No. 20-1639

IN THE
Supreme Court of the United States

GEORGE K. YOUNG, JR.,
Petitioner,
v.
STATE OF HAWAII, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Hawaii's restrictions on the open carrying of small, concealable arms in public are facially unconstitutional.

PARTIES TO THE PROCEEDING

George K. Young, Jr., petitioner on review, was the plaintiff-appellant and cross-appellee below.

The State of Hawaii; David Y. Ige, in his capacity as Governor of the State of Hawaii; and Clare E. Connors, Esq., in her capacity as State Attorney General (collectively, "Hawaii respondents"); the County of Hawaii, a sub-agency of the State of Hawaii; Mitch Roth, in his capacity as Mayor of the County of Hawaii; Hilo County Police Department, as a sub-agency of the County of Hawaii; and Paul Ferreira, in his capacity as Chief of Police (collectively, "County of Hawaii Respondents"); and John Does, 1-25; Jane Does, 1-25; Doe Corporations, 1-5; and Doe Entities, 1-5, are respondents on review.

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INTRODUCTION

For nearly 170 years, Hawaii has required individuals to demonstrate good cause in order to openly carry small, concealable arms in public. George Young, a Hawaii resident, brought a *pro se* complaint challenging that longstanding regulation on its face. He contended that any limit on his ability to carry handguns exposed to public view is categorically unconstitutional. And he demanded that he be issued a carry permit despite offering no particularized reason why he wishes to wield a gun in public.

Writing for the en banc Ninth Circuit, Judge Bybee rejected that contention. In a 127-page opinion laden with analysis of over 700 years of Anglo-American

history, he found that "Hawai'i's restrictions on the open carrying of firearms reflect longstanding prohibitions and that the conduct they regulate is therefore outside the historical scope of the Second Amendment." Pet. App. 14-15. Similar restrictions, Judge Bybee explained, were codified in the 1328 Statute of Northampton and "permeated public life" in England for centuries thereafter, *id.* at 40-56; were "brought to the New World" by early American colonists and enacted by numerous state legislatures in the decades following the ratification of the Second Amendment, *id.* at 56-73; were upheld by the vast majority of nineteenth-century courts to consider their constitutionality, *id.* at 73-86; and were deemed consistent with the right to keep and bear arms by treatise-writers in pre-colonial England and post-ratification America alike, *id.* at 52-55, 87-92. "[H]istory is complicated," Judge Bybee acknowledged, and as the first judicial authority to "undert[ake] a systematic review of the historical right to carry weapons in public," he refrained from issuing "any one-sentence declaration" about the precise "contours of the government's power to regulate arms in the public square." *Id.* at 38, 40, 97. Yet whatever the outer limits of that power, Hawaii's restrictions on "the open carrying of small arms capable of being concealed" do not "infringe what th[is] Court called the 'historical understanding of the scope of the right.' " *Id.* at 97, 122-123 (quoting *District of Columbia* v. *Heller*, 554 U.S. 570, 625 (2008)).

Young now asks this Court to overturn that deeply considered and historically informed judgment. But Young cannot muster a plausible criticism of the opinion that Judge Bybee wrote. Instead, he attacks a caricature, accusing the Ninth Circuit of "abrogat[ing] an essential component of the Second Amendment right"

by holding that "the Second Amendment simply does not apply outside the home at all." Pet. 1-2. That charge is groundless. Judge Bybee took great care to explain that his opinion went "no further than" holding that states may constitutionally restrict "the open carrying of small arms capable of being concealed." Pet. App. 97. And he immediately proceeded to clarify that even this limited holding was "subject to qualifications and exceptions," *id.*, to which he devoted an entire section of the opinion, *see id.* at 107-113. Under no fair reading did the en banc court hold that the right protected by the Second Amendment simply ends at the doorstep.

Once the scope of the opinion below is properly understood, little is left of Young's petition. His claimed circuit split and his critique of the opinion's merits both flow from his mistaken claim about what the court below held. As Judge Bybee noted, no court until now has engaged in a "systematic review" of the history of open carry restrictions, *id.* at 38; indeed, no court but the Ninth Circuit has specifically considered the constitutionality of a good-cause restriction on *open*—as opposed to *concealed*—carry at all. It would be folly for this Court to jump in and resolve that significant constitutional question, on which the open-carry laws in more than twenty states depend, after a single published opinion on the matter. That is particularly so given that this case is riddled with vehicle defects that would distort and potentially impede review of the question presented.

Young's alternative request that the Court consider his petition in tandem with *New York State Rifle & Pistol Ass'n* v. *Bruen*, No. 20-843, should also be rejected. *NYSRPA* involves an *as-applied* challenge to a *concealed* carry requirement. This case, by contrast,

involves a *facial* challenge to an *open* carry requirement. The constitutionality of concealed-carry laws and open-carry laws stand on markedly different footing, which is why no judge on the Ninth Circuit believed the court's earlier opinion addressing concealed carry laws resolved or even shed much light on the question presented here. *See Peruta* v. *County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc). The fact that *NYSRPA* involves as-applied claims in which the petitioners offered particularized reasons for carry licenses makes it still less likely the Court's decision will have bearing on Young's facial claim—the only claim that he has preserved.

Certiorari should be denied.

STATEMENT

A. Statutory Background

Hawaii has limited the carrying of small arms in public since the mid-nineteenth century. In 1852, the Hawaii Legislative Council made it a criminal offense for "[a]ny person not authorized by law" to "carry, or be found armed with, any * * * pistol * * * unless good cause be shown for having such dangerous weapons." Act of May 25, 1852, § 1, 1852 Haw. Sess. Laws 19, 19. That law remained in force after the U.S. Constitution was extended in full to the territory of Hawaii in 1898. *See* Haw. Rev. Laws, ch. 209, § 3089 (1905); *Territory of Hawaii* v. *Mankichi*, 190 U.S. 197, 209-211 (1903). In 1927, the territorial legislature updated the law to bar individuals from carrying a "pistol or revolver" in public unless they obtained a license upon showing "good reason to fear an injury to [their] person or property" or "other proper reason for carrying" a handgun. Act 206, §§ 5, 7, 1927 Haw. Sess. Laws 209, 209-211. Hawaii revised that law to substantially its present

form in 1934 and 1961. *See* Act 26, § 8, 1933-1934 Haw. Sess. Laws Spec. Sess. 35, 39; Act 163, § 1, 1961 Haw. Sess. Laws 215, 215-216.

Today, Hawaii law authorizes individuals to carry firearms in a variety of circumstances. Any person who lawfully possesses a firearm may carry it at her residence, business, place of sojourn, or a target range. Haw. Rev. Stat. §§ 134-5(a), 134-23(a). Individuals may carry firearms while hunting, as well as to and from a place of hunting, if they complete a hunter education course and pay a nominal fee. *Id.* § 134-5(a), (c); *see id.* §§ 183D-22, 183D-28. Various government officials may carry firearms in connection with their job duties. *Id.* § 134-11. And individuals may transport firearms between authorized locations—including repair shops, firearm dealers, gun shows, and police stations—provided the gun is unloaded and placed in an enclosed container. *Id.* §§ 134-5(a), 134-23(a).

Hawaii also allows individuals to obtain licenses to carry firearms in public places in certain circumstances. Section 134-9 of the Hawaii Code authorizes each county's chief of police to issue a license to carry a "pistol or revolver"—defined as a firearm with a barrel less than sixteen inches in length—either concealed or unconcealed. *Id.* §§ 134-1, 134-9(a). A chief of police may issue a license to carry a handgun concealed "[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property." *Id.* § 134-9(a). A chief of police may issue a license to carry a handgun openly "[w]here the urgency or the need has been sufficiently indicated," the applicant is "of good moral character," and the applicant "is engaged in the protection of life and property." *Id.*

B. Procedural History

1. In 2011, George Young twice applied for carry licenses from the County of Hawaii. App. 15a. Each time, he failed to identify any particularized need to carry a firearm in public; according to his complaint, he stated only that he wished to carry a handgun for "the purpose [of] personal security, self-preservation and defense, and protection of personal family members and property." *Id.* The chief of police denied the applications because Young did not identify an "exceptional case[] or a demonstrated urgency," as Section 134-9 requires. *Id.* (emphasis omitted).

Young sued the County, the State, and numerous state and local officials. App. 1a-4a. In his 53-page *pro se* complaint, Young raised a panoply of constitutional claims against Section 134-9, including that the statute constitutes a bill of attainder, that it impairs the obligation of contracts, and that it violates the Second, Ninth, and Fourteenth Amendments. App. 35a-64a.

2. The District Court granted respondents' motion to dismiss. Pet. App. 293. The court held that Young's claims against the State and its officials were barred by sovereign immunity, *id.* at 300-305, and it rejected Young's claims against the other respondents on the merits. *Id.* at 305-330. As relevant here, it held that Hawaii's licensing requirement does not implicate conduct protected by the Second Amendment and that, even if it does, it survives intermediate scrutiny. *Id.* at 315-321.

3. A divided panel of the Ninth Circuit reversed. The panel began by noting that the Ninth Circuit had previously held that the Second Amendment does not include "the right of a member of the general public to

carry *concealed* firearms in public." *Id.* at 225 (emphasis added) (quoting *Peruta*, 824 F.3d at 939). "Young's claim," the panel explained, "therefore picks up where Peruta's left off," and presents the question "whether the Second Amendment encompasses a right to carry firearms *openly* in public for self-defense." *Id.* (emphasis added).

After surveying the history of firearms restrictions, the panel concluded that the Second Amendment protects "some" right to open carry. *Id.* at 260-261 (emphasis omitted). It then found that Section 134-9 "amounts to a destruction" of that right because, according to the panel, it allows individuals to obtain open-carry licenses only if they are "security guard[s]" or others "whose job entails protecting life or property." *Id.* at 266-267 (citation omitted).

4. Following the panel's decision, the Hawaii Attorney General issued a formal opinion clarifying that the panel's understanding of Hawaii law was incorrect. *See* App. 66a-80a. Contrary to the panel's claim, Section 134-9 does not restrict open-carry permits to "private security officers" and persons similarly employed. App. 68a. It allows any otherwise-qualified person to obtain an open-carry license if she has the "urgency or the need" to carry a firearm in order to "protect[] * * * life and property." *Id.* at 70a (quoting Haw. Rev. Stat. § 134-9(a)); *see* 77a-78a. The Attorney General gave several illustrative examples of individuals who could qualify under this standard, including "victim[s] of stalking," persons who "ha[ve] suffered serious domestic abuse," and "witness[es] to a crime who ha[ve] received credible threats." App. 77a-78a.

The Attorney General noted that, prior to the panel opinion, no court had ever "suggested that section

134-9 limits open-carry licenses to private security officers." App. 67a-68a, 73a. The State and the County therefore petitioned for rehearing en banc.

C. The En Banc Decision

The Ninth Circuit granted rehearing en banc and, after supplemental briefing and oral argument, affirmed the judgment of the District Court. Pet. App. 15. In his 127-page opinion for the court, Judge Bybee concluded "that Hawai'i's restrictions on the open carrying of firearms reflect longstanding prohibitions and that the conduct they regulate is therefore outside the historical scope of the Second Amendment." *Id.* at 14-15.

1. Judge Bybee began his analysis by delineating "the scope of [the Ninth Circuit's] review." *Id.* at 25. He noted that "although Young peppered his pleadings with the words 'application' and 'enforcement,' he never pleaded facts to support an as-applied challenge." *Id.* at 27. Nor did he brief an as-applied claim before the District Court or the panel. *Id.* at 27-28. Accordingly, the court's review was "limited to Young's facial challenge," and did not include the question "whether Hawai'i County properly applied § 134-9." *Id.* at 27, 30.

Judge Bybee explained that the proper way to resolve that challenge was by conducting "a review of the historical record" to determine whether and to what extent "the right to carry a firearm openly in public is protected by the Second Amendment." *Id.* at 36, 39. The en banc court, he noted, was the first to "undert[ake] a systematic review of the historical right to carry weapons in public." *Id.* at 38. The other circuits to analyze the constitutionality of carry restrictions—including "[t]he two circuits that struck

down state or D.C. licensing rules"—had "largely avoided the historical record." *Id.* at 37. But Judge Bybee "d[id] not think we can avoid the historical record" and remain faithful to *Heller*. *Id.* at 38.

2. Judge Bybee started his historical inquiry "as did the Court in *Heller*": by examining "the English concept of the right to bear arms." *Id.* at 40. "English law," he found, "restricted public firearm possession as early as the thirteenth century." *Id.* A series of royal decrees dating back to 1299 prohibited individuals from "going armed within the realm without the king's special licen[s]e." *Id.* (emphasis omitted) (quoting 4 Calendar Of The Close Rolls, Edward I, 1296-1302, at 318 (Sept. 15, 1299, Canberbury) (H.C. Maxwell-Lyte ed., 1906)). In 1328, Parliament "effectively codified" those restrictions in the Statute of Northampton, which "prohibited all people" from "being armed in public." *Id.* at 43-44 (citing 2 Edw. 3, 258, ch. 3 (1328)).

For centuries, sovereigns "regularly instructed sheriffs to enforce the statute," and its effects "permeated public life." *Id.* at 47-48. Two leading seventeenth-century cases illustrated the statute's breadth. In *Chune* v. *Piott* (1615), 80 Eng. Rep. 1161 (K.B.), the King's Bench concluded that "[t]he sheriff could arrest a person carrying arms in public 'notwithstanding he doth not break the peace.'" Pet. App. 49 (quoting *Chune*, 80 Eng. Rep. at 1162). In *Sir John Knight's Case* (1686), 87 Eng. Rep. 75 (K.B.), the Chief Justice of the King's Bench "opined that the meaning of the Statute of Northampton was to punish those who go armed." Pet. App. 49-50. Although the jury acquitted Knight of the offense of carrying arms in public—for reasons disputed both by "original sources" and "the academic literature"—the court "required [Knight] to

pay a surety for good behavior[,]making Knight's 'acquittal' more of a conditional pardon." *Id.* at 51.

"English treatises also recognized the prohibition on publicly carrying arms in England." *Id.* at 52. John Carpenter wrote that "no one, of whatever condition he be, [may] go armed in the said city or in the suburbs, or carry arms, by day or by night." *Id.* (emphasis omitted) (quoting John Carpenter, *Liber Albus: The White Book of the City of London* 335 (Henry Thomas Riley ed., 1862)). William Hawkins "recognized that the lawful public carry of arms required some particular need," and that the desire to engage in "proactive self-defense" was not sufficient. *Id.* at 54 (citing 1 William Hawkins, *A Treatise of the Pleas of the Crown* 489 (John Curwood ed., 1824)). Sir William Blackstone and Lord Edward Coke, too, "strongly suggested that carrying arms openly was a status offense and that the law did not require proof of intent or effect." *Id.* at 54-55 (citing 4 William Blackstone, *Commentaries* *148-149 (1769); Edward Coke, *The Third Part of the Institutes of the Laws of England* 160 (E. and R. Brooke ed., 1797)).

The English Bill of Rights preserved these limits on the English right to bear arms. *Id.* at 55. It provided that individuals "may have [a]rms for their [d]efence suitable to their [c]onditions *and as allowed by [l]aw*." *Id.* (emphasis added) (quoting 1 W. & M., ch. 2, § 7, in 3 Eng. Stat. at Large 441 (1689)). As Blackstone explained, one restriction long "allowed by law" was "the prohibition on publicly carrying weapons, codified in the Statute of Northampton." *Id.* at 56 (citing 4 Blackstone, *Commentaries* *148-149).

3. "Early American colonists brought to the New World the English sensibilities over the carrying of

arms in public." *Id.* Many colonies "implemented restrictions on the carrying of arms similar to those found in the Statute of Northampton." *Id.* In 1686, for example, New Jersey passed a law providing that "no planter shall ride or go armed with sword, pistol, or dagger." *Id.* at 57 (quoting An Act against Swords, &c., 1686 N.J. Laws 289, 290, ch. IX). Six years later, Massachusetts Bay enacted a statute "patterned after the Statute of Northampton." *Id.* at 58. New Hampshire followed suit in 1699, as did Virginia in 1786. *Id.* at 58, 61.

Judge Bybee noted that some colonies "mandated public carry" in certain circumstances. *Id.* at 58-62. Virginia, for instance, "required colonists to carry arms to church." *Id.* at 58-59. But these laws reflected the colonies' "assum[ption] that they had the power to *regulate*—whether through *mandates* or *prohibitions*—the public carrying of arms." *Id.* at 61. They reinforced the view that, in the colonial era, "it was the role of local government, not individuals, to decide when th[e] duty [to bear arms in defense of the community] justified or mandated public carry." *Id.* at 61-62.

4. Judge Bybee turned next to "post Second Amendment restrictions on the right to bear arms." *Id.* at 62 (capitalization omitted). Here, too, he found a widespread tradition of "laws that restricted the public carrying of arms." *Id.* at 64.

Shortly after ratification, a number of states enacted or reenacted "versions of the Statute of Northampton," including North Carolina, Massachusetts, Tennessee, and Maine. *Id.* at 64-66. In 1836, Massachusetts revamped its firearm laws to provide that "weapons could not be carried in public *unless* the person so

armed could show 'reasonable cause.'" *Id.* at 67-68 (quoting 1836 Mass. Acts 750, ch. 134, § 16). That "good-cause restriction" quickly became the model for a number of other states and territories, including Wisconsin, Maine, Michigan, Virginia, Minnesota, Oregon, Pennsylvania, and West Virginia. *Id.* at 67-69. In the decades that followed, some jurisdictions enacted even broader restrictions—and, in some cases, outright prohibitions—on public carry, including Texas, Kansas, Wyoming, New Mexico, and Oklahoma. *Id.* at 69-73.

Nineteenth-century courts almost uniformly upheld these laws as consistent with the Second Amendment and its state constitutional analogues. Judge Bybee identified "[o]nly one" decision—the Kentucky Supreme Court's decision in *Bliss* v. *Commonwealth*, 12 Ky. (2 Litt.) 90 (1822)—that "held that there is a constitutional right to carry arms publicly." Pet. App. 86. That decision, however, was later overturned by state constitutional amendment, "was not followed by any other court," and "was considered and rejected by state courts in Alabama, Arkansas, Georgia, and Tennessee." *Id.* at 74. "Outside of that one case, the state courts generally agree[d] that the legislature can prohibit the carrying of concealed weapons." *Id.* at 86. And all five state high courts to squarely address the question held that states could limit "the open carrying of firearms" as well. *Id.*

"Most nineteenth-century American authors" agreed. *Id.* at 88. St. George Tucker and Joseph Story indicated that the Second Amendment prevents the state from "depriving the people of arms" "suitable for militia service," but not from prohibiting "the carrying of concealable arms." *Id.* at 87-88 (citing 5 St. George Tucker, *Blackstone's Commentaries* app'x 19 (William

Young Birch & Abraham Small eds. 1803); 3 Joseph Story, *Commentaries on the Constitution of the United States* 746 (1833)). William Rawle "drew a line between the use of firearms for hunting and their possession in other public places." *Id.* at 88 (citing William Rawle, *A View of the Constitution of the United States of America* 126 (1829)). Francis Wharton wrote that "[a] man cannot excuse wearing * * * armour in public, by alleging that such a one threatened him, and that he wears it for the safety of his person against his assault." *Id.* at 88-89 (quoting Francis Wharton, *A Treatise on the Criminal Law of the United States* 932, § 2497 (1857)).

"[P]erhaps the strongest endorsement for the right to carry firearms openly in public" came from John Ordronaux, writing in 1891. *Id.* at 91-92. Yet even he acknowledged that the right to bear arms "does not prevent a State from enacting laws regulating the manner in which arms may be carried." *Id.* (quoting John Ordronaux, *Constitutional Legislation in the United States* 242-243 (1891)).[1]

5. Stepping back from his "review of more than 700 years of English and American legal history," Judge Bybee identified "a strong theme: government has the power to regulate arms in the public square." *Id.* at 96. He acknowledged that "[h]istory is messy," and that "any one-sentence declaration that we might make will be subject to qualifications and exceptions,"

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[1] Firearm restrictions remained in force, and in some cases became "more detailed" in scope, throughout "[t]he first part of the twentieth century." Pet. App. 92. But because Judge Bybee doubted whether these later developments were "reliable as evidence of the original meaning of the American right to keep and bear arms," he did not "review [them] in detail." *Id.*

which he would "address in the next section." *Id.* at 96-97. But, as a basic rule, he stated that "[t]he contours of the government's power to regulate arms in the public square is at least this: the government may regulate, and even prohibit, in public places—including government buildings, churches, schools, and markets—the open carrying of small arms capable of being concealed, whether they are being carried concealed or openly." *Id.* at 97. Judge Bybee emphasized that the court needed to "go no further than this" to resolve Young's claims, "because the Hawai'i firearms licensing scheme Young challenges only applies to 'a pistol or revolver and ammunition therefor.' " *Id.* (quoting Haw. Rev. Stat. § 134-9(a)).

Judge Bybee added that history revealed a number of "general exceptions" to this "basic rule." *Id.* at 96, 107 (capitalization omitted). Historically, firearm laws did not prohibit public carry by "certain classes of persons," including law enforcement officers, foreign travelers, and hunters. *Id.* at 107-108. They restricted carry only in "public places," not in homes and businesses. *Id.* at 108. And they allowed persons to obtain a license or post a surety enabling the public carry of firearms for "good cause." *Id.* at 108-111. "None of the longstanding exceptions for certain types of public carry," however, "diminishe[d] in any significant way the government's power to regulate the carrying of arms in public places." *Id.* at 111-112.

Judge Bybee also explained that the rule and exceptions he outlined were "fully consonant with the Second Amendment right recognized in *Heller*." *Id.* at 97. *Heller* emphasized that " '[t]he *central component* of the Second Amendment' is the 'basic right' of self-defense, whose exercise is 'most acute in the home.' " *Id.* (internal quotation marks omitted) (quoting

McDonald v. *City of Chicago*, 561 U.S. 742, 767 (2010), in turn quoting *Heller*, 554 U.S. at 599, 628). By contrast, *Heller* found that the Second Amendment does not protect "a right to 'carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" *Id.* (quoting *Heller*, 554 U.S. at 626). "The power of the government to regulate carrying arms in the public square does not infringe in any way on the right of an individual to defend his home or business." *Id.* at 98. And whereas defense of the home is quintessentially a private right, "[d]efense of the public square" is "peculiarly the duty of the states." *Id.* at 98-99.

6. Before applying the rule and exceptions to Hawaii's law, Judge Bybee offered "several general observations" in response to the dissenters. *Id.* at 113. The en banc majority, he noted, had "labored to make sense of the whole record," "recognized that the materials do not always agree in all the particulars," and "worked to distill the central meaning from the record." *Id.* at 113-114. The dissenters, by contrast, "dispensed with most of the [historical] resources available to us," including "the English practice, the entire history of American legislation, half of the state cases, and at least half of the scholarly commentary." *Id.* at 115, 121. "[W]ith respect," Judge Bybee said, this "is not history." *Id.* at 116.

Further, the dissents' particular reasons for disregarding most of the history were flawed. The available evidence indicated that the Statute of Northampton and its progeny had not "fallen into desuetude," as the dissenters claimed. *Id.* at 117. Colonies and states repeatedly adopted and updated the Statute of Northampton even after their ties with England had been severed. *Id.* And a number of courts resolved

cases in which states sought to enforce open-carry restrictions. *Id.*

The dissent also "overstated its case" when it rejected "roughly half of the state cases that did address the constitutionality of firearms regulations" on the ground that those cases were "premised on a militia-focused view of the right to bear arms" that *Heller* rejected. *Id.* at 119-120, 145. "None of those state decisions took the position disapproved by the Supreme Court in *Heller*"—that is, that a state may ban "all weapons except when actually used in militia service." *Id.* at 120-121. They simply held that "[t]he militia clause helps us understand the contours of the Second Amendment," a position in accord with (indeed, echoed by) *Heller*'s own analysis. *Id.* at 121.

7. Judge Bybee concluded by holding that "Hawai'i's licensing scheme stands well within our traditions." *Id.* at 122. "Section 134-9 requires a license to carry a pistol or revolver, concealed or unconcealed." *Id.* And, "[c]onsistent with English and American legal history," it allows carry by certain persons (including "police officers," "members of the armed forces," and "hunters and target shooters"), in certain places (a person's "place of business, residence or sojourn"), and for certain purposes (where there is "reason to fear injury to * * * person or property," or where " 'the urgency or the need has been sufficiently indicated' and the applicant is 'engaged in the protection of life and property' "). *Id.* (quoting Haw. Rev. Stat. § 134-9(a)). Accordingly, "Hawai'i's restrictions have deep roots in the Statute of Northampton and subsequent English and American emendations, and do not infringe what the Court called the 'historical understanding of the scope of the right.' " *Id.* at 122-123 (quoting *Heller*,

554 U.S. at 625). Section 134-9 is thus "facially consistent with the Second Amendment." *Id.* at 123.[2]

REASONS FOR DENYING THE PETITION

The decision below is the first—and, to date, only—opinion to "undert[ake] a systematic review of the historical right to carry weapons in public," or to apply that history to a law restricting the open carry of firearms. Pet. App. 38. And it is a model of how courts should analyze the Second Amendment. Judge Bybee conducted a historical analysis of extraordinary breadth, sensitivity, and fair-mindedness—surveying English history, colonial practices, and early American laws, treatises, and cases to determine how the right to keep and bear arms was historically understood. The Court need only read Judge Bybee's careful work to confirm that he did not disregard this Court's holding in *Heller*, or treat the Second Amendment as a "second-class right." *McDonald*, 561 U.S. at 780.

Rather than grapple with the exemplary opinion Judge Bybee wrote, Young attacks a straw man. He accuses Judge Bybee of holding that the Second Amendment "does not apply outside the home at all." Pet. 1. He claims that the Ninth Circuit addressed a question "identical" to the one on which this Court granted certiorari in *NYSRPA*. *Id.* at 11 (capitalization omitted). And he argues that the en banc court's opinion is "at war" with the holdings of other circuits,

[2] The en banc court also rejected Young's claims that Section 134-9 imposes an unconstitutional "prior restraint" and violates procedural due process. Pet. App. 123-127. Young does not renew those claims in his petition, and so they have been forfeited.

as well as the text of the Second Amendment itself. *Id.* at 1, 20.

None of these claims is accurate. Judge Bybee issued a narrow, carefully circumscribed holding that addressed only the specific open-carry law before him. That holding is neither implicated by this Court's grant of certiorari in *NYSRPA*, nor a plausible candidate for certiorari in its own right.

I. YOUNG SEVERELY MISCHARACTERIZES THE NINTH CIRCUIT'S HOLDING.

Young's principal claim is that the Ninth Circuit "effectively abrogated the Second Amendment right of self-defense" by holding that the right to bear arms "does not apply outside the home at all." Pet. i, 10. This dramatic claim serves as the premise of most of Young's petition—including his asserted circuit split, *id.* at 14, his claim that this case is encompassed by the *NYSRPA* grant, *id.* at 11, and his contention that the opinion below is at odds with the Second Amendment's text, *id.* at 22. That claim, however, is incorrect.

To see why that is so, one need look no further than the opinion's own description of its holding. Judge Bybee explicitly stated that his opinion went "no further than" holding that "the government may regulate, and even prohibit, in public places * * * *the open carrying of small arms capable of being concealed*." Pet. App. 97 (emphasis added). And he hastened to add that this "[b]asic [r]ule" is "subject to exceptions and qualifications." *Id.* at 96-97. Among other things, he noted that laws regulating open carry have historically exempted "certain classes of persons," *id.* at 107, been limited to "public places," *id.* at 108, and made exceptions for individuals who "could demonstrate

good cause," *id.* at 109. Indeed, Judge Bybee spent a full 16 pages spelling out "The Basic Rule" and "The Exceptions." *See id.* at 96-112. Reducing this subtle, multi-part holding to a simplistic "one-sentence declaration" is precisely what Judge Bybee told litigants they should *not* do. *Id.* at 97.

Nor was all this talk of "qualifications and exceptions," *id.*, empty dicta. When Judge Bybee turned to analyzing Hawaii's law, he carefully confirmed that it followed both the basic rule and the historical exceptions he had outlined. First, he found that the law "only applies to 'a pistol or revolver and ammunition therefor' "—that is, to small arms capable of being concealed. *Id.* (quoting Haw. Rev. Stat. § 134-9(a)). Then, he checked whether the law satisfied each of the historical exceptions. He found that, just like laws dating to the Statute of Northampton, Hawaii "exempts" certain classes of persons from its restrictions on public carry—including "police officers," "certain persons employed by the state," "members of the armed forces," and "hunters and target shooters." *Id.* at 122 (citing Haw. Rev. Stat. §§ 134-5, 134-11(a)). He found that Hawaii restricts carry only in public places, and does not trench on "the right of persons to arm themselves in their 'places of business, residence, or sojourn.' " *Id.* (quoting Haw. Rev. Stat. § 134-23). And he found that Section 134-9 enables people to obtain a license for good cause, including when they have "reason to fear injury" or a need to "protect[ ] * * * life and property." *Id.* (quoting Haw. Rev. Stat. § 134-9(a)).

Only after confirming that "Hawai'i's licensing scheme stands well within our traditions" in each of these respects did Judge Bybee find the statute constitutional. *Id.* And then, too, he made clear that both the rule and the exceptions were critical to his

analysis: Hawaii's law, he explained, had "deep roots in the Statute of Northampton *and subsequent English and American emendations*." *Id.* at 122-123 (emphasis added). The "emendations" to which he was referring, *id.* at 123, were "the general exceptions the states made to the no public carry rule" outlined earlier in his opinion. *Id.* at 107.

Tellingly, Young does not identify a single word in the majority opinion that supports his contention that the Ninth Circuit eliminated any right to public carry. He instead rests that claim—the keystone of his petition—on a citation to the dissent. *See* Pet. 14 (quoting Pet. App. 128 (O'Scannlain, J., dissenting)). It would hardly be unusual for dissenters to overstate the import of a majority opinion with which they disagreed. Here, the dissenters cited two snippets to support their claim that the majority held "that public carry falls *entirely* outside the scope of the Amendment's protections," Pet. App. 128, and neither bears the weight the dissent assigned it.

First, the dissent quoted the majority's statement that states "may * * * *prohibit*, in public places[,] * * * the open carrying of small arms capable of being concealed." *Id.* at 169 (citation omitted). By its terms, however, that holding applied only to "small arms capable of being concealed," not all public carry. *Id.* at 97 (majority opinion). And, more importantly, the majority caveated this holding by stating that it was "subject to qualifications and exceptions" that the majority "address[ed] in the next section." *Id.* The dissent simply disregarded that caveat and the six pages of exceptions that followed. *Id.* at 107-112.

Second, the dissent quoted a statement appearing at the very end of the section entitled "The Exceptions."

Id. at 107. After cataloguing each of the historical limitations on the basic rule he had identified, Judge Bybee stated:

> None of these longstanding exceptions for certain types of public carry diminishes *in any significant way* the government's power to regulate the carrying of arms in public places. The fact that we have recognized the need for [exceptions for certain persons, places, and purposes] * * * does not detract in any way from *the fundamental point* that for centuries we have accepted that, in order to maintain the public peace, the government must have the power to determine whether and how arms may be carried in public places. There is no right to carry arms openly in public; nor is any such right within the scope of the Second Amendment.

Id. at 111-112 (emphases added). The dissent plucked out the final sentence of this passage and read it as eliminating any Second Amendment right to open carry. *Id.* at 128 (O'Scannlain, J., dissenting). Read in context, however, the meaning of that sentence is far more modest. Judge Bybee was explaining that the exceptions he had just identified did not detract "in any significant way" from "the fundamental point" he had previously laid out: that there is no unqualified right to openly carry concealable arms in public. *Id.* at 111-112 (majority opinion). He plainly did not mean that states are free to disregard "the longstanding exceptions" to that rule described *in the immediately preceding sentence*. *Id.* That self-defeating reading is rendered still more implausible by the fact that, in analyzing Hawaii's law, Judge Bybee meticulously confirmed that Section 134-9 satisfied *both* the basic rule *and* the exceptions he had outlined, *see id.* at

122—an exercise that would have been pointless had Judge Bybee adopted the categorical rule Young imagines.

The Court should not grant certiorari to address the validity of a holding that the Ninth Circuit did not issue. At minimum, basic principles of prudence and restraint counsel in favor of waiting to see if the Ninth Circuit actually adopted the implausibly broad rule Young claims before granting review. This Court will not need to wait long: The Ninth Circuit is currently considering a challenge to California's open-carry law. *See Flanagan* v. *Becerra*, No. 18-55717 (9th Cir.). If the Ninth Circuit reads the decision below as broadly as Young does—notwithstanding all of the indicia to the contrary—that case will make it apparent, and the Court can decide whether to grant review then.

II. THIS CASE DOES NOT WARRANT CERTIORARI.

Once the proper scope of Judge Bybee's opinion is grasped, Young's case for certiorari crumbles. This case does not implicate a "circuit split on whether the Second Amendment right extends outside the home at all," Pet. 14 (emphasis in original), because the court below did not deny that it did. Similarly, Young's extended arguments that "the Right to Bear Arms Extends Beyond the Home," *id.* at 20, and that "[t]he History of the Second Amendment Confirms That the Right to Bear Arms Extends Beyond the Home," *id.* at 24, are directed at a straw man. Judge Bybee did not hold that the right to bear arms is limited to the home. Nor does Hawaii's law confine it there: It authorizes carry outside the home in numerous circumstances, including for ordinary citizens who have reason to fear injury or damage to property. *See* Haw. Rev. Stat.

§ 134-9(a). Indeed, Young's principal question presented—"Whether the Ninth Circuit erred in holding * * * that the Second Amendment does not apply outside the home at all," Pet. i—is premised on a fallacy.

Even construing Young's arguments as reasons for granting certiorari on the question the Ninth Circuit actually decided, they still fall flat. There is no circuit split on the constitutionality of laws requiring good cause to carry small, concealable weapons openly in public. And Young does not come close to demonstrating that the en banc panel's thorough opinion upholding the constitutionality of Hawaii's law was in error.

1. Young fails to identify any circuit split on the issue the Ninth Circuit resolved. No court other than the Ninth Circuit has specifically considered the constitutionality of good-cause restrictions on the open carry of handguns, or considered (let alone disagreed with) the ample historical evidence the Ninth Circuit marshalled in support of such laws.

In *Wrenn* v. *District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), the D.C. Circuit considered the constitutionality of a District of Columbia law that restricted "the *concealed* carry of handguns." *Id.* at 655 (emphasis added). The court did not discuss open carry at all. *See id.* (noting that concealed carry is "the only sort of carrying the [D.C.] Code allows"). And, by its own admission, it largely "sidestep[ped] the historical debate" concerning restrictions on public carry. *Id.* at 660. The only historical questions it considered were whether the Second Amendment "protect[s] carrying in densely populated or urban areas," *id.* at 659-661, and whether D.C.'s concealed-carry law was analogous to "English 'surety laws,' " *id.* at 661. The first issue plainly has no relevance to Hawaii's law. And

while the second issue has some glancing relevance—and Judge Bybee "vigorously disagree[d]" with the D.C. Circuit's analysis on this point, Pet. App. 111—surety laws provide only one small piece of support for the decision below. *Compare id.* at 67-69 (discussing surety laws), *with id.* at 40-67, 69-96 (discussing other historical evidence supporting Hawaii's law). This disagreement on a subsidiary historical question—in the context of opinions addressing two markedly different types of public-carry laws—does not make for a cert-worthy split.

The Seventh Circuit's decision in *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012), is even further afield. There, the Seventh Circuit struck down an Illinois law that imposed a "blanket prohibition on carrying gun[s] in public." *Id.* at 940; *see People* v. *Aguilar*, 2 N.E.3d 321, 326-328 (Ill. 2013) (same). This "flat ban"—the "*only*" law of its kind in the country, *Moore*, 702 F.3d at 940 (emphasis in original)—is categorically unlike Hawaii's law, which allows public carry in numerous circumstances. *See* Haw. Rev. Stat. § 134-9(a). Indeed, the Seventh Circuit expressly distinguished Illinois' law from good-cause requirements, *Moore*, 702 F.3d at 940, and later upheld a revised version of the Illinois law that allowed concealed carry in specified circumstances while barring open carry altogether. *See Shepard* v. *Madigan*, 734 F.3d 748, 749-750 (7th Cir. 2013); *Berron* v. *Illinois Concealed Carry Licensing Review Bd.*, 825 F.3d 843 (7th Cir. 2016).

Each of the remaining circuits Young cites *upheld* laws imposing limits on public carry. *See Gould* v. *Morgan*, 907 F.3d 659 (1st Cir. 2018); *Kachalsky* v. *County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Drake* v. *Filko*, 724 F.3d 426 (3d Cir. 2013); *Woollard* v. *Gallagher*, 712 F.3d 865 (4th Cir. 2013). None of

these decisions cast doubt on the constitutionality of open-carry laws; indeed, each of them addressed laws that either applied exclusively to concealed-carry, *see Kachalsky*, 701 F.3d at 84, or that drew no distinction between open and concealed carry, *see Gould*, 907 F.3d at 667; *Drake*, 724 F.3d at 433; *Woollard*, 712 F.3d at 869. Like the D.C. Circuit, these cases largely "avoided extensive historical analysis." Pet. App. 37. They present no conflict with the decision below, and any tension between these decisions and *Wrenn*—which would not affect this case in any event—is already slated to be resolved by this Court in *NYSRPA*.

2. Lacking any plausible claim of a split, Young devotes the lion's share of his petition to the merits. *See* Pet. 16-30. But this discussion, too, is largely directed at a phantom target. Young's principal claim is that circuits have erred by applying intermediate scrutiny to firearms restrictions, by failing to analyze the "text, history, and tradition of the Second Amendment," and by upholding carry restrictions based solely on policy justifications. Pet. 16-17; *see* Br. of *Amici Curiae* Firearms Policy Coal. et al. 2-18 (same). Whatever the merit of these accusations as to other opinions by other courts, they have no application to the decision below, which did not apply intermediate scrutiny, and which rested its analysis exclusively on the Constitution's text, history, and tradition, not policy. *See supra* pp. __-__. It is Young who sees fit to expound at length on the purported policy benefits of the public carry regime he favors. *See* Pet. 17-19.

Young also repeats the arguments of the dissenters below, albeit in abbreviated form. Judge Bybee answered each of these arguments in his majority opinion, and pointed out their central flaw: The dissent "dispensed with most of the [historical] resources

available," and instead "picked its friends and c[a]me to a fore-ordained conclusion." Pet. App. 115-116. That approach "[wa]s not history" when taken by the dissent, *id.* at 116, and it is no more persuasive when repeated by Young.

To take just a few examples: Young asserts that the Statute of Northampton was "the first law that regulated the carry of arms," Pet. 24, even though Judge Bybee identified similar laws dating back decades earlier. *See* Pet. App. 40-43. Young claims that the Statute of Northampton "only restricted carry with ill intent," Pet. 25, but ignores the numerous cases and treatises explaining that "carrying arms openly was a status offense and that the law did not require proof of intent or effect." Pet. App. 54; *see id.* at 49-56. Young states that "only *one* colony enacted a broad statutory restriction on bearing arms by law-abiding citizens," Pet. 27 (emphasis added), while ignoring the many other colonial-era "prohibitions on public carry" that refute his claim. Pet. App. 58.

Young's treatment of the post-Founding sources is no better. He does not even mention the dozens of state laws restricting public carry in the decades after the founding. *Id.* at 64-73. Nor does he acknowledge the many treatises recognizing the validity of such laws. *Id.* at 87-92. He instead focuses on just four nineteenth-century cases. *See* Pet. 28. Young offers no principled reason for zeroing in on these cases rather than the far greater number that run against his position; he just declares them "more insightful." *Id.* And even those four cherry-picked cases hardly provide impressive support for Young's view. Two of the four—*State* v. *Reid*, 1 Ala. 612 (1840) and *Andrews* v. *State*, 50 Tenn. (3 Heisk.) 165 (1871)—recognized the constitutionality of broad limits on open carry, while

the other two—*Nunn* v. *State*, 1 Ga. 243 (1846) and *State* v. *Chandler*, 5 La. Ann. 489 (1850)—upheld complete prohibitions on concealed carry. *See* Pet. App. 75-78, 81-82 (discussing cases); *Heller*, 554 U.S. at 626 (discussing *Nunn* and *Chandler*).

That leaves Young's claim that the bare text of the Second Amendment guarantees individuals an unqualified right to carry arms in public. *See* Pet. 20-24. *Heller*, however, already forecloses that contention. There, Justice Scalia explained that the right to bear arms is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. Rather, it is a right subject to "longstanding prohibitions," which courts are required to ascertain by engaging in "historical analysis * * * of the full scope of the Second Amendment." *Id.* at 626-627. Judge Bybee faithfully performed that analysis below. Young—who simply ignores the great bulk of the history that refutes his position—does not.

3. This case also presents a premature and exceptionally poor vehicle to review the question presented. The Ninth Circuit is the first court of appeals to review the question presented or the underlying history. Pet. App. 38. Given the wealth of historical materials at issue, it would be unsurprising if more research, more advocacy, and more judicial opinions produced greater insight into the historical question at issue. Leaping to address the question at the first opportunity would short-circuit that percolation in precisely the context where it is needed most, and risk producing an opinion that does not stand the test of time.

Young's own litigation choices have also artificially constrained the scope of this Court's review. Young

forfeited any as-applied challenge to Hawaii's law by failing to raise it in his complaint or in his panel-stage appellate briefing. *See id.* at 27-28. Young also forfeited any challenge to Hawaii's restriction on carrying rifles and shotguns in public. *Id.* at 25-26 n.3, 224 n.3. If this Court granted review, it would thus be constrained to asking whether a single component of Hawaii's comprehensive firearms regime (its restriction on openly carrying handguns in public) is unconstitutional on its face—a highly suboptimal posture in which to review a question of such magnitude.

Apparently recognizing this defect, Young urges the Court to revisit the panel's holding that Young forfeited his as-applied challenge, Pet. 13-14, and peppers his brief with attacks on the manner in which both the State of Hawaii and Hawaii County allegedly apply the law. *See, e.g.*, *id.* at 1, 6, 13, 19-20. But the panel had sound reasons for holding that Young forfeited an as-applied claim—not least Young's own admission that he "made a facial challenge." Pet. App. 30 (citation and emphasis omitted). This Court is not usually in the business of reviewing case-specific forfeiture determinations.

The procedural history of this case adds a host of additional complications. Proceeding *pro se*, Young filed a "lengthy and rambling complaint" that makes it difficult to discern even the basic facts of his claim. *Id.* at 25 n.3; *see* App. 1a-65a. The case arises in a motion to dismiss posture, where no facts are properly part of the record except the complaint itself (despite Young's improper attempt to inject additional facts into his petition). Further, even though the Attorney General issued a formal opinion advising that the original Ninth Circuit panel misconstrued Hawaii law, *see* App. 66a-80a, Young continues to suggest that the Court should

disregard that plain-text interpretation and read state law as limiting open carry to "security guards." Pet. 13.

It might be the case that, at some point, the Court should consider the constitutionality of open-carry laws. But it should not do so after a single published opinion specifically addressing the question, in a case hamstrung by procedural defects, and where the petitioner insists on litigating questions not properly implicated by the opinion below.

III. THIS CASE SHOULD NOT BE CONSIDERED OR HELD ALONGSIDE *NYSRPA*.

Young's alternative argument is that, even if his petition does not merit certiorari in its own right, it presents "the same issue" as *NYSRPA* and should be considered in tandem with that case. Pet. 1. This request has already been overtaken by events: The petitioners' merits brief in *NYSRPA* was filed on July 13, and respondent's brief is due on September 14. Young offers no reason why the Court should halt the progress of *NYSRPA* to enable him to catch up months after that case has been fully briefed.

Nor would it be appropriate to hold this case for *NYSRPA*, as some of Young's amici (but not Young himself) suggest. The questions presented in the two cases are markedly different, such that any decision in that case is highly unlikely to affect the disposition below. The question presented in *NYSRPA*, as reformulated by this Court, is "[w]hether the State's denial of *petitioners' applications* for *concealed-carry* licenses for self-defense violated the Second Amendment." Order, No. 20-843 (U.S. Apr. 26, 2021) (emphases added). *NYSRPA* thus involves (1) an as-applied

challenge to (2) a concealed-carry law. Each of those limits was imposed by this Court. *Cf.* Pet. i, *NYSRPA*, No. 20-843 (U.S. Dec. 17, 2020) (posing substantially broader question presented). This case differs in both respects.

First, this case involves the constitutionality of a restriction on open carry, not concealed carry. Both the panel and the en banc court repeatedly emphasized that the only question this case presents is the constitutionality of "Hawai'i's restrictions on the *open carrying* of firearms." Pet. App. 14 (emphasis added); *see id.* at 36, 221, 225, 267 n.21. The Ninth Circuit did not consider the constitutionality of Hawaii's limits on concealed carry, which are set forth in a separate sentence of Section 134-9(a) and governed by distinct legal standards. *See* Haw. Rev. Stat. § 134-9(a). Young himself tacitly acknowledges that this case is not about concealed carry: Although he claims that the question presented here is "the same" as the one in *NYSRPA*, he conspicuously omits the words "concealed-carry" from his second question presented, which is otherwise copied verbatim from the order granting certiorari in *NYSRPA*. *Compare* Pet. i, *with* Order, *NYSRPA*, No. 20-843 (U.S. Apr. 26, 2021).

Concealed-carry laws stand on considerably different historical footing than open-carry laws. The Ninth Circuit analyzed the two types of laws in separate en banc opinions—concealed carry in *Peruta*, open carry in the decision below—and as even a casual comparison discloses, the relevant historical materials at issue in each case differ substantially. In upholding a prohibition on concealed carry, *Peruta* relied on centuries of English laws specifically "forbidding concealed weapons," nineteenth-century precedents unanimously holding that "members of the general

public could be prohibited from carrying concealed weapons," and this Court's own statement that the Second Amendment " 'is not infringed by laws prohibiting the carrying of concealed weapons.' " *Peruta*, 824 F.3d at 930-939 (quoting *Robertson* v. *Baldwin*, 165 U.S. 275, 281-282 (1897)). The opinion below, by contrast, analyzed a wealth of laws, treatises, and nineteenth-century cases that specifically addressed the open carry of firearms. *See* Pet. App. 43-92. Judge Bybee did not rely on *Peruta* in any significant respect when performing that historical survey; nor, for that matter, did the dissenters. Even if *Peruta*'s holding were called into question by *NYSRPA*, the decision below would thus continue to stand on its own feet.

Moreover, the contemporary legal landscapes governing open carry and concealed carry are different. Today, more than twenty states impose restrictions on the open carry of firearms.[3] Many of those states regulate open and concealed carrying differently, in recognition of the fact that openly carrying a handgun can terrorize bystanders and provoke conflict in a way that concealed carry may not. For instance, five states and the District of Columbia prohibit open carry of handguns even while allowing concealed carry, and six states restrict when a person may carry a handgun openly rather than concealed.[4] It would be a grave mistake to assume that the rules governing open

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[3] *See Guns in Public: Open Carry*, Giffords Law Ctr., https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/open-carry (last visited July 25, 2021) (listing states that restrict the open carry of firearms).

[4] *Compare id.*, *with Guns in Public: Concealed Carry*, Giffords Law Ctr., https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/ (last visited July 25, 2021).

carry and concealed carry must stand or fall together, particularly after the Court took care in *NYSRPA* to limit its consideration to "concealed-carry licenses" alone.

Second, this case, unlike *NYSRPA*, involves solely a facial challenge. The en banc court found that Young forfeited any challenge to Hawaii's law as applied, and so did not consider Young's belated claim that Hawaii County did not "properly appl[y] § 134-9" in Young's case. Pet. App. 27-28. That distinguishes this case from *NYSRPA*, which concerns the constitutionality of "the State's denial of *petitioners' applications* for concealed-carry licenses." Order, No. 20-843 (U.S. Apr. 26, 2021) (emphasis added). That framing places the focus on the particular reasons the *NYSRPA* petitioners gave for seeking carry licenses—namely, that they lived in a high-crime area or had extensive experience with firearms. *See New York State Rifle & Pistol Ass'n* v. *Beach*, 354 F. Supp. 3d 143, 146-147 (N.D.N.Y. 2018). Young has not offered any such reason. His challenge can prevail only if "no set of circumstances exists under which" requiring good cause for an open-carry license is constitutional. *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). *NYSRPA* will not present occasion for the Court to address that question.

The long and short of it is this: The Court granted certiorari on a carefully circumscribed question in *NYSRPA*. This case involves a different type of firearm law, supported by a different body of historical evidence, and subject to a different type of challenge. The Court should not treat the cases alike or allow its decision in one to control the other.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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