

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.,  
ROBERT NASH, BRANDON KOCH,  
*Petitioner,*

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS  
SUPERINTENDENT OF THE NEW YORK STATE POLICE,  
RICHARD J. MCNALLY, JR., IN HIS OFFICIAL CAPACITY AS  
JUSTICE OF THE NEW YORK SUPREME COURT,  
THIRD JUDICIAL DISTRICT, AND LICENSING OFFICER  
FOR RENSSELAER COUNTY,  
*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 FORMER MAJOR CITY  
POLICE CHIEFS AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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**INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amici* are uniquely positioned to address the impact of concealed-carry laws on public safety and policing. They collectively represent nearly thirty decades of law enforcement experience at the local, state and federal level. Each has led the police department of at least one major city, including Boston, Buffalo, Chicago, Los Angeles, Milwaukee, Newark, New York City, Philadelphia, Seattle and Washington, D.C. They have led their departments through terrorist attacks, improved community policing, built public trust and helped lead and train thousands of police officers who are charged with maintaining safety and order in America's cities. In short, they know what it takes to protect the public and law enforcement officers, and they know how difficult that job is. *Amici* submit this brief to urge the Court to uphold New York State's concealed-carry licensing regime because it makes the state's citizens safer without infringing on protected constitutional rights.

- Amicus **William J. Bratton** has more than fifty years of law enforcement experience, beginning in 1970. Over his long career of service, Commissioner Bratton has led six police departments, including departments in New York, Los Angeles and Boston, and he is the only person ever to have led the police departments of the nation's two largest cities: New York and Los Angeles. From his long years of service, Commissioner Bratton knows intimately the

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

particular public-safety needs of New York City and other large cities like it.

- Amicus **Gil Kerlikowske** has built a wide-ranging and extensive law enforcement track record of over forty years. He was the first permanent U.S. Commissioner of Customs and Border Protection from 2014 to 2017, one of the largest law enforcement agencies in the country. He also served as Director of the Office of National Drug Control Policy. Prior to his federal service, he was Chief of Police in Seattle from 2000 to 2009. He was also the Police Commissioner in Buffalo from 1995 to 1998 and was twice elected President of the Major Cities Chiefs Association.
- Amicus **Charlie Beck** is a retired police officer and former Chief of the Los Angeles Police Department. A department veteran with over four decades as an officer, he is known for commanding and rehabilitating the Rampart Division after the Rampart scandal, and for implementing technological enhancements during his time as Chief of Detectives. He also stepped in as interim Superintendent of Police in Chicago in 2019.
- Amicus **Edward Flynn's** career spans forty-five years (thirty years as a chief executive) in four states, having led six different agencies. His police career concluded with ten years of service as Milwaukee police chief. His prior positions included service as police commissioner in Springfield, Massachusetts; as Massachusetts Secretary of Public Safety; and as Arlington County, Virginia police

chief, where he led police recovery efforts at the Pentagon on September 11, 2001. He holds an M.A. in Criminal Justice and completed all required courses in the Ph.D. program at City University of New York.

- Amicus **Ed Davis** has worked in law enforcement for thirty-five years and is a recognized expert in community policing with a broad range of local, state, national and international experience in law enforcement and public safety. He served as the Police Commissioner of the City of Boston from December 2006 until October 2013. He led the highly successful response to the Boston Marathon bombing. Prior to that, Commissioner Davis was the Superintendent of the Lowell Police Department, a position he held for twelve years. His law enforcement career began as a patrol officer in 1978. He has also worked internationally on police issues in Singapore, London, Northern Ireland, Jordan and Israel. Since leaving police work, he served as the security analyst for WBZ-TV in Boston and is the founder and CEO of Edward Davis, LLC Security and Management Consulting.
- Amicus **Charles Ramsey**, former Commissioner of the Philadelphia Police Department, has forty-five years of law enforcement experience and expertise. Before taking on the leadership of the Philadelphia Police Department in 2008, he served as Deputy Superintendent of the Chicago Police Department in 1994 and as Chief of the Metropolitan Police Department of the District of Columbia from 1998 to early 2007. In 2017, he became a regular CNN contributor.

- Amicus **Garry McCarthy**'s law enforcement career spans forty years. He has served as Superintendent of the Chicago Police Department and Chief of the Newark Police Department. He joined the New York City Police Department at age 22 and was at Ground Zero during the September 11 attacks, working closely with then-Mayor Rudy Giuliani to operate an emergency response command post. He has also served as a federal law enforcement officer.

### SUMMARY OF ARGUMENT

*Amici* are seven former chiefs and commissioners of police departments in the nation's largest, most diverse and most densely populated urban areas, including Boston, Buffalo, Chicago, Los Angeles, Milwaukee, Newark, New York City, Philadelphia, Seattle and Washington, D.C. Among them, they have nearly thirty decades of experience leading the largest police departments in the United States. Based on their vast law enforcement experience and their deep understanding of gun use and regulation, *amici* have a resounding interest in ensuring that states and local licensing authorities be allowed to retain discretion in issuing concealed-carry licenses.

Allowing for discretion by officials with intimate, firsthand knowledge of the communities they serve helps to ensure the safety of both the individuals in those communities and the law enforcement officers charged with protecting them. Data plainly show that the increased presence of concealed handguns which follows from less restrictive permitting regimes leads to higher rates of both police and citizen fatalities. Moreover, *amici's* vast experience has convinced them that,

far from promoting public safety, the use or attempted use of firearms by ordinary citizens in responding to criminal activity is not effective and actually undermines law enforcement’s ability to quickly and effectively neutralize threats, identify suspects and conduct necessary investigations.

Vesting discretion with respect to the issuance of concealed-carry licenses in local and state officials is an essential component of reducing gun violence, protecting citizen and officer safety, and fostering effective policing practices, particularly in large American cities like the ones *amici* have served.

### ARGUMENT

As this Court has recognized, there is “no better example of the police power . . . reposed in the States, than the suppression of violent crime and vindication of its victims.” *United States v. Morrison*, 529 U.S. 598, 618 (2000). Indeed, states not only have the authority, but the “*obligation . . . to protect [their] citizens and provide for the safety and good order of society.*” *Panhandle Eastern Pipe Line Co. v. State Highway Comm’n of Kan.*, 294 U.S. 613, 622 (1935) (emphasis added). States enjoy “great latitude under their police powers” in discharging this foundational duty. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quotation omitted); see also *United States v. Salerno*, 481 U.S. 739, 755 (1987) (observing that the “primary concern of every government” is “concern for the safety and indeed the lives of its citizens”).

Discretionary concealed-carry, or “may-issue,” licensing regimes—including those like New York’s which allow individuals to carry concealed handguns



only on a showing of “proper cause”—are a valid use of states’ police power and a critical component of their obligation to safeguard “the lives, limbs, health, comfort, and quiet” of their citizens and the law enforcement officers charged with protecting them. *Medtronic*, 518 U.S. at 475. Indeed, this Court’s Second Amendment jurisprudence recognizes that “measures regulating handguns” are among the “tools” available to states in fulfilling their obligation to protect the health and well-being of their citizens. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (“The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns.”).

As highly experienced law enforcement professionals tasked with leading the police departments of the nation’s largest and most diverse urban areas, *amici* view the prospect of removing local discretion from concealed-carry licensing regimes with alarm. No credible data suggest that increasing the number of people carrying concealed firearms will improve public safety, particularly in our large cities. In fact, as detailed herein, data indicate the exact opposite—increasing the number of concealed firearms results in higher rates of homicide among the public and law enforcement, while simultaneously undermining police officers’ ability to quickly and effectively respond to criminal activity and threats to public safety.

**I. Local law enforcement and licensing authorities play an essential role in maintaining public safety.**

Discretionary licensing laws, including the New York law at issue in this case with its “proper cause” requirement, are integral to protecting public safety. These important laws allow local licensing authorities to use their intimate knowledge of and experience with the communities they serve to determine which individuals should be issued permits to carry concealed weapons in public settings. Laws like New York’s that require applicants to articulate a non-speculative need to carry a firearm for self-defense help local authorities ensure that public-carry regulations “suit local needs and values.” *McDonald v. Chicago*, 561 U.S. 742, 785 (2010). Local law enforcement are best positioned to evaluate or assist in evaluating the bona fides of an articulated need for a concealed-carry permit in light of community conditions, such as population density and the number and location of law enforcement officers.<sup>2</sup> Among other things, these laws ensure that individuals known to local law enforcement as having disqualifying criminal or mental health histories—or who local law enforcement believe are likely to misuse firearms—do not obtain permits.

Indeed, law enforcement leaders overwhelmingly prefer to retain discretion over the issuance of carry permits. A 2015 study revealed that 90% of police chiefs in Massachusetts, which has a concealed-carry licensing law similar to that of New York, favor retaining

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<sup>2</sup> See Brief for Respondents (“Respondent’s Brief”) at 16, 28–29, 31–32.

state laws that allow police officers discretion in the issuance of concealed-carry permits. Massachusetts chiefs reported that while the discretion to deny permits was only rarely (and carefully) applied, without such laws, they would have been unable to deny permits in circumstances that warranted it. Those circumstances included applications by serial domestic offenders and individuals known to be experiencing mental health crises.<sup>3</sup> The study's lead author emphasized that "passing a federal background check may not always be enough to ensure that an individual does not pose a threat of violence to others or to themselves. Local police chiefs typically know more about the people in their community than does a national computer."<sup>4</sup>

Conversely, states that remove discretion over concealed-carry permits from local law enforcement have suffered severe public safety issues. In 2011, the New York Times investigated the results from North Carolina's decision to weaken its concealed-carry licensing law to remove discretion and hasten the concealed-carry permit process for people who meet basic minimum standards. Following those changes, individuals with troubling records of criminal activity or substance abuse obtained permits and went on to commit violent crimes with their firearms.<sup>5</sup>

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<sup>3</sup> David Hemenway and James G. Hicks, *May Issue Gun Carrying Laws and Police Discretion: Some Evidence from Massachusetts*, *Journal of Public Health Policy* (Apr. 16, 2015), doi: 10.1057/jphp.2015.11.

<sup>4</sup> *Id.*

<sup>5</sup> Michael Luo, *Guns in Public and Out of Sight*, *The New York Times* (Dec. 26, 2011), <http://www.nytimes.com/2011/12/27/us/more-concealed-guns-and-some-are-in->

## II. Discretionary concealed-carry licensing regimes keep communities safe by reducing gun-related violence.

Laws like New York’s keep communities safe by limiting concealed-carry only to those who have demonstrated a non-speculative need for self-defense, thereby reducing the frequency and occurrence of gun-related crimes. They reduce the likelihood that heated or violent encounters between citizens will turn deadly. Indeed, the “presence of a handgun in an altercation, however petty, increases the likelihood that it will escalate into potentially lethal violence.” *Woollard v. Gallagher*, 712 F.3d 865, 879 (4th Cir. 2013) (cleaned up).<sup>6</sup> Arguments over parking spaces, driving errors, pets and sporting events have all ended in shootings where the individuals involved had concealed handguns readily available.<sup>7</sup> In addition, episodes of racism and bias can

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the-wrong-hands.html (2,400 permit holders in North Carolina were convicted of non-traffic felony or misdemeanor offenses over a five-year period. More than 200 of those individuals were convicted of felonies, including 10 who committed murder or manslaughter, and more than 200 were convicted of weapon-related offenses. In about half of the felony convictions, authorities in North Carolina failed to revoke or suspend the permit, even in cases of murder, rape and kidnapping.).

<sup>6</sup> See also John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J. of Empirical Legal Studies 198 (2018), <https://www.nber.org/papers/w23510> at 6.

<sup>7</sup> See, e.g., Janelle Griffith & Phil Hazel, *Florida man found guilty in parking lot shooting of unarmed black man*, NBC News (Aug. 23, 2019), <https://www.nbcnews.com/news/us-news/florida-man-found-guilty-parking-lot-shooting-unarmed-black-man-n1045966> (in dispute over parking space, man carrying concealed firearm shoots unarmed man); Peggy Gallek, *I-Team: \$500,000 bond set for*

escalate into murder in a few short moments where handguns are readily accessible.<sup>8</sup>

“Proper cause” licensing laws limit carry to those with a non-speculative need for self-defense. By decreasing the sheer number of firearms in public settings, discretionary licensing laws in turn reduce criminals’ ability to obtain weapons by theft. *See, e.g., id.* (noting record evidence that “criminals often target victims *precisely* because they possess handguns, and that Baltimore police have frequently investigated homicides and robberies where it appears that one, if not the primary, goal of the attacker was to deprive the victim of his handgun or other weapons” (quotations omitted)).

The data clearly demonstrate that shall-issue laws, and the corresponding increase in handguns in the public sphere, lead to higher rates of violent crime and homicides. A 2018 study (using 1977–2014 data) determined that, over the course of ten years, shall-issue laws of the type Petitioners argue for here correlate to

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*suspect in shooting outside Cedar Point Sports Center*, Fox8 (April 19, 2021), <https://fox8.com/news/i-team/i-team-500000-bond-set-for-suspect-in-shooting-outside-cedar-point-sports-center/> (altercation after youth basketball game ends in non-fatal shooting); Natalie Weber, *Man sentenced in fatal shooting of Houston attorney in disabled parking spot dispute*, Houston Chronicle (Aug. 1, 2019) (fatal shooting over parking space); Alexis Bechman, *Voden conviction appeal denied*, Payson Roundup (Mar. 15, 2017) (homeowner fatally shot neighbor who chased loose dog in homeowner’s yard).

<sup>8</sup> *Man who shot 2 Indian men in Kansas bar sentenced to life*, Associated Press (Aug. 7, 2018), <https://apnews.com/article/shootings-north-america-donald-trump-us-news-immigration-2dfe848ffc3147a9be9be63105b5452a> (one victim killed, two others wounded, by man who opened fire in bar after harassing victims and yelling “get out of my country”).

a 13–15 percent higher rate in aggregate violent crime.<sup>9</sup> Further, it found that “the drop in violent crime from 1977–2014 in the states that have resisted the adoption of [shall-issue] laws is almost an order of magnitude greater than in [shall-issue] adopting states (a 42.3 percent drop versus a 4.3 percent drop).”<sup>10</sup> Indeed, after comparing the results of its analyses to “results generated using placebo treatments,” that study was “able to reject the null hypothesis that [shall-issue] laws have no impact on aggregate violent crime.”<sup>11</sup>

Other studies have reached similar conclusions. A 2019 study found that states with laws that afford law enforcement discretion to issue concealed-carry permits saw 11.1 percent lower homicide rates compared to states that did not.<sup>12</sup> Similarly, a 2017 study comparing homicide rates in states with shall-issue laws to those with may-issue laws found that shall-issue laws were associated with 6.5 percent higher homicide rates, 8.6 percent higher firearm homicide rates, and 10.6 percent higher handgun homicide rates.<sup>13</sup> Research also shows

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<sup>9</sup> Donohue, *supra* note 6, at 1. *See also id.* at 3 (“The median effect of [shall-issue] adoption after ten years is 12.3 percent if one considers all 31 states with ten years of data and 11.1 if one limits the analysis to the 26 states with the most compelling pre-passage fit between the adopting states and their synthetic controls.”).

<sup>10</sup> *Id.* at 3–4.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Michael Siegel et al., *What Are the Most Effective Policies in Reducing Gun Homicides?*, Rockefeller Inst. of Gov’t (2019), <https://rockinst.org/wp-content/uploads/2019/08/8-13-19-Firearm-Laws-Homicide-Brief.pdf> at 9.

<sup>13</sup> Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 *Am. J. of Pub. Health* 1923, 1927–28 (2017). *See also* Mark Gius,

that concealed carriers are more likely to be shot during an assault, and that the more legal handguns in circulation, the greater the chance of an “arms race” with more criminals carrying firearms, thereby increasing the lethality of street crime.<sup>14</sup>

The results of these analyses coincide with *amici*’s observations from their decades of law enforcement experience and refute Petitioners’ position.

### **III. May-issue licensing regimes protect law enforcement officers and facilitate their mission of keeping the public safe.**

Jurisdictions with permissive concealed-carry laws see a greater number of police officer homicides. The presence of large numbers of untrained citizens carrying concealed firearms seriously undermines law enforcement’s ability to maintain public safety. In light of these realities, and consistent with their police power

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*Using the Synthetic Control Method to Determine the Effects of Concealed-carry Laws on State-Level Murder Rates*, 57 Int’l Rev. L. & Econ. 1, 6 (2019) (states that weakened their concealed-carry laws experienced a 12.3 percent increase in gun-related murder rates and a 4.9 percent increase in overall murder rates).

<sup>14</sup> See Respondent’s Brief at 44 (citing Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (2009); David Hemenway & Sara J. Solnick, *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007-2011*, 79 Preventative Med. 22 (2015); Philip Cook et al., *Gun Control After Heller: Threats and Sideshows from a Social Welfare Perspective*, 56 U.C.L.A. L. Rev. 1041, 1081 (2009)).

obligations, states and cities have instituted discretionary permit regimes to protect officers and ease the burden on already strained law enforcement agencies.

**A. May-issue laws are essential to promoting officer safety.**

May-issue regimes are an essential component of protecting the lives and safety of law enforcement officers. The majority of officers killed in the line of duty are killed by firearms—and specifically, by handguns.<sup>15</sup> The data support this grim reality: In 2019, of the 48 felonious officer deaths, 44 were killed with firearms.<sup>16</sup> In 2020, of the 46 felonious officer deaths, 41 were killed with firearms.<sup>17</sup> And, as of mid-2021, 28 officers have been killed with firearms, marking a 4 percent increase from the same time last year.<sup>18</sup> Indeed, according to FBI

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<sup>15</sup> See *2021 Mid-Year Preliminary Law Enforcement Officers Fatalities Report*, Nat'l Law Enforcement Officers Memorial Fund (July 2021), [http://nleomf.org/wp-content/uploads/2021/07/2021-Mid-Year-Fatality-Report\\_FINAL.pdf](http://nleomf.org/wp-content/uploads/2021/07/2021-Mid-Year-Fatality-Report_FINAL.pdf) at 4 (of the 28 officer fatalities in the first half of 2021, nine were killed with a handgun); *FBI Crime Data Explorer*, FBI Uniform Crime Reporting Program, <https://crime-data-explorer.app.cloud.gov/pages/downloads#leoka-Downloads> (of the 44 officers killed in 2019, 34 were killed with a handgun; of the 41 officers killed in 2020, 21 were killed with a handgun).

<sup>16</sup> *FBI Releases 2019 Statistics on Law Enforcement Officers Killed in the Line of Duty*, FBI.gov, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2019-statistics-on-law-enforcement-officers-killed-in-the-line-of-duty>.

<sup>17</sup> *FBI Crime Data Explorer* (searching LEOKA Annual Reports for officers feloniously killed in 2020).

<sup>18</sup> *2021 Mid-Year Preliminary Law Enforcement Officers Fatalities Report*, *supra* note 15, at 2.



statistics, firearms are used in more than *90 percent* of all officer fatalities,<sup>19</sup> and when motor vehicle crashes are removed from those statistics, the percentage of deaths from firearms increases to 97.5 percent.<sup>20</sup>

Unsurprisingly, the number of law enforcement fatalities is directly correlated to state firearm ownership rates. Indeed, a study of police killings from 1996 to 2010 found that law enforcement homicide rates were 3.1 times higher in states with high firearm ownership compared with states with low firearm ownership.<sup>21</sup> Of the 23 states in the high-firearm-ownership category, 21 had right-to-carry laws in effect during the study period.<sup>22</sup> For example, officers in Mississippi, New Mexico and Alaska (all shall-issue or permitless-carry states) experienced the greatest risk of officer shootings, whereas officers in Connecticut, New Jersey and New York (all discretionary licensing systems, with New

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<sup>19</sup> Franklin E. Zimring, *Firearms and Violence*, 1 *Reforming Criminal Justice: Introduction and Criminalization* 167, 170 (Erik Luna ed., 2017); see also Franklin E. Zimring, *Can Foreign Experience Inform U.S. Policy on Killings of and by Police*, 10 *Harvard L. & Pol'y Rev.* 43, 57 (2016) (“Although firearms are used in only four percent of attacks on U.S. police, they account for more than nineteen out of twenty police deaths.”).

<sup>20</sup> Zimring, *Firearms and Violence*, *supra* note 19, at 170.

<sup>21</sup> David Swedler et al., *Firearm Prevalence and Homicides of Law Enforcement Officers in the United States*, 105 *Am. J. of Pub. Health* 2042, 2045 (2015), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2015.302749>.

<sup>22</sup> Expert Report of John J. Donohue at 16, *Flanagan v. Becerra*, No. 2:16-cv-06164 (C.D. Cal June 1, 2017), ECF No. 45-8 (“Donohue Expert Report”).

York and New Jersey requiring “proper cause” or a “justifiable need” to carry a handgun in public) experienced the lowest risk.<sup>23</sup>

**B. Removing state and local authority over concealed-carry policies impairs effective policing.**

Unfettered concealed-carry makes it harder for law enforcement officers to do their jobs and undermines their ability to respond to dangerous criminal activity. As one research team explains, “the presence of more guns on the street can complicate the job of police as they confront (or shy away from) armed citizens.”<sup>24</sup>

This concern is amplified in high-density urban areas, where “increased concealed-carry of handguns renders the work of police in targeting the illegal use of handguns more difficult.”<sup>25</sup> Discretionary licensing helps foster the relationship between law enforcement and civilians by providing police officers with comfort that the individuals they encounter are not armed or

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<sup>23</sup> Michael Sierra-Arevalo and Justin Nix, *Gun Victimization in the Line of Duty*, *Criminology & Pub. Pol’y* 1041, 1048-49 (Special Issue July 20, 2020), <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12507>.

<sup>24</sup> Donohue, *supra* note 6, at 13.

<sup>25</sup> Declaration of Andrew Lunetta, Deputy Inspector, New York City Police Department, *Kachalsky v. Cacace*, No. 7:10-cv-05413 (S.D.N.Y. Feb. 23, 2011), ECF No. 62, at 6 (an increased number of armed individuals in New York City would “make it more difficult for police officers to distinguish between lawful and unlawful possession” and “make it more dangerous for law enforcement officers to deal with situations where they have reason to believe that concealed handguns are present”).

have met the law's reasonable licensing requirements. It thereby embodies the principal that "community policing is most effective when police can engage citizens in a direct, but friendly, way."<sup>26</sup>

The data clearly demonstrate this point. A study of fatal shootings of citizens by police from 2015 to 2017 found that states with the highest rate of firearm ownership experienced *four times* as many fatal shootings by police than states with the lowest rate of firearm ownership (4.1 per million versus 1.1 per million).<sup>27</sup> The study accounted for potential confounders such as violent crime, urbanization, and the percentage of the population that is non-white.<sup>28</sup> The author concluded that the "intuitive explanation" of the data is that in places where more people are armed, the probability that "police will encounter an armed civilian (criminal or otherwise) is higher, and thus, to the extent that police fear people who are armed with firearms more than those armed only with knives or without weapons, they are more likely to shoot them."<sup>29</sup>

A significant increase in the number of concealed handguns carried by ordinary citizens also complicates the work of law enforcement. The presence of concealed

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<sup>26</sup> Declaration of James W. Johnson, Chief of the Baltimore County Police Department, *Woollard v. Sheridan*, No. 1:10-cv-02068 (D. Md. Mar. 22, 2011), ECF No. 26-7, at 6.

<sup>27</sup> David Hemenway et al., *Variation in Rates of Fatal Police Shootings across US States: the Role of Firearm Availability*, 96 J. Urban Health 63, 67 (2018), <https://link.springer.com/article/10.1007/s11524-018-0313-z>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

firearms among members of the public means that officers “have no choice but to take extra precautions before engaging citizens, effectively treating encounters between police and the community that now are routine, friendly, and trusting, as high-risk stops, which demand a much more rigid protocol and a strategic approach.” *Woollard*, 712 F.3d at 880 (cleaned up). Not only must officers be more cautious when engaging with citizens in jurisdictions with lax concealed-carry laws, they also must check and confirm carry permits of those they encounter with concealed firearms. All of this compels officers to spend more time on routine interactions—time that could be spent more productively and in ways that would benefit public safety.<sup>30</sup>

As the number of people carrying firearms increases, so too do “handgun sightings”—reports called in to law enforcement of persons carrying firearms that must be investigated. *Woollard*, 712 F.3d at 880. Similarly, the greater the number of concealed firearms being carried in public, the greater the likelihood of negligent or unintentional discharges.<sup>31</sup> Unsurprisingly, the data show that police agencies in right-to-carry states tend to increase their police forces relative to other states in response to the state’s adoption of right-to-carry measures.<sup>32</sup> Police and criminal justice needs as-

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<sup>30</sup> Donohue Expert Report, *supra* note 22, at 16.

<sup>31</sup> Donohue, *supra* note 6, at 15 (detailing an accidental discharge in a church that injured the gun-owner and his wife and resulted in police responding to the scene and locking down a hospital and schools nearby).

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

sociated with gun violence cost taxpayers approximately \$10.7 billion annually, a drain on already-strained government resources.<sup>33</sup>

Unrestricted concealed-carry also complicates some of the most difficult work of policing: responding to active shootings and other dangerous situations. In those circumstances, armed citizens can cause confusion, delay the apprehension of suspects and put themselves and officers at risk. “Civilians without sufficient training to use and maintain control of their weapons, particularly under tense circumstances, pose a danger to officers and other civilians.” *Woollard*, 712 F.3d at 880 (cleaned up). For example, in 2018, police in Portland, Oregon shot a well-intentioned, armed man who was trying to break up a fight.<sup>34</sup> Similarly, in 2014, a police officer was “forced to terminate his foot pursuit [of an armed robber] and take cover for his own safety” when a citizen with a concealed handgun fired two shots at the fleeing suspect, thereby causing confusion for the officer as to “where the shots were fired from.”<sup>35</sup>

In the context of active shooter situations—which have become increasingly frequent in recent years—law enforcement’s ability to promptly identify and stop the suspect can be impaired by the presence of multiple

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<sup>33</sup> Everytown Research & Policy, *The Economic Cost of Gun Violence* (Feb. 17, 2021), <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/#executive-summary>.

<sup>34</sup> Donohue, *supra* note 6, at 15.

<sup>35</sup> Dahleen Glanton & Carlos Sadovi, *Concealed-carry Shooting Reignites Debate* (July 31, 2014), <https://www.chicagotribune.com/news/ct-crestwood-concealed-carry-0730-20140730-story.html>.

firearms when concealed carriers draw their handguns in response to the shooting.<sup>36</sup> For example, following a 2017 active shooting at a Denver-area shopping center, law enforcement reported that the presence of ordinary civilians with handguns drawn in response to the shooting “absolutely” hampered their investigation and ability to identify the assailant because they had to track the movements of anyone who was armed in order to find the suspect and rule out accomplices.<sup>37</sup>

Moreover, civilian firearm use intended to stop an active shooter is generally ineffective and threatens the safety of innocent bystanders. As a 2016 report from public health experts at Johns Hopkins University notes, “[e]ffective and responsible use of a firearm under the conditions of an active shooting requires significant training” and a “high level of familiarity with tac-

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<sup>36</sup> See Kristal Hayes, *Most shooters got their guns legally, didn't have diagnosed mental illness, new FBI report say*, USA Today (June 20, 2018), <https://www.usatoday.com/story/news/2018/06/20/fbi-most-active-shooters-dont-have-mental-illness-get-guns-legally/718283002/>; *Active Shooter Incidents in the United States in 2020*, FBI.gov, <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2020-070121.pdf/view>; *Active Shooter Incidents 20-Year Review, 2000-2019*, FBI.gov, <https://www.fbi.gov/file-repository/active-shooter-incidents-20-year-review-2000-2019-060121.pdf/view>.

<sup>37</sup> See Kevin Simpson, *Shoppers Pulled Guns in Response to Thornton Walmart Shooting, but Police say that Slowed Investigation*, The Denver Post (Nov. 2, 2017), <https://www.denverpost.com/2017/11/02/shoppers-pulled-weapons-walmart-shooting>.

tics and the ability to manage stress under intense pressure” that most ordinary gun-possessing citizens do not have.<sup>38</sup>

Although Petitioners’ *amici* claim that concealed-carry holders are effective in stopping active shooters, in reality, armed citizens play a negligible role in such situations. Petitioners’ *amici* cite a bare handful of instances out of countless shootings in which an armed citizen shot an active shooter and prevented the assailant from injuring more innocent victims. In two such instances, the individual who shot the assailant was a trained security guard and/or former law enforcement officer.<sup>39</sup> Similarly, a 2013 FBI study analyzing 160 active shootings over a 13-year-period found only *one* incident in which the shooter was stopped by an armed individual who was neither a police officer nor a security guard,<sup>40</sup> and even in that case, the armed citizen

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<sup>38</sup> Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications* 8 (Oct. 15, 2016), [https://nccpsafety.org/assets/files/library/Firearms\\_on\\_College\\_Campuses.pdf](https://nccpsafety.org/assets/files/library/Firearms_on_College_Campuses.pdf).

<sup>39</sup> See Reuters, *Texas Church Shooter Wore Wig and Fake Beard, says Security Head who Shot Him* (Dec. 30, 2019), <https://www.reuters.com/article/us-texas-shooting/texas-church-shooter-wore-wig-and-fake-beard-says-security-head-who-shot-him-idUSKBN1YY1F0>; CNN, *Security Guard who Stopped Shooter Credits God* (Dec. 10, 2007), <https://www.cnn.com/2007/US/12/10/colorado.shootings/>.

<sup>40</sup> Blair & Schweit, *A Study of Active Shooter Incidents, 2000-2013*, Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. (2014), <https://www.fbi.gov/file-repository/active-shooter-study-2000-2013-1.pdf/view>.

was an active-duty Marine.<sup>41</sup> Notably, the study found that in far more instances—21 in total—*unarmed* citizens safely and successfully restrained the shooter and prevented further injury to innocent bystanders.<sup>42</sup>

In addition, the relaxation of concealed-carry laws and the corresponding rise in civilian “vigilante justice” can instill a sense of fear in the community. The presence or threat of armed “militia” patrolling city streets in response to lawful protests or peaceful demonstrations can have the effect of escalating violence, sowing fear within the community and obstructing law enforcement’s duties. For example, the presence of armed “militias” or “vigilante groups” at the racial justice protests that swept the nation beginning in the spring of 2020 only served to increase tensions and, in some cases, ultimately led to violent confrontations.<sup>43</sup>

### **C. Concealed handguns are not effective means of self-defense.**

Data show that the use of handguns by even well-intentioned citizens in crime prevention and defensive efforts is largely ineffective and unsuccessful, and crime

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<sup>41</sup> Dee Holzel, *Shootout in Winnemucca: Three Dead, Two Injured in Early-Morning Gunfight* (May 24, 2008), [https://elko-daily.com/news/local/shootout-in-winnemucca-three-dead-two-injured-in-early-morning-gunfight/article\\_83fe3832-cc3b-528b-88bd-a85ce65f5967.html](https://elko-daily.com/news/local/shootout-in-winnemucca-three-dead-two-injured-in-early-morning-gunfight/article_83fe3832-cc3b-528b-88bd-a85ce65f5967.html).

<sup>42</sup> Blair & Schweit, *supra*, note 40, at 11.

<sup>43</sup> See Tim Craig, *U.S. Political Divide Becomes Increasingly Violent, Rattling Activists and Police* (Aug. 27, 2020), [https://www.washingtonpost.com/national/protests-violence/2020/08/27/3f232e66-e578-11ea-970a-64c73a1c2392\\_story.html](https://www.washingtonpost.com/national/protests-violence/2020/08/27/3f232e66-e578-11ea-970a-64c73a1c2392_story.html).



victims rarely even use guns in self-defense. According to data provided by the federal Bureau of Justice Statistics, victims of violent crimes use handguns to threaten or attack the perpetrator in less than *one percent* of all criminal incidents.<sup>44</sup> In those rare instances in which a victim does use a firearm in self-defense, doing so does not actually reduce the individual's risk of injury as compared to other protective measures, like “[r]unning away and calling the police.”<sup>45</sup> Although Petitioners’ *amici* contend that there are up to 2.5 million defensive gun uses each year,<sup>46</sup> the study supporting that exaggerated figure has been widely discredited.<sup>47</sup>

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<sup>44</sup> See Hemenway & Solnick, *supra* note 14, at 23 (concluding that “self-defense gun use is a rare event” and demonstrating that guns are used by victims “in less than 1% of crimes in which there is personal contact between the perpetrator and victim, and about 1% in cases of robbery and (non-sexual) assault”); Mark Gius, *Self-Protective Behaviors in the United States: Results from a Recent Survey*, 16 Int’l J. of Applied Economics 43–54 (Sept. 2019) (finding that percentage of all crime victims who defended themselves with a firearm was 1.25%); see also David Hemenway, *The Myth of Millions of Annual Self-Defense Gun Uses: A Case Study of Survey Overestimates of Rare Events*, 10 *Chance* 6–10 (1997).

<sup>45</sup> See Hemenway & Solnick, *supra* note 14, at 23.

<sup>46</sup> See Brief *amici curiae* of William English, Ph.D. and the Center for Human Liberty at 9 (Jul. 20, 2021).

<sup>47</sup> See, e.g., David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 *J. Crim. L. & Criminology* 1430, 1430–31 (1997), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6936&context=jclc>; Hemenway & Solnick, *supra* note 14, at 22–27 (asserting that the National Crime Victimization Survey estimate of defensive gun use is more credible because it eliminates the risk of false positive answers by asking about protective action only if the respondent was a crime victim). Petitioners’ *amici* used

Rather than protecting an individual from harm, carrying a firearm may actually *increase* a victim's risk of injury during the commission of a crime. An influential 2009 study published in the *American Journal of Public Health* that analyzed 677 shootings in Philadelphia over a two-and-a-half-year period concluded that, on average, "guns did not seem to protect those who possessed them from being shot in an assault."<sup>48</sup> To the contrary—after adjusting for confounding factors—the study found that individuals who were in possession of a gun were 4.46 times more likely to be shot in an assault than unarmed individuals, and 4.23 times more likely to be killed by such an assault. Moreover, in assaults where the victim had an opportunity to resist, individuals in possession of a gun were 5.45 times more likely to be shot.<sup>49</sup> The researchers posited that a gun "may falsely empower its possessor to overreact, instigating and losing otherwise tractable conflicts with similarly armed persons" as a possible explanation for their finding that "possession of a gun increases an individual's risk of gun assault."<sup>50</sup> In addition, individuals in

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an online survey service that does not yield a nationally representative sample, contained leading "teaser" questions that could have skewed survey responses, and has an ill-formed main question that does not limit inquiry to incidents where victims were defending themselves against a crime, but instead asks generally about defending oneself or one's property with a firearm, even if it was not fired or displayed.

<sup>48</sup> See Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 *Am. J. Pub. Health* 2034, 2037 (2009), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2008.143099>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

possession of a gun “may increase their risk of gun assault by entering dangerous environments that they would have normally avoided” or “may bring a gun to an otherwise gun-free conflict only to have that gun wrested away and turned on them.”<sup>51</sup>

### CONCLUSION

For the foregoing reasons, based on their vast law enforcement experience and their deep understanding of gun use and regulation, *amici* respectfully ask this Court to affirm the circuit court’s opinion and to uphold New York’s constitutional and common-sense public concealed-carry law. Licensing regimes like New York’s that vest discretion in local and state officials help protect the lives and safety of law enforcement officers, foster effective policing practices and reduce both civilian and police fatalities.

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

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