

No. 20-843

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IN THE  
*Supreme Court of the United States*

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NEW YORK STATE RIFLE &  
PISTOL ASSOCIATION, INC., *et al.*,  
*Petitioners,*

v.

KEVIN P. BRUEN, in his official capacity as  
Superintendent of the New York State Police, *et al.*,  
*Respondents.*

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

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BRIEF OF THE VIOLENCE POLICY CENTER AS  
*AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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## INTEREST OF *AMICUS CURIAE*

*Amicus curiae* the Violence Policy Center is a national non-profit educational organization that conducts research on firearms violence and provides information and analysis to policymakers, journalists, organizations, researchers, advocates, and the general public. The Violence Policy Center examines the role of firearms in the United States, analyzes trends and patterns in firearms violence, and works to develop policies to reduce gun-related deaths and injuries. In addressing these matters, the Violence Policy Center conducts numerous fact-based studies on a wide range of gun violence issues, which have influenced congressional and state policymaking on the regulation of firearms.<sup>1</sup>

The Violence Policy Center actively tracks non-self-defense killings involving private citizens who have permits to carry concealed handguns, and makes data on such killings publicly available through an online database and reference entitled *Concealed Carry Killers*.<sup>2</sup> Based on this data, the Violence Policy

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<sup>1</sup> Pursuant to Rule 37.6, *amicus* affirms that no counsel for any party authored this brief in whole or in part, and no person other than *amicus*, its members, or its counsel made a monetary contribution to fund the preparation or submission of this brief. Petitioners have provided blanket consent for *amici* to file briefs, and Respondents have provided written consent to the filing of this *amicus* brief.

<sup>2</sup> See <https://concealedcarrykillers.org/>. The incidents in *Concealed Carry Killers* are only examples. There is no comprehensive federal database of concealed carry incidents, and some states even bar the release of such information by law. As a result, the examples in *Concealed Carry Killers* are taken primarily from news reports and from the reporting required in a few states. These examples thus represent an unknown, but

Center urges the Court, if it were to hold that private individuals have any Second Amendment right to carry concealed firearms in public, to hold further that New York’s “proper cause” licensing regime is a constitutionally permissible, legitimate restriction on that right because the law protects the citizens of New York from the significant danger posed by the widespread concealed carriage of handguns in public.

### **SUMMARY OF ARGUMENT**

New York’s licensing regime is a legitimate restriction on the rights of private citizens because concealed firearms in the hands of the general public have an unmatched ability to cause unlawful violence, including killing and maiming innocent people.

In 1911, New York enacted the Sullivan Law, which made it unlawful to carry, without a license, “any pistol, revolver or other firearm of a size which may be concealed upon the person.” 1911 N.Y. Laws, Ch. 195, § 1, at 443 (codifying N.Y. Penal Law § 1897, ¶ 3). In 1913, the New York legislature amended the Sullivan Law and established standards for the issuance of concealed carry licenses. As amended, the Sullivan Law permitted a magistrate to issue a concealed carry license upon proof “of good moral character” and a showing that “proper cause exists for the issuance” of the license. 1913 N.Y. Laws, Ch. 608, § 1, at 1629.

New York’s licensing regime was introduced to curb a wave of murders and suicides committed with handguns. New York legislators recognized that the

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likely small, portion of similar incidents that routinely occur across the nation.

widespread carrying of concealed handguns in public presented a grave threat to public safety. See N.Y. TIMES, *Revolver Killings Fast Increasing; Legislative Measure to be Urged for Curbing the Sale of Firearms* (Jan. 30, 1911), at 4. In recognition of these facts, they enacted the Sullivan Law, a reasonable response to the heightened dangers associated with citizens carrying concealable handguns.

New York's current licensing regime for the carrying of concealed handguns is substantially the same as it was when the Sullivan Law was first enacted, 110 years ago. Today, New York residents can obtain a "carry" license which allows them to carry a concealed "pistol" or "revolver" in public. Such licenses "shall be issued" to applicants engaged in certain kinds of employment (including certain state and local judges, correctional facility employees, and bank messengers), N.Y. Penal Law § 400.00(2)(c)–(e), as well as to other qualified applicants who can show "proper cause," N.Y. Penal Law § 400.00(2)(f).

Petitioners challenge the constitutionality of New York's "proper cause" requirement. But even assuming there is any constitutional protection under the Second Amendment for the concealed carriage of firearms, New York may appropriately restrict that right to address the significant harms that flow from the concealed carriage of handguns. We discuss three significant reasons why New York's limits are legitimate.

First, in the 110 years that have passed since the enactment of the Sullivan Law, the suitability of New York's licensing regime as a means of protecting the public has become ever more apparent. In the past century, handguns have evolved to become deadlier

and more efficient killing machines. Today's handguns are increasingly designed to maximize lethality and mimic military-style weapons. Replacing the five- or six-shot revolvers that plagued the boroughs of New York City at the turn of the Twentieth Century, modern high-capacity semiautomatic pistols have the alarming ability—demonstrated all too often in mass shootings across this country—to kill far more quickly and effectively than their predecessors. Reversing the court of appeals' judgment would open New York's streets, parks, playgrounds, and other public spaces to these modern handguns, with potentially catastrophic consequences.

Second, New York's licensing regime is also a valid and constitutional restriction because—as even many pro-gun advocates concede—handguns are generally not an effective self-defense tool. Compared to other firearms, handguns are smaller and harder to shoot accurately. When faced with a real threat that requires self-defense, humans experience involuntary physiological and mental impairments. The critical skills needed to shoot a handgun accurately are the very skills that are lost in a moment of life-threatening danger, resulting in a greater likelihood that innocent people are killed or injured.

Third, the claim by many proponents of “shall issue” regimes, including some *amici* in support of Petitioners, that concealed carry permit holders are more law-abiding than the general population—and that such permit holders do not commit violent crimes—are grossly exaggerated. Far too frequently, individuals with concealed carry permits commit

unjustified homicides and mass shootings. The Violence Policy Center has documented hundreds of examples of non-self-defense killings by private citizens with concealed carry permits since it began the *Concealed Carry Killers* project in 2007. Tragically, these deaths have included the killing of at least 24 law enforcement officers, as well as at least 37 mass shootings in America’s workplaces, colleges, bars, places of worship, and other public arenas.

New York’s licensing scheme is a legitimate and constitutional effort to balance these significant risks to public safety against those instances where there might be a valid reason for someone to carry a concealed handgun.

#### ARGUMENT

#### **New York’s “Proper Cause” Licensing Regime Is A Legitimate Restriction On Any Private Right To Carry A Concealed Firearm In Public.**

This case presents the question whether New York’s “proper cause” licensing regime for carrying concealed firearms is constitutional.

While not the focus of this brief, the Violence Policy Center posits that the Second Amendment does not confer upon private citizens the right to carry concealed weapons in public. See, *e.g.*, *Robertson v. Baldwin*, 165 U.S. 275, 281–82 (1897) (recognizing that “the right of the people to keep and bear arms \* \* \* is not infringed by laws prohibiting the carrying of concealed weapons.”); *Peruta v. Cty. of San Diego*, 824 F.3d 919, 924 (9th Cir. 2016) (en banc) (holding that the Second Amendment does not enshrine a right of a member of the general public to carry concealed firearms in public).



If the Court were, nonetheless, to find that the Second Amendment does, in fact, include such a right, the Court should hold that New York’s licensing regime is a constitutional—indeed, an eminently reasonable—restriction on that right. As this Court recognized in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008), any right under the Second Amendment “is not unlimited.” The Court in *Heller* in fact specifically noted that “the majority of the 19<sup>th</sup>-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful.” *Ibid.* Because any such right is not absolute, it is—as Petitioners themselves acknowledge—subject to legitimate restrictions. See Pet. Br. 30 (recognizing that “like the right to keep arms and virtually every other constitutional right, the right to carry was not unlimited”).

New York’s licensing regime is a valid restriction on any Second Amendment right to carry concealed firearms in public, given that modern-day handguns present a unique menace to the public safety, handguns are not particularly effective for self-defense, and hundreds of unjustified killings (including killings of law enforcement officers and mass shootings) have been committed by concealed carry permit holders. Accordingly, the Court should affirm the judgment of the court of appeals.

**A. New York’s licensing regime accords with longstanding historical restrictions, and is especially important in light of today’s handgun environment.**

In the Nineteenth Century, New York—like most of its sister states—heavily regulated the carriage of concealable firearms by its citizens. See, *e.g.*, 1881

N.Y. Sess. Laws, Ch. 676, at 412 (prohibiting the concealed carrying of “any kind of fire-arms”). This culminated in New York passing the Sullivan Law in 1911, making it unlawful for any person to possess, without a license, “any pistol, revolver or other firearm of a size which may be concealed upon the person.” See 1911 N.Y. Laws, Ch. 195, § 1, at 443 (codifying N.Y. Penal Law § 1897, ¶ 3). In 1913, the New York legislature amended the Sullivan Law and established standards for issuance of concealed carry licenses. As amended, the Sullivan Law permitted a magistrate to issue a concealed carry license upon proof “of good moral character” and a showing that “proper cause exists for the issuance” of the license. 1913 N.Y. Laws, Ch. 608, § 1, at 1629.

The Sullivan Law was enacted with good reason. A New York City Coroner’s Office report in early 1911—which directly influenced the legislature—noted a “marked increase in the number of homicides and suicides in [New York City] by shooting,” and stressed the concomitant “urgent necessity of the proper authorities taking some measures for the regulation of the indiscriminate sale and carrying of firearms.” N.Y. TIMES, *Revolver Killings Fast Increasing; Legislative Measure to be Urged for Curbing the Sale of Firearms* (Jan. 30, 1911), at 4 (quoting report). In the face of such grim murder and suicide statistics, an official from the Coroner’s Office remarked that “[t]he law applying to the carrying of concealed weapons is farcical, and does not meet present conditions.” *Ibid.*

The troubling conditions that spurred the enactment of the Sullivan Law over a century ago have only been amplified in today’s handgun

environment. Modern handguns—even more so than their predecessors and other categories of firearms—are uniquely designed to deliver deadly force. The lethality of today’s handguns stems primarily from a combination of their small (and shrinking) size and their extreme (and growing) firepower. In short, the revolvers of the early Twentieth Century have given way to handguns of the Twenty-First Century that have the capacity to kill and maim in ways the Founding Fathers could not have remotely fathomed. As a result of these design enhancements and the increased dangers presented by such weapons, New York’s concealed carry licensing regime is even more reasonable today than when it was introduced over a century ago.

**1. The handgun industry has shifted production from revolvers to high-capacity semiautomatic pistols.**

Since the early 1980s, the handgun industry has shifted production from the traditional revolver to the high-capacity semiautomatic pistol.<sup>3</sup> Revolvers typically are capable of holding five or six rounds of ammunition in a revolving cylinder and take a relatively long time to reload. In contrast, semiautomatic pistols are capable of easily holding three times the ammunition of the traditional “wheelgun” revolver and have a reloading process

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<sup>3</sup> Josh Sugarmann, *EVERY HANDGUN IS AIMED AT YOU: THE CASE FOR BANNING HANDGUNS* 7 (New Press 2001); see also John Malloy, *GUN DIGEST 2000, HANDGUNS TODAY: AUTOLOADERS* 117 (Ken Warner ed., Krause Publications 1999) (“As the concealed-carry movement grows across the country, the demand for small but powerful handguns grows.”).

utilizing a pre-loaded ammunition “magazine” that takes seconds.

In 1987, pistol production surged past revolver production. Semiautomatic pistols now lead the handgun market by a wide margin. Today, the handgun most likely to be used in acts of violence is a semiautomatic pistol.<sup>4</sup> The rise of the high-capacity semiautomatic pistol has dramatically increased the unique dangers to the public posed by handguns. That is because, as explained below, the critical design features of the handgun have been modernized in a manner increasingly focused on maximizing lethality.

**2. The modern handgun is designed for superior lethality.**

Modern handguns have several unique design features that, in combination, make them particularly dangerous among firearms. Compared to other firearms and earlier versions of handguns, today’s handguns (i) have the capacity to hold larger amounts of ammunition; and (ii) use higher caliber, and more deadly, ammunition that is continually increasing in size and power.

**a. The ammunition capacity of handguns has increased dramatically.**

Modern handguns are increasingly designed to provide greater ammunition capacity, a critical factor that affects the outcome of an armed encounter.<sup>5</sup>

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<sup>4</sup> Sugarman, *supra* note 3, at 7.

<sup>5</sup> See VIOLENCE POLICY CENTER, *Pocket Rockets: The Gun Industry’s Sale of Increased Killing Power* (July 2002), <https://www.vpc.org/studies/pockcont.htm>.

Unlike the five- or six-shot revolvers dominant at the time the Sullivan Law was introduced, the high-capacity pistols available today routinely use 10-, 13-, 15-, 18-, and even 30-round ammunition magazines.<sup>6</sup> When more rounds are fired and guns can be more quickly reloaded, the likelihood of inflicting wounds—and the severity of the resulting injuries—increases substantially. This unfortunate fact is illustrated all too often in mass shootings in America’s schools, malls, bars, workplaces, places of worship, and other public arenas.

An alarming number of the recent mass shootings in the United States have been carried out by individuals using handguns with high-capacity magazines. The gunman in the May 26, 2021, shooting at the Santa Clara Valley Transportation Yard in San Jose, California, for example, used three semiautomatic handguns equipped with high-capacity magazines to kill nine coworkers.<sup>7</sup> The gunman in the November 7, 2018, shooting at the Borderline Bar and Grill in Thousand Oaks, California, used a semiautomatic handgun with an extended magazine to kill 12 individuals (including a responding police officer).<sup>8</sup> The gunman in the June

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<sup>6</sup> High-capacity pistol magazines are readily available for purchase by consumers. See, e.g., CDNN SPORTS INC., *Magazines*, <https://www.cdnnsports.com/magazines.html> (last visited Sept. 16, 2021) (listing numerous high-capacity pistol magazines for sale).

<sup>7</sup> See VIOLENCE POLICY CENTER, *Large Capacity Ammunition Magazines (listing of casualties and locations of mass shooting incidents involving large capacity magazines since 1980)* (Aug. 3, 2021), [https://vpc.org/fact\\_sht/VPCshootinglist.pdf](https://vpc.org/fact_sht/VPCshootinglist.pdf).

<sup>8</sup> *Ibid.*

17, 2015, shooting at the Mother Emanuel Church in Charleston, South Carolina, used a semiautomatic handgun with an extended magazine to kill eight parishioners and their pastor.<sup>9</sup> And the gunman in the April 16, 2007, shooting at Virginia Tech in Blacksburg, Virginia, used two handguns with high-capacity magazines to kill 32 students and faculty.<sup>10</sup>

The rise of semiautomatic assault pistols, and the number of mass shootings committed with such weapons, demonstrates the elevated dangers that come from increased handgun ammunition capacity. Semiautomatic assault pistols are military-style weapons that incorporate enhanced design features born out of the unique needs of the military. Two important design features of firearms developed for the military—(1) high capacity detachable ammunition magazines, and (2) devices, such as an additional pistol grip or barrel shroud, that make it easier simply to point the gun (as opposed to aiming carefully) while rapidly pulling the trigger—allow a shooter to lay down a wide field of fire, which is sometimes referred to as “hosing down” an area. Semiautomatic assault pistols include many highly lethal weapons that an uninformed observer might not even recognize as a “handgun.” Individuals can purchase pistol versions of AK-47 and AR-15 semiautomatic assault rifles, for example, which commonly utilize ammunition magazines of 20, 30, or even 40 rounds.<sup>11</sup> Such guns demonstrate that the

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> See VIOLENCE POLICY CENTER, *AR-15 and AK-47 Assault Pistols: Rifle Power in a Handgun*, <https://vpc.org/studies/>

distinction between handguns and assault rifles is becoming increasingly blurred and, in many cases, illusory. A recent, tragic example demonstrates the dangers posed by such handguns. In the March 22, 2021, mass-shooting in Boulder, Colorado, the alleged gunman used a Ruger AR-556 pistol (which resembles an AR-15 rifle) equipped with a high-capacity magazine to kill nine individuals inside a supermarket, as well as a responding police officer.<sup>12</sup>

**b. Today’s handguns use ammunition designed for increased lethality.**

Today’s handguns are also significantly more lethal than their predecessors because of the caliber—that is, diameter—and design of the ammunition they fire.<sup>13</sup>

Handguns for the civilian market now fire ammunition capable of piercing body armor—the last line of defense responsible for saving thousands of police officers’ lives. The first of these handgun “vest-busters” was the Model 500, a .50 caliber magnum handgun introduced by Smith & Wesson in February

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armor.pdf (last visited Sept. 16, 2021); VIOLENCE POLICY CENTER, *Assault Pistols: The Next Wave*, <https://vpc.org/studies/awpistols.pdf> (last visited Sept. 16, 2021).

<sup>12</sup> Colleen Slevin & James Anderson, *DA: Colorado shooting suspect had 10 high-capacity magazines*, ASSOCIATED PRESS (April 22, 2021), <https://apnews.com/article/boulder-shootings-colorado-ahmad-al-aliwi-alissa-denver-af173b8bcca7ff1b8615f379dd879229>.

<sup>13</sup> Sugarmann, *supra* note 3, at 6–11; *Pocket Rockets*, *supra* note 5.

2003.<sup>14</sup> The Model 500 was designed around a new cartridge called the “.500 S&W Magnum.” The striking power of the .500 S&W Magnum round substantially exceeds the protection level of the highest grade of concealable body armor normally worn by law enforcement officers in the field.<sup>15</sup> Other manufacturers have followed suit with their own versions of handguns chambered for the .500 S&W Magnum round. More shockingly, in 2004, gun manufacturer FN Herstal introduced into the civilian market a pistol and cartridge *specifically* designed to defeat body armor—the Model Five-seveN. This handgun is chambered for a very high velocity 5.7mm round that was originally developed specifically as an armor-piercing round and designed for use by law enforcement and counter-terrorism teams.<sup>16</sup>

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<sup>14</sup> See *Smith & Wesson Model 500 Revolver*, SMITH & WESSON, <https://www.smith-wesson.com/product/model-sw500> (last visited Sept. 16, 2021).

<sup>15</sup> See VIOLENCE POLICY CENTER, *Vest Buster: The .500 Smith & Wesson Magnum—The Gun Industry’s Latest Challenge to Law Enforcement Body Armor* (June 2004), <https://www.vpc.org/graphics/S&W500%20final.pdf>.

<sup>16</sup> After an outcry from law enforcement agencies about the availability of this combination of gun and armor-piercing ammunition, the manufacturer agreed not to import into the United States the variety of its 5.7mm ammunition specifically designed to penetrate body armor. See VIOLENCE POLICY CENTER, *‘Big Boomers’—Rifle Power Designed Into Handguns* (Dec. 2008), <https://vpc.org/studies/bigboomers.pdf>. Nevertheless, questions remain about the viability of the current federal definition of what constitutes banned “armor-piercing ammunition,” the capabilities of the ammunition the manufacturer continues to import, and the availability of its



In addition to armor-piercing munitions, modern handguns are capable of firing “defensive rounds”—such as expanding hollow-point and soft-point bullets—that are specifically designed to inflict maximum trauma and cause incapacitating injury.<sup>17</sup> In 2014, a Georgia-based ammunitions manufacturer introduced a hollow-point round for handguns called the “Radically Invasive Projectile” (or “R.I.P.” for short), which was touted for its ability to “take out all your vital organs” and be a “one-shot man-stopper.”<sup>18</sup> Civilians in the United States have access to such defensive rounds and they are often used on innocent civilians in mass shootings perpetrated with handguns. The gunman in the 2015 Mother Emanuel Church shooting in Charleston, South Carolina, for example, killed nine

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armor-piercing ammunition through channels in informal markets such as gun shows. *Ibid.*

<sup>17</sup> Univ. of Utah, Department of Pathology, “*The Internet Pathology Laboratory for Medical Education: Firearms Tutorial*,” <https://webpath.med.utah.edu/TUTORIAL/GUNS/GUNINTRO.html> (last visited Sept. 16, 2021) (“Tissue destruction can be increased at any caliber by use of hollowpoint expanding bullets.”); Martin L. Fackler, *Gunshot Wound Review*, 28(2) ANNALS OF EMERGENCY MEDICINE 194, 195 (Aug. 1996) (“Wounding potential is also determined to a great extent by a bullet’s physical characteristics \* \* \*. For example, an expanding soft-point or hollow-point bullet causes more tissue disruption than a similar but nonexpanding one \* \* \*.”)

<sup>18</sup> Jordyn Taylor, *New Organ Destroying ‘R.I.P.’ Bullet Has Completely Sold Out*, OBSERVER (Jan. 29, 2014), <https://observer.com/2014/01/new-organ-destroying-r-i-p-bullet-has-completely-sold-out/>; Cheryl K. Chumley, *New ‘R.I.P.’ bullet hailed as ‘one-shot man-stopper’*, WASH. TIMES (Jan. 28, 2014), <https://www.washingtontimes.com/news/2014/jan/28/georgia-maker-bills-new-bullet-one-shot-manstopper/>.

people using a .45 caliber Glock pistol loaded with hollow-point bullets.<sup>19</sup>

**B. New York’s licensing regime furthers the state’s public safety goals because handguns are not particularly effective for self-defense.**

A number of the *amici* that have filed briefs in support of Petitioners tout the importance of “self-defense” and the purported value that carrying a concealed weapon has in furthering that interest.<sup>20</sup> Such claims, however, fail to recognize the general ineffectiveness of handguns for self-defense purposes. Handguns are in fact the *least* effective firearm for self-defense for all but a small group of individuals, such as police officers, who are well trained and maintain their skills with regular and intensive practice. Many of the features that make handguns particularly lethal also render them less effective in situations requiring a gun owner to fend off an attacker. Numerous studies have confirmed that handgun owners who attempt to use a handgun for self-defense put their own safety and the safety of others in jeopardy.<sup>21</sup>

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<sup>19</sup> Department of Justice, *Attorney General Lynch Statement Following the Federal Grand Jury Indictment Against Dylann Storm Roof* (July 22, 2015), <https://www.justice.gov/opa/pr/attorney-general-lynch-statement-following-federal-grand-jury-indictment-against-dylann-storm>.

<sup>20</sup> See, e.g., DC Project Foundation et al. Amici Br. 28–32.

<sup>21</sup> See generally VIOLENCE POLICY CENTER, *Unintended Consequences: Pro-Handgun Experts Prove That Handguns Are a Dangerous Choice for Self-Defense* (Nov. 2001), <https://vpc.org/>

For starters, the evidence shows that guns generally are largely ineffective for self-defense. In 2015, a Harvard University epidemiological study found that the likelihood of injury to a victim of a crime when a gun is used for self-defense (10.9%) is almost exactly the same as the likelihood of injury when a victim takes no action at all (11%).<sup>22</sup> After conducting multivariable analyses, the researchers concluded that “where a gun was used in self-defense was not associated with a significant reduction in the likelihood of being injured during the crime.”<sup>23</sup>

Beyond that, even many pro-gun advocates recognize that handguns in particular are not well-suited for self-defense. Firearms expert Chris Bird, for example, has explained that a handgun “is the least effective firearm for self defense,” and that in almost all situations “shotguns and rifles are much more effective in stopping a [criminal].”<sup>24</sup> That contention is supported by a wealth of evidence. As Bird has noted and many others have echoed, “[a] handgun is the hardest firearm to shoot accurately.”<sup>25</sup>

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publications/unintended-consequences/; see also Sugarman, *supra* note 3, at 55–61.

<sup>22</sup> David Hemenway & Sara J. Solnick, *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007-2011*, 79 PREVENTIVE MED. 22, 24 (2015).

<sup>23</sup> *Ibid.*

<sup>24</sup> Chris Bird, THE CONCEALED HANDGUN MANUAL: HOW TO CHOOSE, CARRY, AND SHOOT A GUN IN SELF DEFENSE 40 (1998).

<sup>25</sup> *Ibid.*; see also Massad F. Ayoob, IN THE GRAVEST EXTREME: THE ROLE OF THE FIREARM IN PERSONAL PROTECTION 47 (Police Bookshelf 1980) (“The handgun is the most difficult firearm to shoot accurately and rapidly; skill comes only with practice.”);

While the smaller size and shape of handguns allows them to be concealed and carried easily, they require a greater degree of dexterity to shoot than larger shotguns and rifles, which are designed to be held with two hands.<sup>26</sup>

The difficulty of shooting a handgun accurately is substantially compounded when an individual is faced with a life-threatening situation. Even a well-trained shooter will experience dramatic physiological effects in response to mortal danger. Commonly known as the “fight-or-flight reflex,” and accompanied by an enormous surge in adrenaline—described by one gun expert as “the most powerful hormone in the body”<sup>27</sup>—the resulting effects include the loss of fine motor skills, tunnel vision, auditory exclusion, trembling, and loss of control of bodily functions.<sup>28</sup> Although these effects may be lessened through intensive training, their arrival is “an automatic physical reaction to a perceived threat that will result in predictable physical, emotional,

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Duane Thomas, *THE TRUTH ABOUT HANDGUNS: EXPLODING THE MYTHS, HYPE, AND MISINFORMATION* (Paladin Press 1997) (“Most cops and civilian gun carriers are *lousy* handgun shots.”).

<sup>26</sup> Handguns may be effectively used in self-defense by the very tiny percentage of handgun users who are highly trained and who routinely practice their skills—a group that includes, most notably, law enforcement officers. But even those who have these qualifications cannot fully simulate the types of physical and psychological effects of a real-life shootout. See *Unintended Consequences*, *supra* note 21, at 27–34.

<sup>27</sup> Massad F. Ayoub, *STRESSFIRE: VOLUME I OF GUNFIGHTING FOR POLICE: ADVANCED TACTICS AND TECHNIQUES 6* (Police Bookshelf 1999).

<sup>28</sup> *Unintended Consequences*, *supra* note 21, at 49.

perceptual, and cognitive changes because of high physical arousal states.”<sup>29</sup>

The effect of these unavoidable physiological changes is profound. Handgun owners faced with the “fight-or-flight reflex” are *less* likely to be able to manipulate a handgun effectively for self-defense, and at the same time are *more* likely to endanger themselves, their family, and other innocent bystanders.<sup>30</sup> Loss of fine motor skills in particular severely affects an individual’s ability to accomplish tasks such as squeezing a trigger or aiming and reloading a handgun.<sup>31</sup> This factor, when combined with other physiological effects, can easily result in the maiming or killing of an innocent bystander.<sup>32</sup>

Numerous reported incidents demonstrate the dangers presented when concealed carry permit holders decide to discharge their handguns in public for self-defense purposes or in defense of others. In November 2020, for example, a concealed carry permit holder in Detroit, Michigan got into a dispute with her neighbor and fired her weapon, but missed her intended target and accidentally shot her own 21-month-old baby in the hip.<sup>33</sup> Similarly, in August

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<sup>29</sup> Alexis Artwohl & Loren W. Christensen, *DEADLY FORCE ENCOUNTERS: WHAT COPS NEED TO KNOW TO MENTALLY AND PHYSICALLY PREPARE FOR TO SURVIVE A GUN FIGHT* 33 (Paladin Press 1997).

<sup>30</sup> *Unintended Consequences*, *supra* note 21, at 49.

<sup>31</sup> *Id.* at 51.

<sup>32</sup> *Id.* at 52.

<sup>33</sup> Randy Wimbley & David Komer, *Woman shot at by mother who hit her own toddler in Uber Eats dispute says what happened*, FOX2 DETROIT (Nov. 10, 2020, updated Nov. 11, 2020),

2020, a concealed carry permit holder in Canton, Ohio, fired his handgun at a dog that was attacking the victim. Although he did fatally shoot the dog, he also accidentally shot the victim as well.<sup>34</sup> And in May 2012, two armed men attempted to rob a Family Dollar Store in Houston, Texas. A customer with a concealed carry permit drew his handgun and fired at the robbers. In so doing, he fatally shot the store's assistant manager, while the robbers managed to escape.<sup>35</sup>

Overall, handguns in the hands of private citizens are the least effective firearm for self-defense and have all too often injured or killed innocent bystanders. Given that the individual Petitioners specifically seek to carry a handgun for self-defense, the general ineffectiveness of such weapons for self-defense is an important factor that this Court should consider in analyzing New York's permitting scheme.

**C. New York's licensing regime is a legitimate restriction in light of the reported incidents of killings by concealed permit holders.**

The proponents of "shall issue" regimes, including some *amici* in support of the Petitioners, claim that

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<https://www.fox2detroit.com/news/woman-shot-at-by-mother-who-hit-her-own-toddler-in-uber-eats-dispute-says-what-happened>.

<sup>34</sup> Lori Steineck, *Dog attacks Canton man before bystander shoots both*, THE REPOSITORY (Sept. 1, 2020), <https://www.cantonrep.com/story/news/local/2020/09/01/dog-attacks-canton-man-before-bystander-shoots-both/113642112/>.

<sup>35</sup> *New lead into deadly shooting at Family Dollar store*, ABC13 NEWS (May 19, 2012), <https://abc13.com/archive/8666763/>.

concealed carry permit holders are “overwhelmingly more law-abiding than the general population”<sup>36</sup>—another reason they argue that under the Second Amendment such permits must be widely available. This echoes similar claims that have been made for decades. In 1996, for example, Tanya Metaksa, then the Executive Director of the National Rifle Association’s Institute for Legislative Action, stated that “[p]eople who get permits in states which have fair right-to-carry laws are law-abiding, upstanding community leaders who merely seek to exercise their right to self-defense \* \* \*. *These citizens don’t commit violent crimes.*”<sup>37</sup>

Research shows that such claims are unsubstantiated and unsupportable. Far too frequently, individuals with concealed carry permits commit unjustified homicides and mass shootings. Additionally, research has demonstrated that areas with more permissive concealed carry laws have higher rates of firearms homicides.<sup>38</sup>

Since 2007, the Violence Policy Center has maintained a database entitled *Concealed Carry Killers*, in which it has documented hundreds of

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<sup>36</sup> State of Arizona *et al. Amici* Br. 9.

<sup>37</sup> VIOLENCE POLICY CENTER, *Concealed Carry Killers Background*, <https://concealedcarrykillers.org/concealed-carry-killers-background/> (last visited Sept. 16, 2021) (emphasis added).

<sup>38</sup> See Emma E. Fridel, *Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide*, 38 JUSTICE Q. 892, 904–05 (2021) (finding that the “firearms homicide incidence rate increased by 10.8% \* \* \* in shall-issue or permitless carry states in comparison to their may-issue counterparts”).

examples of non-self-defense homicides by private citizens with concealed carry permits. As of the date of this brief, the database contains information about 1,757 incidents, which resulted in 2,015 deaths. These include suicides, domestic violence killings, killings of law enforcement officers, and mass shootings.

In the following pages, we discuss a few of the instances in which individuals with concealed carry permits have killed law enforcement officers or engaged in mass shootings. There are many more—and a vast number of other unlawful killings by such individuals. But these examples will, we hope, help demonstrate that the wide-spread concealed carriage of handguns presents a direct threat to public safety, and that New York has a legitimate interest in limiting the number of citizens who carry concealed weapons in public.

**1. Numerous police officers have been killed by concealed carry permit holders.**

There are numerous reported incidents of concealed carry permit holders using their handguns to kill law enforcement officers in the line of duty. Indeed, the Violence Policy Center has identified 24 instances where a law enforcement officer was killed by a concealed carry permit holder since 2007, which demonstrates that concealed carry permit holders are not necessarily the “upstanding community leaders” they are touted to be. Some recent examples are illustrative.

In August 2017, Everett Miller, who possessed a valid concealed carry permit, shot and killed two law enforcement officers, Matthew Baxter and Sam Howard, in Kissimmee, Florida. Miller was described



as the “epitome of a Marine.”<sup>39</sup> While on patrol, Officer Baxter was “checking out” three people, including Miller, which led Miller and Officer Baxter to get into a scuffle. Sergeant Howard responded as back up. Miller shot and killed both officers before they had the opportunity to return fire. He was arrested shortly thereafter at a bar. When Miller was approached he reached for his waistband, but was tackled and subdued by deputies. He was carrying a handgun and a revolver when he was arrested.<sup>40</sup> Miller was convicted on two counts of first-degree murder and sentenced to death.<sup>41</sup>

In May 2014, Michael Bowman, who also possessed a valid concealed carry handgun permit, shot and killed police officer Kevin Jordan in Griffon, Georgia. Officer Jordan was working an off-duty security job in uniform at a Waffle House restaurant. Bowman was drunk when he and his girlfriend entered the Waffle House in the early hours of the morning. After causing a disturbance and being asked to leave the restaurant, an altercation erupted and

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<sup>39</sup> Monivette Cordeiro, *Everett Miller trial: Man who killed 2 Kissimmee cops was ‘epitome of a Marine,’ witnesses say*, ORLANDO SENTINEL (Nov. 7, 2019), <https://www.orlandosentinel.com/news/crime/os-ne-everett-miller-sentencing-military-career-20191107-dgqaxuj22rexpjelspjmp37pe-story.html>.

<sup>40</sup> *2nd Kissimmee, Florida police officer dies after being shot by suspect*, ABC7 NEWS (Aug. 19, 2017), <https://abc7.com/florida-kissimmee-police-officers-shot-sam-howard/2325870/>.

<sup>41</sup> Monivette Cordeiro, *Judge won’t set aside jury’s death penalty for man who killed 2 Kissimmee cops*, ORLANDO SENTINEL (Dec. 20, 2019), <https://www.orlandosentinel.com/news/crime/os-ne-everett-miller-attorneys-set-aside-death-20191220-qhcucydol5d5vhostnsnore2xe-story.html>.

Officer Jordan attempted to arrest Bowman's girlfriend. Officer Jordan—a father of seven—was on the ground attempting to restrain Bowman's girlfriend when Bowman shot him multiple times in the back. Bowman was convicted of felony murder and sentenced to life in prison without parole.<sup>42</sup>

In December 2009, Bart Johnson, yet another concealed carry permit holder, shot and killed Pelham, Alabama, police officer Philip Davis during a routine traffic stop. Officer Davis had stopped Mr. Johnson for speeding. According to videotape from the officer's patrol car, Officer Davis and Mr. Johnson spoke briefly, and Davis then went to write Johnson a ticket in his patrol car. Upon his return, Mr. Johnson fired one shot, striking Davis in the face and killing him. Mr. Johnson fled the scene, and attempted to break into another vehicle. Mr. Johnson later surrendered to authorities, was convicted of capital murder, and sentenced to death.<sup>43</sup>

There are many other examples, but these three are typical: all too frequently, police officers have been killed in the line of duty by individuals using handguns for which they possessed valid concealed carry permits. New York's system, which limits the circumstances where individuals may obtain such

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<sup>42</sup> VIOLENCE POLICY CENTER, *Law Enforcement Officers Killed by Concealed Carry Killers*, <https://concealedcarrykillers.org/law-enforcement-officers-killed-by-concealed-carry-killers/> (last visited Sept. 16, 2021).

<sup>43</sup> *Ibid.*

permits, has helped prevent similar instances in the state.<sup>44</sup>

**2. Concealed carry permit holders have also committed numerous mass shootings.**

As we are all too well aware, mass shootings are no longer extraordinary occurrences but take place with alarming regularity throughout the United States. And many of these horrific incidents involve attacks by individuals using handguns for which they possess concealed carry permits. Indeed, the Violence Policy Center has identified at least 37 mass shootings committed using such permitted handguns since May 2007, which resulted in the deaths of 183 victims.<sup>45</sup>

This bleak statistic stands in stark contrast to the fact that, according to FBI statistics on “active shooter incidents—which the FBI defines as “one or more individuals actively engaged in killing or attempting to kill people in a populated area”—only 4 “active shooters” in the past twenty years, or 1.2% of the

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<sup>44</sup> The only instance of which the Violence Policy Center is aware in which a police officer was killed by a New York concealed carry permit holder involved a situation where the killer was himself also a law-enforcement officer, and involved a murder-suicide. See *ibid.*

<sup>45</sup> *Concealed Carry Killers Background*, *supra* note 37. The Violence Policy Center defines a mass shooting as the killing of three or more people, which is consistent with the federal definition contained in the Investigative Assistance for Violent Crimes Act of 2012. See 6 U.S.C. § 455(d)(2)(A) (defining “mass killings” as “3 or more killings in a single incident”).

shooters in such incidents, were killed by an armed private citizen.<sup>46</sup>

A few examples of mass killings committed by individuals with valid concealed carry permits illustrate the extraordinary damage and devastation caused when these individuals commit such crimes using handguns.

In May 2019, DeWayne Craddock, who had a valid concealed carry permit, entered his workplace at the Virginia Beach Municipal Center armed with a .45 caliber handgun equipped with a silencer.<sup>47</sup> Just a few hours earlier, Craddock had tendered his resignation.<sup>48</sup> According to the FBI, he “was motivated by perceived workplace grievances, which he fixated on for years. \* \* \* and that violence was viewed by the shooter as a way to reconcile this

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<sup>46</sup> According to the FBI, there were 333 active shooter incidents, involving 345 shooters, between 2000 and 2019, including 135 mass shootings. Only four of those 345 shooters were killed by armed civilians. Federal Bureau of Investigation, *Active Shooter Incidents 20-Year Review, 2000–2019* (May 2021), at 4, <https://www.fbi.gov/file-repository/active-shooter-incidents-20-year-review-2000-2019-060121.pdf/view>. In 2016 and 2017, concealed carry permit holders also stopped four active shooting incidents without resulting in the shooters’ deaths. See Federal Bureau of Investigation, *Active Shooter Incidents in the United States in 2016 and 2017* (April 2018), at 5, <https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view>.

<sup>47</sup> Virginia Beach Police Department, *May 31, 2019 Final Investigation Summary Report* (Mar. 2021), at 3, <https://www.vbgov.com/government/departments/police/Documents/20210324-PDFinalReport.pdf>.

<sup>48</sup> *Ibid.*

conflict and restore his perverted view of justice.”<sup>49</sup> In his rampage, Craddock killed twelve individuals and injured five others before ultimately being shot and killed by the police.<sup>50</sup>

In May 2012, Ian Stawicki, who had a valid concealed carry permit, opened fire at Café Racer in Seattle, Washington with two .45 caliber handguns, killing four of the restaurant’s patrons. Stawicki had been banned from the cafe as the result of past behavior. According to a news report from the lone survivor, “[i]t was clear \* \* \* that [he] wanted everyone dead, shooting the victims once” and then went around “double-tapp[ing] everyone.”<sup>51</sup> Stawicki then left the restaurant and, thirty minutes later, approached a mother of two, killed her, and stole her SUV. When confronted by law enforcement, Stawicki committed suicide.<sup>52</sup>

In August 2010, Omar Thornton went on a shooting rampage at the beer distributorship where he worked outside Hartford, Connecticut, killing eight co-workers before he committed suicide. The

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<sup>49</sup> Federal Bureau of Investigation, *FBI Provides Final Briefing on the Virginia Beach Municipal Center Shooting to the Virginia Beach Police Department* (June 9, 2021), <https://www.fbi.gov/contact-us/field-offices/norfolk/news/press-releases/fbi-provides-final-briefing-on-the-virginia-beach-municipal-center-shooting-to-the-virginia-beach-police-department>.

<sup>50</sup> Virginia Beach Police Department, *supra* note 47, at 2.

<sup>51</sup> VIOLENCE POLICY CENTER, *Mass Shootings Committed by Concealed Carry Killers*, <https://concealedcarrykillers.org/mass-shootings-committed-by-concealed-carry-killers/> (last visited Sept. 16, 2021).

<sup>52</sup> *Ibid.*

shooting began at a meeting where Thornton resigned after being shown video evidence that he stole beer from the company. Authorities believe that Thornton had hidden two handguns for which he had a valid concealed carry permit in his lunch box. After being shown the video, according to one witness, “[h]e was cool and calm. He didn’t yell. He was cold as ice. He didn’t protest when we were meeting with him to show him the video of him stealing \* \* \*. He just agreed to resign. And then he just unexplainably pulled out his gun and started blasting.”<sup>53</sup>

In August 2009, George Sodini opened fire at an LA Fitness Center in Collier, Pennsylvania, killing three women and wounding nine others before killing himself. Sodini entered the gym in the evening armed with two 9mm pistols with 30-round magazines, a .45 caliber pistol, and a .32 caliber pistol, for which he had a valid concealed carry permit. In his gym bag, Sodini also had two additional 30-round magazines. He walked into an aerobics class that was underway, turned off the lights, and then started firing, emptying the magazine of one of his 9mm pistols. Drawing the second 9mm, he opened fire again. In total, Sodini fired at least 36 rounds from his two 9mm pistols within approximately one minute. He then took his own life. After the killings, investigators recovered a note from Sodini’s gym bag that complained about being rejected by women and expressing hatred toward them.<sup>54</sup>

In April 2009, Jiverly Wong, who had a valid concealed carry permit, walked into the American

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

Civic Association in Binghamton, New York, where he had recently taken an English class. Wong opened fire, killing 13 former classmates before killing himself. In approximately one minute, Mr. Wong fired 98 shots from his two handguns, a 9mm and a .45 caliber. Wong had been granted a concealed carry permit in Broome County, New York in 1997, which was still valid at the time of the shooting. At that time, permits issued there did not have to be renewed, unlike in other parts of the state.<sup>55</sup>

In February 2009, Frank Garcia, who had a valid concealed carry permit, opened fire with a .40 caliber pistol in the parking lot of the Lakeside Memorial Hospital, in Brockport, New York, killing both a co-worker who previously refused his sexual advances and a good Samaritan that tried to intervene.<sup>56</sup> Garcia then travelled to Canandaigua, New York, where he went door-to-door looking for another former coworker.<sup>57</sup> When he located her home, he terrorized her, her husband, and their two children for three hours, before killing the adults execution-style.<sup>58</sup> Garcia surrendered to police and was sentenced to life in prison. Garcia had been denied a permit to carry a handgun three times in the previous 15 years due to previous arrests for assault,

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Convicted killer Frank Garcia gets maximum in re-sentencing from 2009 killing spree*, DEMOCRAT & CHRONICLE (June 2, 2017), <https://www.democratandchronicle.com/story/news/2017/06/02/frank-garcia-gets-maximum-re-sentencing-2009-killing-sprees/364719001/>.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

harassment, and criminal possession of a weapon, before a judge granted him a permit in 2007.<sup>59</sup>

In March 2008, former substitute teacher Charles Johnston entered Doctors Hospital in Columbus, Georgia, carrying three handguns for which he had a valid concealed carry permit. Johnson, apparently angered over the care his mother had received while a patient in the hospital, came looking for a nurse he knew only as “Pete.” Traveling up to the fifth-floor intensive care unit where his mother had been treated, Johnston followed nurse Peter Wright after hearing his name called out. Johnston shot Mr. Wright in the head and chest, killing him. While leaving the hospital, he also shot and killed an administrative assistant. Finally, in the hospital’s parking lot, he shot another victim in the head, killing him. Johnston was found guilty of the three murders and sentenced to three life sentences.<sup>60</sup>

These examples underscore the widespread devastation and death that ensue when some private citizens are permitted to carry concealed handguns. The tragic loss of life from these shootings is further compounded by the lethality and efficiency of today’s handguns, which together demonstrate that New York’s scheme that limits the frequency with which concealed carry permits are issued is eminently reasonable.

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<sup>59</sup> *Mass Shootings Committed by Concealed Carry Killers*, *supra* note 51.

<sup>60</sup> *Ibid.*



## CONCLUSION

Given the manifest dangers to the public safety that modern handguns present, New York’s “proper cause” licensing regime is a legitimate restriction on the right of citizens to carry concealed firearms in public for self-defense, which furthers New York’s compelling public safety interest, and is entirely consistent with the Second Amendment. The Court should affirm the judgment of the court of appeals.

Respectfully submitted.

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