

No. 20-843

IN THE
Supreme Court of the United States

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

v.

KEVIN P. BRUEN, in His Official Capacity as
Superintendent of New York State Police, et al.,
Respondents.

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

**BRIEF OF AMICUS CURIAE PROSECUTORS
AGAINST GUN VIOLENCE IN SUPPORT OF
RESPONDENTS**

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Corporate Disclosure Statement

Prosecutors Against Gun Violence has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	<u>PAGE</u>
Corporate Disclosure Statement.....	i
Identity and Interest of Amicus Curiae.....	1
Summary of Argument.....	2
Argument	4
I. Localized Discretion in Issuing Public Carry Permits Is Essential to Exercising a State’s Police Power to Protect the Public	4
A. State and Local Governments’ Paramount Duty to Protect the Safety of Their Citizens Is Accompanied by Broad Discretion	4
B. The Second Amendment Does Not Deprive the States of the Duty, or of the Discretion, to Protect Public Safety Through Firearms Permits	7
C. Appropriate, Common Sense Gun Regulations Vary with the Public Safety Needs of Specific Communities	8
D. Localized Standards in Concealed Carry Permitting Decisions Are of Importance in Combating Unlawful Handgun Use in the Urban Areas That PAGV Members Serve...	10

- II. Courts Have Recognized the Constitutionality of Discretionary Licensing Regimes Vesting Authority in Local Officials 13
- III. Non-Discretionary Licensing Improperly Limits the Discretion Required by State and Local Authorities to Fulfill Their Obligation to Protect Their Citizens 19
 - A. Non-Discretionary Licensing Limits Law Enforcement’s Ability to Protect the Public, Including Increasing Risk Inherent in Civilian-Police Encounters 19
 - B. Non-Discretionary Licensing Schemes Would Further Increase the Risk to the Lives of Law Enforcement Personnel 23
 - C. The Empirical Evidence Demonstrates That Non-Discretionary Licensing Laws Would Result in Increased Gun Violence 25
- Conclusion..... 27
- Appendix A: Map of “sensitive places” in New York City 1a
- Appendix B: Map of 1,000 foot buffer zones around facilities catering to children in New York City 2a

TABLE OF AUTHORITIES

CASES

	<u>PAGE(S)</u>
<i>Brescia v. McGuire</i> , 509 F. Supp. 243 (S.D.N.Y. 1981)	7
<i>D.C. v. Heller</i> , 554 U.S. 570 (2008)	7, 11
<i>Drake v. Filko</i> , 724 F.3d 426 (3d Cir. 2013)	13, 14, 15, 16
<i>Gonzales v. Oregon</i> 546 U.S. 243 (2006)	5
<i>Gould v. Morgan</i> , 907 F.3d 659 (1st Cir. 2018) ..	14, 15, 16, 22, 24, 26
<i>Kachalsky v. Cnty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012)	<i>passim</i>
<i>Kelley v. Johnson</i> , 425 U.S. 238 (1976)	5, 6-7
<i>Kolbe v. Hogan</i> , 849 F.3d 114, 149-50 (4th Cir. 2017)	14
<i>Libertarian Party of Erie Cnty. v. Cuomo</i> , 300 F. Supp. 3d 424 (W.D.N.Y. 2018)	6
<i>McDonald v. City of Chi.</i> , 561 U.S. 742 (2010)	7, 11
<i>Medtronic, Inc. v. Lohr</i> , 518 U.S. 470 (1996)	2, 5

<i>Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives</i> 700 F.3d 185 (5th Cir. 2012)	15
<i>Panhandle E. Pipe Line Co. v. State Highway Comm'n of Kan.,</i> 294 U.S. 613 (1935)	5
<i>Peruta v. Cnty. of San Diego,</i> 758 F. Supp. 2d 1106 (S.D. Cal. 2010)	26
<i>Peruta v. Cnty. of San Diego,</i> 824 F.3d 919 (9th Cir. 2016) (en banc)	14, 26
<i>Piszczatoski v. Filko,</i> 840 F. Supp. 2d 813 (D.N.J. 2012)	26
<i>Richards v. Cnty. of Yolo,</i> 821 F. Supp. 2d 1169 (E.D. Cal. 2011)	26
<i>Richmond Boro Gun Club, Inc. v. City of N.Y.,</i> 896 F. Supp. 276 (E.D.N.Y. 1995)	6
<i>Robertson v. Baldwin,</i> 165 U.S. 275 (1897)	2
<i>United Auto., Aircraft & Agric. Implement Workers of Am. v. Wis. Emp't Rel. Bd.,</i> 351 U.S. 266 (1956)	5
<i>United States v. Comstock,</i> 560 U.S. 126 (2010)	5
<i>United States v. Krueger,</i> 809 F.3d 1109 (10th Cir. 2015)	7
<i>United States v. Morrison,</i> 529 U.S. 598 (2000)	5

<i>United States v. Reese</i> , 627 F.3d 792 (10th Cir. 2010)	15
<i>Woollard v. Gallagher</i> , 712 F.3d 865 (4th Cir. 2013)	<i>passim</i>

BRIEFS

Brief of the Brady Center to Prevent Gun Violence, Ceasefire NJ, International Brotherhood of Police Officers, Major Cities Chiefs et al. as Amici Curiae, <i>Drake v. Filko</i> , 724 F.3d 426 (3d Cir. 2013)	24
Brief of the Legal Community Against Violence, Major Cities Chiefs Association, Association of Prosecuting Attorneys, and San Francisco District Attorney George Gascón as Amici Curiae Supporting Appellees, <i>Peruta v. Cnty. of San Diego</i> , 824 F.3d 919 (9th Cir. 2016)	24
Brief of Petitioner, <i>N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen</i> , No. 20-843 (U.S. Jul. 13, 2021)	20
Brief for State Appellees, <i>Kachalsky v. Cnty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012)	19

DECLARATIONS

Declaration of Andrew Lunetta, Deputy Inspector, New York City Police Department, Joint Appendix, <i>Kachalsky v. Cnty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012)	19-20, 23
--	-----------

Declaration of Franklin E. Zimring, Professor of Law, the University of California, Berkeley, Joint Appendix, <i>Kachalsky</i> , 701 F.3d 81 (2d Cir. 2012)	10-11, 12, 13
Declaration of James W. Johnson, Chief of the Baltimore County Police Department, Joint Appendix, <i>Woollard</i> , 712 F.3d 865 (4th Cir. 2013)	20, 22, 24
Declaration of Philip J. Cook, Joint Appendix, <i>Kachalsky</i> , 701 F.3d 81 (2d Cir. 2012)	12-13
Declaration of Terrence B. Sheridan, Superintendent of the Maryland State Police, Joint Appendix, <i>Woollard</i> , 712 F.3d 865 (4th Cir. 2013) ...	20, 23, 25
Declaration of The Honorable David R. Roefaro, Joint Appendix at 521, <i>Kachalsky</i> , 701 F.3d 81	18
Declaration of The Honorable Stephanie A. Miner, Joint Appendix at 524-525, <i>Kachalsky</i> , 701 F.3d 81	18
Declaration of Thomas L. Fazio, Deputy Superintendent of the Bureau of Criminal Investigation, New York State Police, Joint Appendix, <i>Kachalsky</i> , 701 F.3d 81 (2d Cir. 2012)	25

STATUTES & RULES

FED. R. APP. P. 29(a)(4)	1
MASS. GEN. LAWS ch. 140 § 131(a)	15
MASS. GEN. LAWS ch. 140 § 131(d)	15

MD. CODE ANN., CRIM. LAW § 4-202	17
MD. PUB. SAFETY § 5-306 (2013).....	16-17
N.J.S.A. § 2C:58-4	16
N.Y. PENAL LAW § 400.00(1)	13
N.Y. PENAL LAW § 400.00(2)(f)	13
N.Y. PENAL LAW § 400.00(3)(a)	14

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<i>60 Minutes: The Showdown Over the Concealed Carry Reciprocity Act</i> (CBS television broadcast Feb. 11, 2018)	8
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the Causes & Prevention of Violence* (1968)12

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Violent Crime: A Comprehensive Assessment
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synthetic-controls-analysis/.....](https://law.stanford.edu/publications/right-to-carry-laws-and-violent-crime-a-comprehensive-assessment-using-panel-data-and-a-state-level-synthetic-controls-analysis/)25-26, 27

Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82
(2013) 10

Letter from David LaBahn, President & CEO, Ass'n
of Prosecuting Attorneys to Congressional Leaders
(Nov. 27, 2017).....5

Letter from 17 Attorneys General to Congressional
Leaders (Oct. 22, 2017) 5-6

Letter from the National Law Enforcement
Partnership to Prevent Gun Violence to Congress
(July 7, 2017) 9-10

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Present*, [http://concealedcarrykillers.org/wp-
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.....24

Identity and Interest of Amicus Curiae¹

Prosecutors Against Gun Violence (“PAGV”) is an independent, nonpartisan coalition that identifies and promotes prosecutorial and policy solutions to the national public health and safety crisis of gun violence. PAGV consists of 74 prosecutors, including co-founder and Manhattan District Attorney (“DA”) Cyrus Vance Jr., as well as Bronx DA Darcel Clark, Brooklyn DA Eric Gonzalez, Queens DA Melinda Katz, and Staten Island DA Michael McMahon. PAGV serves more than 60 million residents of 36 urban areas in 22 states across the country. PAGV’s mission includes sharing best practices for prosecuting gun offenders and defending common-sense gun safety policies.

Prosecutors, along with other local law enforcement agencies with which they collaborate daily, play a critical role in promoting citizen safety, the highest objective of state and local government. The key issue before this Court is whether a state may require that a citizen show a “proper” reason for an *unrestricted* license to carry a *concealed* firearm in *public*. From their position on the front lines of local efforts to curb gun violence and defend public safety in a wide cross-section of communities, prosecutors within the Second Circuit, and

¹ PAGV has obtained the consent of all parties in this case to file its amicus brief. *See* Fed. R. App. P. 29(a)(4). PAGV certifies that this brief was not written in whole or in part by counsel for any party, and no person or entity other than PAGV, its members, and its counsel has made any monetary contribution to the preparation or submission of this brief. *See id.*

throughout the nation, will be directly affected by the outcome of this case.

Accordingly, PAGV submits this amicus brief to emphasize the need for deference to local jurisdictions' determinations about the type of firearm licensing requirements that are best suited to their specific public safety challenges, and to extend its support for New York's determination that a "proper cause" requirement for the public carry of firearms effectuates that state's interest in promoting public safety and reducing crime.

Summary of Argument

Localized concealed carry permitting standards are often crucial tools for combating unlawful gun use and the crime and violence it inflicts.

The Supreme Court has repeatedly emphasized that, pursuant to their police powers, states have broad discretion in creating legislative standards aimed at protecting citizens' lives. *See, e.g., Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996). The choice of whether and how to regulate firearms, short of imposing categorical bans, is well within this discretion.

It has long been established that laws restricting the public carrying of concealed weapons do not infringe on the Second Amendment right to keep and bear arms. *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897). According to the weight of precedent, restrictions on public carry thus do not

impermissibly burden conduct protected by the Second Amendment.

Even assuming that public carry falls within the scope of protected conduct, permitting laws similar to the at-issue New York statute have been upheld as substantially related to the important governmental objective of public safety. Apart from the Second Circuit, the First, Third, Fourth, and Ninth Circuits have all upheld a variety of states' licensing schemes vesting authority in local officials to impose "proper cause," "justifiable need," or "good and substantial reason" requirements for acquiring concealed carry permits. In contrast, the mandatory licensing schemes that Appellants demand obstruct law enforcement's ability to promote public safety and protect lives.

Empirical data and expert testimony from law enforcement officials across the nation confirm the deleterious effects resulting from non-discretionary licensing laws. As non-discretionary licensing increases the number of concealed handguns carried in public, such licensing transforms routine police encounters into potentially dangerous, high-risk scenarios threatening the safety of *both* law enforcement officials and the citizens they serve. These risks, while problematic on a nationwide level, are amplified in the urban areas that PAGV members serve.

Discretion in issuing concealed carry permits is not only a common-sense administrative tool, but also a necessary means of controlling crime levels and

violence in vulnerable American cities. For this reason, tens of millions of Americans, through their elected officials, have exercised their choice to grant local law enforcement agencies discretion concerning the issuance of concealed carry permits. The will of these citizens, and the dangers posed by non-discretionary carry permitting, ought not to be ignored by this Court.

Argument

I. Localized Discretion in Issuing Public Carry Permits Is Essential to Exercising a State's Police Power to Protect the Public

The highest purpose of all state and local governments is protecting and promoting the physical safety of their citizens. The challenged permitting regime is the product of deliberation on the part of New York lawmakers on how to best effectuate that objective.

A. State and Local Governments' Paramount Duty to Protect the Safety of Their Citizens Is Accompanied by Broad Discretion

This Court has observed that there is “no better example of the police power, which the Founders denied the National Government and 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).² Protecting the physical safety of their citizens is not merely a power, but the primary obligation, of state and local authorities. See *Panhandle E. Pipe Line Co. v. State Highway Comm'n of Kansas*, 294 U.S. 613, 622 (1935) (stating that the state police power “springs from the obligation of the state to protect its citizens and provide for the safety and good order of society”).

Commensurate with the weight of this responsibility, states retain “great latitude under their police powers to legislate as to the protection of the lives, limb, health, comfort and quiet of all persons.” *Medtronic*, 518 U.S. at 475 (internal quotations omitted); accord *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). State and local lawmakers discharge this duty by “carefully and thoughtfully creat[ing] their own framework of standards . . . to suit public safety needs.”³ These homegrown standards reflect “the great diversity in geography, population, culture, and tradition” of lawmakers’

² See also *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“The promotion of safety of persons and property is unquestionably at the core of the State’s police power”); *United Auto., Aircraft & Agric. Implement Workers of Am. v. Wisconsin Emp’t Relations Bd.*, 351 U.S. 266, 274 (1956) (“The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern.”); *United States v. Comstock*, 560 U.S. 126, 153 (2010) (Kennedy, J., concurring in result) (“Residual power, sometimes referred to (perhaps imperfectly) as the police power, belongs to the States and the States alone.”).

³ Letter from David LaBahn, President & CEO, Ass’n of Prosecuting Attorneys to Congressional Leaders (Nov. 27, 2017).

constituents.⁴ They are not only “decisions by state and local authorities about how to best ensure public safety,”⁵ but also reflect “the will of their citizens” and symbolize “the core democratic principle that . . . elected representatives make those laws.”⁶

Likewise, the challenged New York statute applies local standards to issuing unrestricted concealed carry permits, reflecting the legislature’s judgment that the statute will promote public safety.⁷

⁴ Letter from 17 Attorneys General to Congressional Leaders (Oct. 22, 2017).

⁵ *Id.*

⁶ Andrew Warren, State Attorney for the 13th Judicial Circuit, *Concealed-Carry Reciprocity Would Be Bad for Florida*, TAMPA BAY TIMES (Dec. 5, 2017), http://www.tampabay.com/opinion/columns/Column-Concealed-carry-reciprocity-would-be-bad-for-Florida_163306216. See also Tom Jackman, *Police Chiefs Implore Congress Not to Pass Concealed-Carry Reciprocity Gun Law*, WASH. POST (Apr. 19, 2018), https://www.washingtonpost.com/news/true-crime/wp/2018/04/19/nations-police-chiefs-implore-congress-not-to-pass-concealed-carry-reciprocity-gun-law/?noredirect=on&utm_term=.73bc281f4c6c (quoting Boston Police Commissioner William Evans as attributing “Massachusetts[] . . . lowest gun deaths of any state” to state permitting requirements and “watch[ing] guns and who possesses them very closely”).

⁷ See *Libertarian Party of Erie Cty. v. Cuomo*, 300 F. Supp. 3d 424, 443 (W.D.N.Y. 2018) (“Unquestionably, [New York State] has [a] ‘substantial, indeed compelling, governmental interests in public safety and crime prevention.’”) (quoting *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 96) (2d Cir. 2012); *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 282 (E.D.N.Y. 1995) (stating that “[t]he promotion of public safety is ‘unquestionably at the core’ of the

As a measure designed “to regulate in the interest of [New Yorkers] public safety,” it is entitled to the benefit of the State’s latitude in the exercise of “the heart of [its] police power.” *Brescia v. McGuire*, 509 F. Supp. 243, 247 (S.D.N.Y. 1981); *see also United States v. Krueger*, 809 F.3d 1109, 1124 (10th Cir. 2015) (Gorsuch, J., concurring) (“Ours is not supposed to be the government of the Hunger Games with power centralized in one district, but a government of diffused and divided power, the better to prevent its abuse.”).

B. The Second Amendment Does Not Deprive the States of the Duty, or of the Discretion, to Protect Public Safety Through Firearms Permits

This Court has repeatedly emphasized that the Second Amendment does not grant the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). The below court properly interpreted these precedents as speaking to the States’ retained duty and discretion to regulate firearms short of imposing certain categorical bans. *See Kachalsky*, 701 F.3d at 94 (reasoning that the *Heller* Court stressed “that banning usable handguns in the home is a ‘policy choice[]’ that is ‘off the table’ . . . , but that a variety

municipality’s police power”) (citing *Kelley v. Johnson*, 425 U.S. 238, 247 (1976)).

of other regulatory options remain available”) (internal citations omitted).

C. Appropriate, Common Sense Gun Regulations Vary with the Public Safety Needs of Specific Communities

PAGV, along with other law enforcement leaders, strongly believes in the importance of vesting discretion with local decision-makers to regulate firearms, including requiring applicants to show a “proper cause,” “good reason,” or “justifiable need” to be allowed to carry concealed weapons in public.

In response to the proposed Concealed Carry Reciprocity Act, James O’Neil, Police Commissioner of New York City, said that New York City has “a good idea . . . of who’s carrying guns” and that if the law passes “all bets are off.”⁸ Joining this criticism, Cyrus Vance Jr., the Manhattan DA, stated that, “the bill would make it impossible for the NYPD to tell the good guys from the bad, including terrorists.”⁹ According to Vance, “[i]f the residents of Idaho want a state [where] you don’t need a permit to get a gun, I don’t think New York should tell Idaho how to manage its public safety, and I certainly don’t think the people of Idaho should tell New York City how to manage its public safety.”¹⁰

⁸ *60 Minutes: The Showdown Over the Concealed Carry Reciprocity Act* (CBS television broadcast Feb. 11, 2018).

⁹ *New York Officials Oppose Bill Extending Concealed Carry Across State Lines*, CBS NEW YORK (Aug. 8, 2017, 6:29 PM).

¹⁰ *Id.*

Other law enforcement leaders have echoed this principle. Chris Magnus, the Chief of Police for Tucson, Arizona, is entrusted with protecting a community that witnessed the horror of a gunman killing six people and injuring others, including Congresswoman Gabby Giffords. Based on his extensive policing experience, Magnus believes that the “best strategy for preventing and reducing crime is the ability to listen and respond accordingly to the needs of the community.”¹¹ As Magnus correctly stated, “[p]rotecting the safety of their residents has long been the purview of individual states, a right ensured by the 10th Amendment of the U.S. Constitution.”¹²

Similarly, the National Law Enforcement Partnership to Prevent Gun Violence—a coalition of law enforcement organizations—asserted that “[s]tates and localities should maintain their rights to legislate concealed carry laws that best meet the needs of their citizens.”¹³ Likewise, the Major Cities Chiefs Association endorsed the continuation of concealed carry laws that “have been tailored to the

¹¹ Chris Magnus, Tucson Police Chief, *Lawmakers Must Listen to Law Enforcement on Dangerous Gun Bills*, ARIZONA DAILY STAR (Sept. 21, 2017), https://tucson.com/opinion/local/chris-magnus-lawmakers-must-listen-to-law-enforcement-on-dangerous/article_50ad9a22-74ba-5c15-acf3-10b22598804a.html.

¹² *Id.*

¹³ Letter from the National Law Enforcement Partnership to Prevent Gun Violence to Congress (July 7, 2017).

needs of regions and local communities over a period of many years.”¹⁴

D. Localized Standards in Concealed Carry Permitting Decisions Are of Importance in Combating Unlawful Handgun Use in the Urban Areas That PAGV Members Serve

PAGV thus emphasizes the importance of tailoring local police powers to the particular community’s needs—especially in the urban areas that PAGV members overwhelmingly represent. This should be of little surprise, given that the “vast majority of gun control regulations in the United States are local, and are tailored to the particular risks of gun use in densely populated areas.”¹⁵

Franklin Zimring, a prominent criminology and criminal justice scholar, noted that carrying loaded weapons in “shared public environments means that the implications . . . are spread over the

¹⁴ Press Release, Major Cities Chiefs Association, Major Cities Chiefs Denounce Combining Concealed Carry Reciprocity with the Fix NICS Act (Dec. 4, 2017). *See also* Press Release, International Association of Chiefs of Police, Law Enforcement Express Opposition to the Concealed Carry Reciprocity Act (Apr. 19, 2018) (asserting that concealed carry reciprocity proposals are “a dangerous encroachment on individual state efforts to protect public safety, and . . . effectively nullify duly enacted state laws and hamper law enforcement efforts to prevent gun violence”).

¹⁵ Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 99 (2013).

community of users of public space.”¹⁶ The problem of unrestricted carry is particularly acute with respect to handguns, which are known for being “easy to carry and conceal,” rendering them a “priority concern of law enforcement.”¹⁷ For governments responsible for maintaining the safety of public spaces in densely populated areas, this concern is amplified.

This concern is particularly true in New York City, boasting the highest population density of any major city in the United States, “with over 27,000 people per square mile.”¹⁸ Local legislators are also entrusted with protecting a larger number of “sensitive” areas, such as schools, government buildings, playgrounds, and places of worship. While *Heller* and *McDonald* clearly stated that their holdings were not meant “to cast doubt on longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places,”¹⁹ New York’s demographic realities mean that a blanket

¹⁶ Declaration of Franklin E. Zimring, Professor of Law, the University of California, Berkeley, Joint Appendix at 490, *Kachalsky*, 701 F.3d 81 [hereinafter “Zimring Decl.”].

¹⁷ *Id.* at 487.

¹⁸ NYC Planning, *New York City Population: Population Facts*, <https://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page>.

¹⁹ *See Heller*, 554 U.S. at 626 (2008); *McDonald*, 561 U.S. at 786 (2010). While *Heller* lists “schools and government buildings” as examples of “sensitive places,” the Court stated that the identification of “these presumptively lawful regulatory measures . . . does not purport to be exhaustive.” *Heller*, 554 U.S. at n. 26.

elimination of the “proper cause” requirement would increase the likelihood of firearms reaching these “sensitive places” and require greater law enforcement resources to prevent this.²⁰

Handguns also pose a major hazard for law enforcement in big cities, due to their higher likelihood of being used in criminal violence.²¹ In an oft-cited survey of 10 major American cities, including New York City, the National Violence Commission reported that 86% of all firearms used in aggravated assaults were handguns, while 96% of firearms used in robberies were handguns.²² Similarly, Duke University professor Philip Cook conducted a regression analysis of robbery-murder rates in 43 cities showing that for every “additional 1,000 gun robberies,” four robbery murders were added to the city total, while an additional 1,000 non-

²⁰ By way of illustration of the unique law enforcement challenges posed by New York City’s demographic profile, Exhibit A contains a map depicting the close proximity and high density of a subset of “sensitive places” in New York City, specifically: (1) schools, daycares and pre-kindergarten buildings, and child welfare services, and (2) certain types of government buildings. Similarly, Exhibit B contains a map showing the 1,000-foot buffer zone around facilities catering to children, including schools (compiled in the context of certain New York sexual assault laws).

²¹ Zimring Decl. at 487.

²² George D. Newton, Jr. & Franklin E. Zimring, *Firearms and Violence in American Life: A Staff Report Submitted to the National Commission on the Causes & Prevention of Violence*, fig. 8-1, at 49 (1968).

gun robberies added just one murder, a 300% increase in the robbery-murder rate.²³

Zimring concludes that “the problem of gun robbery in American cities is almost exclusively a problem of concealable handguns.”²⁴ Thus, the ability of officials in urban areas to determine who should be able to carry concealed handguns is critical to public safety.

II. Courts Have Recognized the Constitutionality of Discretionary Licensing Regimes Vesting Authority in Local Officials

Consistent with the obligation of state and local legislative bodies to enact laws that meet the needs of the communities they serve, courts have affirmed the constitutionality of licensing regimes vesting discretion in local authorities. The challenged provision of New York law, N.Y.P.L. § 400(2)(f), requires the local licensing authority to issue an *unrestricted* carry license once the authority determines that “proper cause” exists for its issuance.²⁵

²³ Declaration of Philip J. Cook, Joint Appendix at 451, *Kachalsky*, 701 F.3d 81.

²⁴ Zimring Decl. at 488.

²⁵ See N.Y. PENAL LAW § 400.00(1) (stating that “[n]o license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true”); *id.* § 400.00(2)(f) (stating that an applicant for “[a] license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to . . . have and carry

The First, Third, and Fourth Circuits have all upheld similar licensing standards requiring public carry permit applicants to demonstrate a need for self-defense greater than that of an ordinary member of the public.²⁶ In upholding these regimes, these courts have specifically cited deference to legislative judgments as a key factor in their decision-making.²⁷

concealed, without regard to employment or place of possession, by any person *when proper cause exists for the issuance thereof*) (emphasis added); *id* § 400.00(3)(a) (stating that applications shall be made “to the licensing officer in the city or county, . . . where the applicant resides, is principally employed or has his or her principal place of business”).

²⁶ *Gould v. Morgan*, 907 F.3d 659, 673-74 (1st. Cir. 2018); *Drake v. Filko*, 724 F.3d 426, 440 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 882-83 (4th Cir. 2013). Similarly, the Ninth Circuit upheld a California law requiring applicants to demonstrate a “good cause” to publicly carry a concealed firearm and delegating authority to county sheriffs “to establish and publish policies defining good cause.” *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc).

²⁷ *See Gould*, 907 F.3d at 673-74; *Drake*, 724 F.3d at 439; *Woollard*, 712 F.3d at 881; *Peruta*, 824 F.3d at 945; *see also Kachalsky*, 701 F.3d at 99 (it “is the legislature’s job, not [the court’s], to weigh conflicting evidence and make policy judgments”). *See also Kolbe v. Hogan*, 849 F.3d 114, 149-50 (4th Cir. 2017) (en banc) (Wilkinson, J., concurring)

“I am unable to draw from the profound ambiguities of the Second Amendment an invitation to courts to preempt this most volatile of political subjects and arrogate to themselves decisions that have been historically assigned to other, more democratic, actors. . . . Disenfranchising the American people on this life and death subject would be the gravest and most serious of steps. It is their community, not ours. It is their safety, not ours. It is their lives, not ours.”)

For example, under Massachusetts law, a “licensing authority . . . may issue [a concealed carry permit] if it appears that the applicant is not a prohibited person . . . and has good reason to fear injury to the applicant or the applicant's property or for any other reason.”²⁸ In upholding Massachusetts’s “good reason” requirement, the First Circuit acknowledged the State’s “compelling governmental interests in both public safety and crime prevention,” and noted that courts were obligated “to give ‘substantial deference to the predictive judgments’ of [the] state legislature.” *Gould*, 907 F.3d at 673-74 (internal citations omitted). The court deferred to Massachusetts’s determinations, holding that the challenged statute did not infringe on the core Second Amendment right “of a citizen to keep arms in his home for the purpose of self-defense,”²⁹ and acknowledged that the legislature aimed to balance the threat firearms present to public safety with the reality that “some individuals might have a heightened need to carry fire-arms for self-defense.” *Id.* at 674. The court also

²⁸ MASS. GEN. LAWS ch. 140 § 131(a); *id.* § 131(d).

²⁹ *Gould*, 907 F.3d at 674. Despite appellants’ assertions that *Heller* and *McDonald* recognize concealed and open-carry of weapons outside the home as “core” Second Amendment conduct, *see* Br. for Appellants at 11, multiple circuits have explicitly held in the aftermath of *Heller* and *McDonald* “that the core Second Amendment right is limited to self-defense in the home.” *Gould*, 907 F.3d at 671; *see also* *Woollard v. Gallagher*, 712 F.3d 865, 874 (4th Cir. 2013); *Drake*, 724 F.3d at 436; *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms*, 700 F.3d 185, 193 (5th Cir. 2012); *U.S. v. Reese*, 627 F.3d 792, 800 (10th Cir. 2010).

noted that Massachusetts had demonstrated a “substantial link between the restrictions . . . and crime prevention,” as evidenced by Massachusetts consistently having “one of the lowest rates of gun-related deaths in the nation.” *Gould*, 907 F.3d at 674-75.

Similarly, the Third Circuit upheld the constitutionality of a New Jersey statute granting local authorities broad discretion to issue concealed carry permits. *See Drake*, 724 F.3d at 440. Under the challenged law, “[n]o application shall be approved . . . unless the applicant demonstrates that he is not subject to any of the [specified] disabilities . . ., that he is thoroughly familiar with the safe handling and use of handguns, *and that he has a justifiable need to carry a handgun.*” *Id.* at 428 (quoting N.J.S.A. § 2C:58-4) (emphasis added). The court acknowledged New Jersey’s “policy judgment that the state can best protect public safety by allowing only those qualified individuals who can demonstrate a ‘justifiable need’ to carry a handgun to do so.” *Id.* at 439. The court concluded that “[e]ven accepting . . . that there may be conflicting empirical evidence as to the relationship between public handgun carrying and public safety, this does not suggest, let alone compel, a conclusion that the ‘fit’ between New Jersey’s individualized, tailored approach and public safety is not ‘reasonable.’” *Id.*

Finally, the Fourth Circuit in *Woollard v. Gallagher* upheld the constitutionality of a Maryland statute conditioning eligibility for public carry “on having [a] ‘good and substantial reason.’” 712 F.3d

865, 868 (4th Cir. 2013) (quoting Md. Pub. Safety § 5-306 (2013)). The court stated that Maryland's interest "in protecting public safety and preventing crime" was substantial based on legislative findings showing that a "high percentage of violent crimes . . . involve[d] the use of handguns" and that "additional regulations on the . . . carrying . . . of handguns [were] necessary to preserve the peace and tranquility of the State . . ." *Id.* at 876-77 (quoting Md. Code Ann., Crim. Law § 4-202). In finding the good-and-substantial-reason requirement as a "reasonable fit," the court deferred to the Maryland General Assembly's findings that the current law "str[uck] an appropriate balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets of Maryland." *Id.* at 881.

New York's firearm regulatory regime likewise reflects the state political branches' determination that "widespread access to handguns in public increases the likelihood that felonies will result in death and fundamentally alter the safety and character of public spaces." *Kachalsky*, 701 F.3d at 99.

Indeed, this determination has proven to be more than mere rhetoric. In New York City, between 2015 and 2019, violent crimes involving firearms cumulatively decreased 34.5%, and in the 57 counties

outside of New York City, decreased 19.3%.³⁰ Additionally, from 2010 through 2019, in New York State, firearm-related homicides decreased 42.5%.³¹

In the words of David Roefaro, former Mayor of Utica, New York, “licensing laws in New York are fundamental to our efforts to keep Utica safe and to lowering the amounts of violence” and “I can say with complete confidence that removing the ‘proper cause’ requirement will hurt public safety.”³² Similarly, Stephanie Miner, former Mayor of Syracuse, New York, stated that the “proper cause” requirement “enhances public safety” and that “[r]easonably regulating the public possession of concealed weapons is important in securing the safety of [her] city . . . [and] encourag[ing] economic growth.”³³

Given the reality that violent crimes are made worse through the use of a firearm, this Court should affirm the Second Circuit’s ruling in *Kachalsky* and defer to New York’s policy judgment that vesting authority in local officials to make a determination as to proper cause “is substantially related to New York’s interests in public safety and crime prevention.” 701 F.3d at 98.

³⁰ NYS Div. of Criminal Justice Servs., *New York State Crime Report: Crime in New York State 2019 Final Data 4* (December 2020).

³¹ *Id.*

³² Declaration of Hon. David R. Roefaro, Joint Appendix at 521, 22 *Kachalsky*, 701 F.3d 81.

³³ Declaration of Hon. Stephanie A. Miner, Joint Appendix at 524-525, *Kachalsky*, 701 F.3d 81.

III. Non-Discretionary Licensing Improperly Limits the Discretion Required by State and Local Authorities to Fulfill Their Obligation to Protect Their Citizens

A. Non-Discretionary Licensing Limits Law Enforcement's Ability to Protect the Public, Including Increasing Risk Inherent in Civilian-Police Encounters

Eliminating discretion in carry licensing would increase the numbers of firearms carried in public spaces in New York, undermining the ability of law enforcement to protect the public in two key respects.

First, a higher incidence of armed individuals in public would increase the likelihood of violent encounters between civilians and law enforcement officials. This is because, as New York authorities explained in *Kachalsky*, the “increased concealed carrying of handguns *renders the work of police in targeting the illegal use of handguns more difficult.*”³⁴ Andrew Lunetta, a Deputy Inspector for the New York City Police Department (“NYPD”), stated that the increased prevalence of armed individuals 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

³⁴ Brief for State Appellees at 48, *Kachalsky*, 701 F.3d 81 (emphasis added).

they have reason to believe that concealed handguns are present.”³⁵

The Fourth Circuit in *Woollard* also cited evidence from law enforcement officials indicating that a higher incidence of individuals being armed in public would increase the likelihood of violent encounters between civilians and law enforcement officials.³⁶ Consistent with these findings, Andrew Warren, State Attorney for the 13th Judicial Circuit, explained “[c]ommon sense dictates that more concealed weapons creates uncertainty and risk for law enforcement,” requiring “officers to guess who is acting lawfully and who is not.”³⁷ These risks would have a direct impact on everyday encounters between police and civilians, turning “routine, friendly, and trusting [encounters] [into] high-risk stops.”³⁸

Petitioner’s recital of how carry restrictions endangered Black communities in the Reconstruction-Era south³⁹ distracts from their

³⁵ Declaration of Andrew Lunetta, Deputy Inspector, NYPD, Joint Appendix at 547, *Kachalsky*, 701 F.3d 81 [hereinafter “Lunetta Decl.”].

³⁶ Declaration of Terrence B. Sheridan, Superintendent of the Maryland State Police, Joint Appendix at 119, *Woollard*, 712 F.3d 865 [hereinafter “Sheridan Decl.”].

³⁷ Warren, *supra* note 6.

³⁸ Declaration of James W. Johnson, Chief of the Baltimore County Police Department, Joint Appendix at 131, *Woollard*, 712 F.3d 865 [hereinafter “Johnson Decl.”].

³⁹ Brief of Petitioner, *New York State Rifle and Pistol Ass’n, Inc. v. Bruen*, No. 20-843 (U.S. Jul. 13, 2021) at 10-13, 36-37.

modern context: it is well demonstrated that these high-risk police-civilian meetings disproportionately harm communities of color. The rate at which Black Americans are killed in police encounters is more than twice as high as the rate for White Americans.⁴⁰

Further, one recent empirical study found that the rate of fatal police shootings in states with high gun ownership rates was 3.6 times greater than in states with low rates of gun ownership. David Hemenway, et al., *Variation in Rates of Fatal Police Shootings Across US States: the Role of Firearm Availability*, 96 J. Urb. Health 63 (Feb. 2019). Considering initiatives by New York City, alongside other American cities, to improve relations between law enforcement and civilians,⁴¹ such risks could

⁴⁰ *Police Shootings Database*, WASH. POST (last updated Sept. 15, 2021) (tracking every fatal shooting by an on-duty police officer in the United States since 2015 from news accounts, social media postings, and police reports), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>. See also *Homicide Firearm Report*, Chicago Police Department (2021) (In Chicago, for example, Black residents accounted for 80% of gun violence victims in 2016 and 2020, despite comprising a minority of the city's population.); Michael Siegel, *The Impact of State-Level Firearms Laws on Homicide Rates by Race/Ethnicity*, 2016-MU-MU-0047, U.S. DEPT. OF JUSTICE, OFF. OF JUSTICE PROGRAMS 1 (2020), <https://www.ojp.gov/pdffiles1/nij/grants/254669.pdf> (Black Americans comprised 59% of firearm-related homicide victims nationwide in 2017, despite forming only 13% of the population).

⁴¹ See, e.g., Cindy Chang, *LAPD Community Policing Has Prevented Crime and Made Residents Feel Safer, Study Finds*, L.A. Times (May 13, 2020), <https://www.latimes.com/california/story/2020-05-13/lapd->

undermine successful “community policing[,] [which] is most effective when police can engage citizens in a direct, but friendly, way.”⁴² *Second*, there are risks inherent in “the presence of a third person with a handgun during a confrontation between a police officer and a criminal suspect[.]” *Gould*, 907 F.3d at 675 (citing *Woollard*, 712 F.3d at 879-80). The *Gould* court acknowledged Massachusetts’s “credible concern that civilians (even civilians who, like the plaintiffs, are law-abiding citizens) might miss when attempting to use a firearm for self-defense on crowded public streets and, thus, create a deadly risk to innocent bystanders.”⁴³ Similarly, the Fourth Circuit in *Woollard* accepted Maryland’s determination that lax public carry laws risk increasing confusion and “potentially tragic consequences” during confrontations with suspects

community-policing-program-prevented-crime-made-residents-feel-safer-study-finds; Press Release, *Neighborhood Policing Now in Every Neighborhood in New York City*, NYPD, (Oct. 22, 2018), <https://www1.nyc.gov/site/nypd/news/pr1022/neighborhood-policing-now-every-neighborhood-new-york-city#/0>; Anisha Nandi, *Neighborhood Policing Program Builds Relationships to Cut Crime*, CBS NEWS (Mar. 27, 2018, 11:55 AM), <https://www.cbsnews.com/news/nypd-community-policing-lower-crime/>.

⁴² Johnson Decl. at 131.

⁴³ 907 F.3d at 675 (citing Bernard D. Rostker et al., RAND Ctr. on Quality Policing, *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process 14 (2008)*) (reporting that even trained NYPD officers had an “average hit rate [of] 18 percent for gunfights”).

due to the presence of armed third parties and bystanders. 712 F.3d at 879-80.

B. Non-Discretionary Licensing Schemes Would Further Increase the Risk to the Lives of Law Enforcement Personnel

The risk of gun violence falls significantly on law enforcement personnel. In New York City, “[e]very NYPD officer murdered in the line of duty since . . . 2005 has been killed with a handgun (excluding those who died, on September 11, 2001, or thereafter, from the attacks that day).”⁴⁴

This risk is not unique to New York law enforcement. As Dallas County Sheriff Lupe Valdez noted, “[i]n the past decade, over 500 police officers have been killed in the line of duty by guns,” including the five Dallas police officers killed in the deadliest attack on police since 9/11.⁴⁵ In Maryland, “[o]f the 158 [] law enforcement officers who have died in the line of duty from non-vehicular, non-natural causes, . . . 83.5% died as a result of intentional gunfire, usually from a handgun.”⁴⁶

“[L]aw enforcement’s ability to protect themselves” would also be actively undermined by

⁴⁴ Lunetta Decl. at 546.

⁴⁵ Lupe Valdez, *Our Police Officers Need Protection From Gun Violence Too*, THE HILL (May 17, 2017, 11:40 AM), <http://thehill.com/blogs/pundits-blog/civil-rights/333819-our-police-officers-need-protection-from-gun-violence-too>.

⁴⁶ Sheridan Decl. at 117.

non-discretionary permitting.⁴⁷ Officers in states with high gun ownership are three times as likely to be killed compared to those in low-gun ownership states.⁴⁸ And, “[s]ince 2007, concealed weapons licensees,⁴⁹ have killed at least 11 law enforcement officers . . . [and with] laws in many states protect[ing] the identities of license holders,” it is impossible to conclude “how many additional officers may have been killed or injured.”⁵⁰

Handguns in particular present dangers to law enforcement. “[D]ue to their small size, light weight, and concealability, . . . [handguns can] be placed in the glove boxes of cars and stowed under car seats in ways that retain their ready accessibility, making them more of a threat for officers conducting traffic stops.”⁵¹ “With the flick of a thumb, a shooter can

⁴⁷ Brief of the Brady Center to Prevent Gun Violence, Ceasefire NJ, International Brotherhood of Police Officers, Major Cities Chiefs et al. as Amici Curiae at 25, *Drake v. Filko*, 724 F.3d 426.

⁴⁸ David I. Swedler et al., *Firearm Prevalence and Homicides of Law Enforcement Officers in the United States*, 105 Am. J. Pub. Health 2042, 2047 (Oct. 2015).

⁴⁹ All but one of the law enforcement killings occurred in states with shall-issue or otherwise loosely unrestricted permitting regimes. See Violence Policy Center, *Law Enforcement Officers Killed by Concealed Carry Killers: May 2007 to Present*, <http://concealedcarrykillers.org/wp-content/uploads/2018/04/ccwlawenforcement.pdf>.

⁵⁰ Brief of the Legal Community Against Violence, Major Cities Chiefs Association, Association of Prosecuting Attorneys, and San Francisco District Attorney George Gascón as Amici Curiae Supporting Appellees at 21, *Peruta*, 824 F.3d 919.

⁵¹ Johnson Decl. at 126-27; see also *supra* Part I.D.

drop a depleted magazine from the pistol grip . . . [and] [i]n a couple of seconds, . . . [one] can load another magazine and chamber a round.”⁵² Terrence B. Sheridan, Superintendent of the Maryland State Police, has stated that “[i]f the MSP were required to issue handgun wear and carry permits to individuals without a good and substantial reason to carry, State Troopers would be in greater danger because they would encounter more armed individuals,” presumably with handguns.⁵³

Licensing laws such as New York’s directly address these dangers by ensuring that only those individuals who show a proper cause may carry a handgun in public, and are thus critical to protecting the lives of law enforcement officials.

C. The Empirical Evidence Demonstrates That Non-Discretionary Licensing Laws Would Result in Increased Gun Violence

Studies lend significant support to law enforcement’s concerns that mandatory or non-discretionary licensing regimes contribute to increased violence, confirming the substantial fit of New York’s “proper cause” requirement to the State’s interest in public safety.⁵⁴ A New York Coroner’s

⁵² Declaration of Thomas L. Fazio, Deputy Superintendent of the Bureau of Criminal Investigation, New York State Police, Joint Appendix at 527, *Kachalsky*, 701 F.3d 81.

⁵³ Sheridan Decl. at 119.

⁵⁴ Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*

Office study, in 1911, noted a drastic decline in homicides and suicides shortly after the introduction of New York's Sullivan Law, which made it unlawful to possess concealable firearms without a license. *Kachalsky*, 701 F.3d at 84. The *Kachalsky* court acknowledged that such evidence "has served as the basis for other states' handgun regulations"55

In a recent study, researchers also concluded that shall-issue concealed carry permitting laws were associated with 6.5% higher total homicide rates, 8.6% higher firearm-related homicide rates, and 10.6% higher handgun-specific homicide rates compared with may-issue states.⁵⁶ Similarly, a May 2018 study found the enactment of right-to-carry ("RTC") laws to be associated with increased risk of

States, 107 Am. J. Pub. Health 1923, 1927-29 (2017); John 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. EMPIRICAL LEGAL STUDIES 198 (2019), <https://law.stanford.edu/publications/right-to-carry-laws-and-violent-crime-a-comprehensive-assessment-using-panel-data-and-a-state-level-synthetic-controls-analysis/>.

⁵⁵ *Kachalsky*, 701 F.3d at 98 (citing *Piszczatoski v. Filko*, 840 F. Supp. 2d 813, 835-36 (D.N.J. 2012)); *Richards v. Cty. of Yolo*, 821 F. Supp. 2d 1169, 1172 (E.D. Cal. 2011), *aff'd Peruta*, 824 F.3d 919; *Peruta*, 758 F. Supp. 2d 1106, 1110 (S.D. Cal. 2010), *aff'd Peruta*, 824 F.3d 919. *See also Gould*, 907 F.3d at 675 (1st Cir. 2018) (accepting Massachusetts's legislators' findings' that "more restrictive licensing schemes for the public carriage of firearms experience significantly lower rates of gun-related homicides and other violent crimes" and that "gun owners are more likely to be the victims of gun violence when they carry their weapons in public") (internal citations omitted).

⁵⁶ Siegel, *supra* note 54 at 1927.

firearm homicides in large, urban counties. The study determined that “[c]ounties in states with RTC laws experienced a 4% increase in firearm homicide relative to counties in states with more restrictions on the issuance of concealed carry weapons permits.”⁵⁷ A March 2019 study examining the relationship between state firearm laws and overall homicide and suicide rates found that non-discretionary licensing laws were associated with a 9% increase in homicide.⁵⁸

Finally, a widely cited study found not only that right-to-carry laws are associated with higher violent crime rates, but also that the size of the deleterious effects associated with the passage of such laws increases over time.⁵⁹ A decade after the adoption of right-to-carry laws, violent crime is estimated to be 13 to 15 percent higher than it would have been absent such laws.⁶⁰

Conclusion

For the foregoing reasons, PAGV respectfully asks this Court to affirm the Second Circuit’s opinion

⁵⁷ Cassandra K. Crifasi, et al., *Association Between Firearm Laws & Homicide in Urban Counties*, 95 J. Urb. Health 383 (2018), available at <https://doi.org/10.1007/s11524-018-0273-3>.

⁵⁸ Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991-2016: A Panel Study*, 34 J. Gen. Internal Med. 2021, 2024 (2019), <https://link.springer.com/article/10.1007/s11606-019-04922-x>.

⁵⁹ Donohue, *supra* note 54 at 63-65.

⁶⁰ *Id.*

and to uphold New York's constitutional and common-sense requirement of a "proper cause" for the public carry of firearms. Licensing regimes that vest discretion in local and state authorities are fully consistent with the Second Amendment, effectuate the government's duty to promote public safety, and reflect the will of the body politic responsible for electing such officials.

Respectfully submitted,

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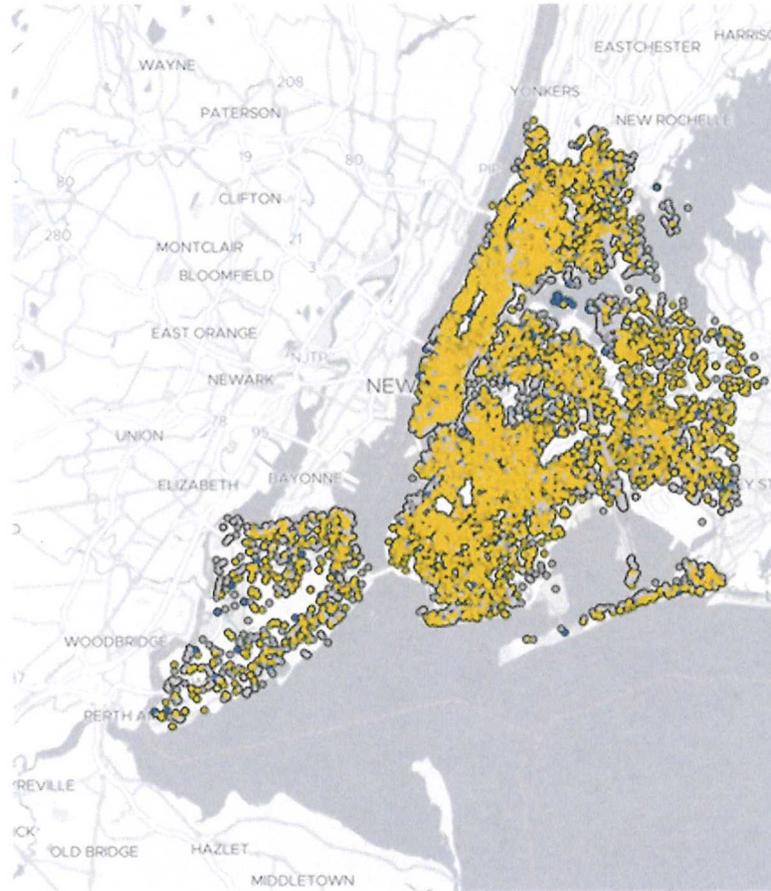
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September 21, 2021

APPENDIX

APPENDIX A

1a



Source: <https://capitalplanning.nyc.gov/map/facilities#9.03/40.6734/-74.2355>

This map depicts the locations of a specific subset of “sensitive places” in New York City. All data is sourced from New York City’s City Planning Public Platform.

Yellow dots represent a specific subset of the “Education, Child Welfare, and Youth Facilities” category, i.e.,: (1) Schools (K-12); (2) Daycare and Pre-Kindergarten; and (3) Child Welfare Services overseen by NYC Health and Human Services and NYC Administration for Children’s Services.

Blue dots represent a specific subset of government buildings, i.e., the “Public Safety, Emergency Services, and Administration of Justice” category, which includes (1) Police Services; (2) Emergency Response; (3) Courthouses; and (4) Correctional Facilities.

