the law, Sills now insured all carried handguns would have to run through the permit process, and allow the Police Chief to investigate, fingerprint and background check all applicants.

Twice in 1966, and once in 1968, Sills explained the meaning of 2C:58-4’s “public health safety and welfare” clause in testimony:

The main thrust of A 165 is to make it illegal to sell or purchase pistols and revolvers in New Jersey if the purchaser involved has a physical defect or sickness which makes it unsafe for him to handle firearms – Now many people have said this bill prevents a purchaser who has a physical defect from getting a permit. It does not say that. It says, which defect makes it unsafe for him to handle firearms. – also if he has ever been confined to a mental institution or sanitarium and cannot produce a doctor’s certificate indicating he can safely handle a

firearm; if he has ever been convicted of a crime, is an alcoholic, an habitual user of or addicted to narcotics, goof-balls or pep pills; or he is a subversive. ***In other words, standards are set forth to determine if the issuance to a permit to purchase or carry a pistol or revolver would be in the interest of public health, safety or welfare.*** [emphasis added.]

Mr. Sills: Well, of course, you who are legislators know that throughout the entire [statutes], the terms “public health” and “safety” have been used on innumerable occasions and courts have construed it in accordance with the intent of the legislation. Now in this particular case, the present law has, and we were asked to maintain, that a person be of good reputation and good character. Now it is very easy to for anyone to sit down and try to construe all of the things which would make a person of poor character or poor reputation. One thing, for example, as I sit here and think, might be a person who is indicted presently for a felony and who may be out on bail, but he has not been convicted of a crime; a person who perhaps has been engaged in every kind of escapade in his community for many, many years, but was fortunate in that he escaped the claws of the law ... But as I point out to you, the present law has these very same words in it with respect to manufacturers and wholesalers and we have extended it here to the point of the granting of the permit and, as I indicate, it would be construed in the manner in which I have just suggested.

The statute ... provides that no permit or identification card shall be issued “to any person where the issuance would not be in the interest of the public health, safety or welfare.” At oral argument the Attorney General took the position, with which we agree, that the quoted language was intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest. [*Burton supra* at 90-91 (citing Attorney General Sills.)]

The public safety clause was designed to prevent permits from going to the “unfit elements of society.”⁴

The public safety clause *was not* designed to claim all 2C:58-4 applicants are dangerous in public when carrying a handgun for self-defense. Sills is on record telling “the fit” elements of society that they had a legitimate right to carry a gun when selling *A-165* to the public:

“Of all people, I can’t understand your opposition. If you’re all ‘good guys,’ you shouldn’t be afraid to register.” Sills said. “**You have a legitimate right to own and carry a gun** and

⁴To understand Sills’ term “unfit elements of society,” *See Burton* at 91, 93 and 105 (New Jersey’s Gun Control Law is highly purposed and conscientiously designed toward preventing criminal and other unfit elements from acquiring firearms while enabling the fit elements of society to obtain them with minimal burdens and inconveniences.)

know how to handle guns. I can't understand why the so-called 'good guys' are raising such resistance." [*Sills Fights for Tougher Gun Laws*, The (Red Bank) Daily Register. March 11, 1965. Pg. 1. Emphasis added.]

But claiming all 2C:58-4 applicants are dangerous in public when carrying a handgun for self-defense is exactly New Jersey's claim today:

New Jersey ***has decided*** that this somewhat heightened risk to the public may be outweighed by the potential safety benefit to an individual with a "justifiable need" to carry a handgun. Furthermore, New Jersey has decided that it can best determine when the individual benefit outweighs the increased risk to the community through careful case-by-case scrutiny of each application, by the police and a court. *See Drake v. Filko*, 724 F.3d 426, 439 (3d Cir. 2013).

New Jersey's "decision" (according to *Drake*) is diametrically opposed to Attorney General Sills who simultaneously explained on page 5 of the *A-165 Debates* that: "...standards are set forth to determine if the issuance of a permit to ... carry a pistol or revolver would be in the interest of the public health safety and welfare." And in the very next sentence, "(f)or those who wish to carry a pistol or revolver, permits will be required as they are under present law."

The key to understanding that New Jersey's permitting system is neither "longstanding" pursuant to *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008) at page 2816-17 or "presumptively

lawful” per *Heller’s* N.26 is to investigate when the requirement changed from “as they are under present law” to “urgent necessity.” The first bread crumb comes from *Preis supra*, where the New Jersey Supreme Court said:

Under the *Siccardi* rule there must be “an urgent necessity * * * for self-protection.” 59 N.J. at 557, 284 A.2d 533. The requirement is of specific threats or previous attacks demonstrating a special danger to the applicant’s life that cannot be avoided by other means. *Ibid.*; [*Preis* at 571. *Reilly v. State*, 59 N.J. 559, 562, 284 A.2d 541 (1971); *In re Application of X*, 59 N.J. 533, 534-35, 284 A.2d 530 (1971).]

Preis demonstrates that URGENT NECESSITY and the requirements of specific threats (plural) and previous attacks (plural) came from *Siccardi* in 1971.

Testimony in *Siccardi* reveals that:

(s)everal police chiefs and a representative of the State Police testified as expert witnesses before the County Court; they all supported a highly restrictive approach in the granting of carrying permits. Thus Chief Roy of the Elizabeth Police Department acknowledged that his standards of “need” were changing “toward the side of more stringency.” [*Siccardi* at 550.]

But the question becomes, more stringent than what?

In the previous *Preis* citation, *Preis* cited *Reilly* where Drs. Reilly, Baron, Bernstein and LaBate all held carry permits prior to 1970:

In earlier years ... Dr. John J. Reilly ... held carrying permits but his 1970 application for a carrying permit was denied because of an insufficient showing of need. [*Reilly* at 560.]

Dr. Stuart Baron had carrying permits in 1968 and 1969 but his 1970 application was denied ... the County Judge concluded that he had not made a sufficient showing of need under ***currently governing principles***. [*Id.* at 561. Emphasis added].

Dr. Michael Bernstein ... held carrying permits since 1960. His 1970 application was denied because of an insufficient showing of need. [*Id.* at 561.]

Dr. Philip LaBate ... held carrying permits in 1968 and 1969 but his application for a 1970 permit was denied because of an insufficient showing of need. [*Id.* at 561-562.]

To answer “more stringent than what?”, it is important to notice “currently governing principles” in Dr. Baron’s paragraph above. NJSA 2C:58-2.6 requires that:

The Attorney General, in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of this act.

But there is nothing in the New Jersey Register to document that any change in the issuance standards took place. In fact, the NJ Register of December 25th, 1969 13:54-23's Limitations on issuance simply reads:

A permit to carry a pistol or revolver shall not be issued to any person who is subject to any of the disabilities which would prevent obtaining a permit to purchase a pistol or revolver or a firearms purchaser identification card as provided in this chapter. [1 N.J.R 30.]

The 1969 Register stated in 13:54-21 Application for a Permit to Carry a Pistol or Revolver that:

(e)very person applying for a permit to carry a pistol ... shall furnish such information and particulars as set forth in the ***application form designated SBI 92***... [1 N.J.R 30, Emphasis added].

When Sills testified in the *Dodd Hearings* a year earlier, Sills included form SBI 92 as Exhibit No. 20. There was simply no requirement of URGENT NECESSITY, "specific threats" or "previous attacks." Line number (3) simply reads, "THE REASON OF SUCH APPLICATION IS." [*Dodd Hearings* at 149.]

Mathematically worse, URGENT NECESSITY did not show up in the Administrative Code until twenty years after *Siccardi* in 1991. Not as a rule of the Attorney General that followed the "Administrative Procedure Act," but as a direct result of the 1990 New Jersey Supreme decision in *Preis*.

NJAC 13:54-2.3 reiterates the statutory criteria which must be satisfied in order to obtain the issuance of a permit to carry a handgun. This and other amendments in subchapter 2 reflect the standards enunciated by the Supreme Court decision in *In re Preis*, 118 *NJ* 564 (1990). [23 N.J.R 2251.]

The lack of adherence to the Administrative Procedures Act not only casts doubt on any claim by the State that their regulation is “presumptively lawful,” but this twenty-year timeline debunks any “longstanding” claim as well.

Further research of *Siccardi*, reveals that the URGENT NECESSITY RULE was created by the investigation unit of the State Police:

Sergeant Klauss heads the investigation unit of the State Police ... (h)e detailed the action taken by his department in connection with permit applications ... (h)e noted that “stricter measures concerning the issuance of permits are being applied” [*Siccardi* at 551.]

Siccardi simultaneously explained that the investigation unit’s URGENT NECESSITY requirement came from a law review, though oddly enough, that was a recommendation for *ownership* of a handgun and was printed three years *after A-165* became the Gun Control Law:

The National Commission recommended federal legislation to encourage the establishment of state licensing systems for handguns with authority in each state to *determine for itself*

what constitutes “need” to own a handgun

... the Commission recommended that “determinations of need be limited to police officers and security guards, small businesses in high crime areas, and others with a special need for self-protection.” [*Siccardi* at 553. Citing *Final Report, National Commission on the Causes and Prevention of Violence*, p.181 (1969). Emphasis added].

It is worthy to note an editor of the *Final Report* was Franklin E. Zimring. In a 1981 New York Times article, Zimring was quoted as saying what he does is similar to “gypsy fortune telling”:

Mr. Zimring also doubted that any study could determine whether a particular law was a deterrent to violent crime. “This whole notion of cause and effect is suspect.” He said. “Criminologists are very much like forecasting economists and gypsy fortune tellers. We can’t explain gun-related behavior, so how can we say what has affected it, either up or down?” [Knight, Michael. “Studies of Gun Law Divided on Impact” New York Times. [New York] 21, January 1981: Page A17.]

Essentially, the State’s URGENT NECESSITY RULE came from a criminologist who admitted ten years later that his recommendations were “suspect.”

Siccardi revealed how the “URGENT NECESSITY RULE” of the investigation unit by-passed the Administrative Procedures Act and still made it into the Administrative Code:

the Assignment Judges undertook ... the furtherance of a strict policy which wisely confines the issuance of carrying permits to persons specifically employed in security work and to such other limited personnel who can ***establish an urgent necessity*** for carrying guns for self-protection. One whose life is in real danger, as ***evidenced by serious threats or earlier attacks***, may perhaps qualify... [Siccardi at 557. Emphasis added]

According to *Siccardi*, the Assignment Judges “furthered” the investigation unit’s “stricter measures concerning the issuance of permits”.

Siccardi’s rationale for the Assignment Judges’ creation of the URGENT NECESSITY RULE was that in 2A:151-44, Judges would study “expert materials” and arrive at Carry Permit “policy formations.”

In N.J.S.A. 2A:151-44 the Legislature made provision for other persons who could make a sufficient showing of “need,” leaving to the Judges the required policy formulations as to what constitutes “need.” The Legislature was fully aware that these formulations would represent the conscientious determinations of the Judges arrived at on the basis of their study of such expert materials as are available within and without our State. [Siccardi at 557]

As NJSA 2C:58-2.6 makes the Attorney General, and not the Assignment Judges, the rule promulgator, when the URGENT NECESSITY RULE entered the Administrative Code in 1991, it did so by-passing the

Administrative Procedures Act. As the Assignment Judges' "furtherance" was not "in accordance with the provisions of the "Administrative Procedure Act," the URGENT NECESSITY RULE was never "presumptively lawful" until the Legislature entered it into the Statute in 2018. Which in turn means, THE "URGENT NECESSITY RULE" is not "longstanding" under *Heller*.

Likewise, as THE URGENT NECESSITY RULE was a "stricter measure" of the investigation unit, and "furthered" by the Assignment Judges, THE "URGENT NECESSITY" RULE was never legislative intent until 2018.

2. The theory of preventing the "known and serious dangers of misuse and accidental use" was not Legislative Intent.

The theory of preventing the "known and serious dangers of misuse and accidental use" by limiting permits to the "fit elements of society" was not a legislative goal in 2C:58-4. [See *Burton supra at 105* in FN3] On page 558, *Siccardi* explained the prevention of "misuse and accidental use" theory came from the Police Chief testimony stating that:

The grant of a permit to him to carry a concealed handgun on his person or in his automobile would, AS ALL OF THE EXPERT TESTIMONY INDICATES, afford hardly any measure of self-protection and would involve him in the known and serious dangers of misuse and accidental use. [*Siccardi at 558. Emphasis added*].

The Police testimony in *Siccardi* reads as follows:

Chief Roy of the Elizabeth Police Department ... noted that “what happens is that the criminal selects his particular time when the victim is unaware of the attack. It is a sudden, very swift type of attack where the individual is caught off guard and has no opportunity to get his weapon to use it and this is the reason why the individual, even if he had a weapon, could be just as much a victim of a robbery as an individual who did not have a weapon. *Siccardi* at 550.

Chief Mass of the Shrewsbury Police Department ... considered that carrying the gun has no deterrent effect and noted that the crime is usually “over and done with” before the person carrying the permitted weapon can effectively react. *Id.*

Chief Haney of the Cranford Police Department knew of no instance in Cranford where a permitted gun was used to thwart a holdup or protect the permittee; he considered that the private person’s possession of the concealed weapon did not serve at all as a deterrent to crime. *Id.* at 551.

Sergeant Klauss ((of) the investigation unit of the State Police) not(ed) that the concealed weapon does not operate as a deterrent and that attacks happen with “so much suddenness that they would have very little chance to use the firearm in the event that they were called upon

to do it.” He stressed that “historically” private people who attempt to thwart robberies through the use of permitted weapons usually wind up with serious or fatal injuries to themselves. *Id.* at 551-552.

“(T)he known and serious dangers of misuse and accidental use” is not just an isolated clip in *Siccardi*. The relevant cases of the day all read *Siccardi* the same way and prove that the “known and serious dangers of misuse and accidental use” came from the Police Chief testimony in *Siccardi*:

- “... possession of handguns in the streets would, as the expert testimony referred to in *Siccardi* indicates, furnish hardly any measure of self-protection and would involve them in the known and serious dangers of misuse and accidental use. *Reilly v. State*, 59 N.J. 559, 562 (1971).
- [h]e has never been assaulted or threatened and, as the expert testimony referred to in *Siccardi* indicates, his possession of a handgun in the streets would furnish hardly any measure of self-protection and would involve him in the known and serious dangers of misuse and accidental use.” *In re “X”*, 59 N.J. 533, 535 (1971).

Siccardi then explained that the Police Chief testimony was the same as Zimring's⁵ *Staff Report* (which):

found that private possession of a handgun is rarely an effective means of self-protection; and so far as the carrying of handguns is concerned, they noted that "no data exist which would establish the value of firearms as a defense against attack on the street" though "there is evidence that the ready accessibility of guns contributes significantly to the number of unpremeditated homicides and to the seriousness of many assaults." *Siccardi* at 552.

Zimring advised on page 66 of the *Staff Report*, where this, "guns are not effective" and "crimes are so "sudden" theory (the *Siccardi* Police Chiefs' position) came from. Zimring cites at note 14, "Verne Bunn" from the Small Business Administration and their publication *Crime Against Small Business*. Bunn wrote:

Because of the sudden, almost violent action of robbery, the victims are often taken by surprise and off their guard. The typical robbery occurs in a very short period of time---less than a minute. The victim generally finds it difficult to relate details of the robbery accurately or reliably to the police.

⁵ Zimring – the individual who admitted in the New York Times that his job was suspect and like that of a gypsy fortune teller.

Almost universally, police departments counsel against the victim of a robbery taking any action which might antagonize the robber. Instead, he is cautioned to cooperate fully with the robber's wishes, but at the same time, noting factors relating to the robbery that will be useful to the police---description, escape route, property taken, etc." *See Crime Against Small Business: A Report of the Small Business Administration.* April 3, 1969. Senate Document No. 91-14. Pg. 242.

Zimring's *Final Report* took Verne Bunn's words and re-wrote them:

Almost invariably, police departments counsel against the victim of the robbery taking any action which might antagonize the robber. Instead he is cautioned to cooperate fully with the robber's wishes The typical businessman is neither adequately trained nor prepared mentally to face up to the robber. *See Zimring's Final Report* at 66.

The footnotes reveal the entire Police Chief testimony, preventing the "known and serious dangers of misuse and accidental use," and thus the mighty rock upon which the State rests its URGENT NECESSITY RULE, came not from the legislature, but Verne A. Bunn, who was a Management assistance officer in the Small Business Administration's Kansas City regional Office. *See Crime against small business*, pgs. XI and 242.

New Jersey tries to maintain that: "(t)he Legislature conditioned the issuance of a carry permit based its

“longstanding ‘aware[ness] of the dangers inherent in the carrying of handguns and the urgent necessity for their regulation,’ a necessity attributable to the ‘*serious dangers of misuse and accidental use*,’” *See State ex rel. Duncanson*, No. A-3318-14T2, 2016 N.J. Super. Unpub. LEXIS 2222, at *3 (Super. Ct. App. Div. Oct. 7, 2016) (emphasis added). However, the government is citing erroneous history that has been re-treaded repeatedly:

- [w]e cannot conclude that the [Second] Amendment or the Court’s recent decisions require this State to dismantle its statutory scheme addressing the risks of misuse and accidental use [of firearms] in public places devised long ago and developed over many years. This scheme is crafted to burden the exercise of the right to use handguns for lawful purposes as little as possible, without abandoning this effort to maintain order and safety in public places. *See In re Winston*, 438 N.J. Super. 1, 10 (Super. Ct. App. Div. 2014).
- The sole reason articulated by New Jersey in this case is that the justifiable need requirement is “designed to combat the dangers and risks associated with the misuse and accidental use of handguns.” *See Drake v. Filko*, 724 F.3d 426, 453 (3d Cir. 2013) (Hardiman, J., dissenting).
- New Jersey has asserted that the interests served by the Handgun Permit Law include “combating handgun violence and combating the dangers and risks associated with the accidental and misuse of handguns” and

“reducing the use of handguns in crimes.”
See Piszczatoski v. Filko, 840 F. Supp. 2d
 813, 835 (D.N.J. 2012).

3. Any New Jersey claim that their URGENT NECESSITY RULE is “presumptively lawful” and “longstanding” is a mathematic impossibility.

It is historically significant to recognize that *A-165*, the bill that became New Jersey’s Gun Control Law, was drafted by Attorney General Sills. See Hearings before the Committee on Ways and Means, 89th Congress. First Session on Proposed Amendments to the National Firearms Act. July 1965. Part 1. US Govt. Printing Office, Washington 1965. Pg. 408. (“Assembly Bill No. 165 is the much-publicized bill developed by the Office of State Attorney General Arthur J. Sills.”)] In the *A-165 Debate*, Attorney General Sills stated:

the history of *my office to draft suitable firearms controls* precedes by many months that tragic day in Dallas of November 22, 1963. This problem was brought to my attention as early as 1963 by the prosecutors of this State. See *A-165 Debate at 3*. Emphasis added.

The newspapers of the time period also printed that Sills drafted the Gun Control Law:

Atty. Gen. Arthur J. Sills yesterday called for stringent new regulations governing the sale, purchase and possession of firearms. *Mr. Sills said his office and the state police have been studying the problem of easy access to firearms since last March.* However, he said, “It always seems to take a catastrophic situation

to make people act in certain fields.” He referred to the death of President John F. Kennedy, who was assassinated with a mail-order rifle ... ***Sweeping revision of existing laws governing firearms was recommended to Mr. Sills last month*** by a study committee of three county prosecutors. See Sills Demand Curbs on Sale of Firearms, Asbury Park Evening Press, Thursday Dec. 5, 1963, Pg. 27. Emphasis added.

Attorney General Sills presented an affidavit in New Jersey Supreme Court and stated that he was closely involved “in the drafting and presentation of the Gun Control Law...” [*Serv. Armament Co. v. Hyland*, 70 N.J. 550, 560, 362 A.2d 13 (1976).]

The attorney general said he has an obligation to draft and introduce the measure because of the nature of his office. The bill is an outgrowth of recommendations of Gov. Richard J. Hughes. The governor has said that the assassination of John F. Kennedy “emphasized the need for reconsideration of the restrictions that should be imposed on people who buy guns.” The bill would:

- Require the registration of all new firearms with police officials ***
- Allow local police chiefs to refuse permits to persons with mental and physical handicaps that would make it unsafe for them to handle firearms.

---Refuse permits to convicted criminal, drug addicts, alcoholics, or members of subversive organizations. [*Sills Fights for Tougher Gun Laws*. The Daily Register. Thursday, March 11, 1965. Pg. 2.]

New Jersey's Gun Control Law was ruled constitutional because the New Jersey Supreme Court characterized the Gun Control Law as:

highly purposed and conscientiously designed toward preventing criminal and other unfit elements from acquiring firearms while enabling the fit elements of society to obtain them with minimal burdens. (*Service Armament Co.* at 559) (additional citation omitted).

The Gun Control Law was enacted in 1966. [*See Burton* at 89 (citing *L.* 1966, c. 60; *N.J.S.* 2A:151-1 *et seq.*)] It is impossible that the Gun Control Law was “highly purposed” or “conscientiously designed” if Sills drafted it from 1963 to 1966, unknowingly waiting until a “Management assistance officer in the Small Business Administration’s Kansas City regional Office” published a report for the Small Business Administration, **three years later** on April 3, 1969.

It is even more historically inaccurate to suggest that New Jersey’s “highly purposed and conscientiously designed” Gun Control Law was going to wait for Franklin Zimring to pick up Verne A. Bunn’s *Small Business Report* and reprint citations of it, as his *National Commission* recommendations in late 1969. [*See Siccardi* at 552 (citing *Final Report*, dated 1969.)]

Worse, it contradicts *Burton* precedent to assume that the Gun Control Law, as A-165, was so **unconscientiously** designed by Sills, that the carry permit statute within the law was going to have to rely on Zimring's National Commission's recommendation on the **owning** of handguns to establish its 2C:58-4 carry requirements:

The National Commission recommended federal legislation to encourage the establishment of state licensing systems for handguns with authority in **each state to determine for itself what constitutes "need" to own a handgun**. *Final Report, National Commission on the Causes and Prevention of Violence*, p. 181 (1969). [Siccardi at 552. Emphasis added].

If the constitutionality of 2C:58-4 was upheld in 1971 because the law was, "highly purposed and conscientiously designed," in 1966 and the time line of the investigation unit, the Assignment Judges, Zimring's *Final Report* and Verne Bunn just proved that the URGENT NECESSITY RULE was not highly purposed or conscientiously designed, until 1969, then the constitutionality of "urgent necessity" is now at odds with the Second Amendment.

CONCLUSION

This Court should grant Mr. Cheeseman's petition for a writ of certiorari.

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