No. 20-843

In the

Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL.,

Petitioners,

v.

KEITH M. CORLETT,

Respondent.

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

BRIEF OF *AMICUS CURIAE* KORTE ENTERPRISES, LLC, d/b/a KORTE TREE CARE, IN SUPPORT OF THE PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Korte Enterprises, LLC, d/b/a Korte Tree Care ("Korte Enterprises"), provides tree care services in Missouri, a state that, unlike New York, recognizes that the Second Amendment's core principles include the right to defend oneself outside the home by carrying a concealed firearm, without the need to demonstrate a particularized need to do so. See Mo. Rev. Stat. §571.101. Korte Enterprises has a critical interest in ensuring that all individuals—regardless of where they reside in the country—may avail themselves of this right.

Korte Enterprises agrees with all of the arguments Petitioners make in their brief, and it will not repeat those arguments here. Rather, this brief gives a short but thorough overview of how English law, up to the time of our country's founding, recognized an inherent right to self-defense through the use of concealed weapons outside of the home. This makes the Second Circuit's ruling below all the more troubling, and calls for this Court's intervention.

SUMMARY OF THE ARGUMENT

Determining the Second Amendment's scope requires a deep examination of how the right to self-defense was understood under English law up to the time of that amendment's ratification. While several English cases discuss unlawful carrying of weapons,

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[1] *Amicus* provided timely notice to both parties of its intent to file this brief, and both parties provided *amicus* with written consent to file this brief. No counsel for either party authored this brief in whole or in part, nor did counsel for either party make any monetary contribution intended to fund the preparation or submission of this brief.

all of them do so in situations that would, of their very nature, terrorize the general public. Carrying concealed weapons does not terrorize the general public. Indeed, English law at the time of the Second Amendment's ratification recognized the right to carry weapons for purposes of self-defense.

ARGUMENT

Legal history plays a critical role in determining the specific rights guaranteed under the Second Amendment. *See District of Columbia v. Heller*, 554 US. 570, 580-620 (2008) ("*Heller I*"). Such an analysis assists courts in determining what the terms "keep and bear arms" meant at the time of the Second Amendment's ratification. This includes examining the English common law in the centuries prior to our country's founding. *See id.* In other words, "the scope of the Second Amendment right—and thus the constitutionality of gun bans and regulations—is determined by reference to text, history, and tradition." *Heller v. District of Columbia*, 670 F.3d 1224, 1273 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) ("*Heller II*").

The Second Circuit below failed to conduct a proper historical analysis of the right to bear arms. Both the English common law at the time of the Second Amendment's ratification and subsequent legal developments in this country recognized that the right to "bear arms" extended to defending oneself outside the home. This Court's review is critically needed to provide a correct, clear historical analysis of the matter that reflects the Second Amendment's true purpose.

The Statute of Northampton, 2 Edw. 3 c. 3 (1328), is one of the earliest references to carrying weapons outside of the home. As such, "the correct view of the

founding-era understanding of [the statute] is an extremely important consideration for determining the original public understanding of the right to keep and bear arms at the time of the ratification of the Second Amendment." Mark Anthony Frassetto, *To the Terror of the People: Public Disorder Crimes and the Original Public Understanding of the Second Amendment*, 43 South. Ill. U. L.J. 61, 63 (2018). Among other things, it declared "that no man great nor small, of what condition soever he be…[shall] go nor ride armed by night nor by day, in fairs, markets…nor in [any] part elsewhere, upon pain to forfeit [his] armour to the King…." *Id*.

Much ink has been spilled over whether this language forbade the carrying of weapons outside the home entirely, or merely forbade the carrying of such weapons in a manner that would terrify a reasonable person. *Compare* Frassetto, *To the Terror*, 43 South. Il. L.J. at 67-70 (arguing that the statute banned wearing arms entirely), *with* Eugene Volkh, *The First and Second Amendments*, 109 Colum. L. Rev. 97 (2009) (arguing that the statute only banned wearing arms in a threatening manner); *Cf. Wren v. District of Columbia*, 864 F.3d 650, 659 (D.C. Cir. 2017) ("[The statute's] language will faintly remind Anglophiles of studying *Canterbury Tales*—in the original."). But the text of the statute aside, it appears that all of the English cases interpreting it viewed it as outlawing only the carrying of weapons in such a matter as would terrify a reasonable person—thus favoring the conclusion that the Second Amendment protects concealed carry for self-defense. To the extent the relevant cases contain language suggesting a prohibition on carrying concealed weapons in public, the context of such pronouncements strongly suggests that they were meant to prohibit vigilantism—that is,

the attempt by private individuals to take the law into their own hands by arming themselves with weapons, exiting their homes, and going out into the public affirmatively looking for threats to combat. Obviously, this is a far cry from modern concealed carry laws, which aim to do no more than vindicate the right of individuals to defend themselves in public should the need arise while they are going about their own, unrelated business.

In *Semayne's Case*, (1604) 77 Eng. Rep. 194, the Court of the King's Bench coined the famous phrase, "The house of every one is his castle, and if thieves come to a man's house to rob or murder, and the owner or his servants kill any of the thieves in defense of himself and his house, it is no felony and he shall lose nothing." *Id*. at 194. After making this observation, he also noted, in language that hints at a reference to the Statute of Northampton, that "every one may assemble his friends and neighbours to defend his house against violence; but he cannot assemble them to go with him to the market, or elsewhere for his safeguard against violence…." *Id*. at 195. The context and structure of this sentence indicates that while it is lawful to use deadly force as a defensive measure inside one's home as a means of repelling someone who has unlawfully entered the home, it is *not* lawful to exit one's home, armed with weapons, and affirmatively go into a public setting looking to stop potential violence from even reaching the home in the first place. This would amount to vigilantism, and thus be forbidden under Chief Justice Coke's analysis. But his analysis would *not* forbid a person from carrying a concealed weapon as a precautionary measure while going about regular business in a public setting, in the event he or she is unexpectedly attacked. The later situation dose not constitute

"assembl[ing]…to go…to the market, or elsewhere, for…safeguard against violence…." *See id.*

The King's Bench first made a direct reference to the Statute of Northampton ten years later, in *Chune v. Piott*, (1614) 80 Eng. Rep. 1161. The plaintiff brought a false imprisonment suit against one of London's sheriffs. It was undisputed that the plaintiff and sheriff had encountered each other while the sheriff was pursuing an escaped prisoner. *Id.* at 1161-1163. Upon coming into contact with the sheriff, the plaintiff "gave him ill words, and afterwards he thrust him up against the wall…." *Id.* at 1162. The sheriff accordingly arrested the plaintiff for breach of the peace. *Id.*

Speaking *seriatim*, Justice Croke observed that "[w]ithout all question, the sheriffe hath power to commit…if contrary to the Statute of Northampton, he sees any one to carry weapons in the high-way, *in terrorem populi Regis;* he ought to take him, and arrest him, notwithstanding he doth not break the peace in his presence." *Id.* at 1162. While the justice interpreted the Statute of Northampton as not requiring an actual breach of the peace, he also maintained that the weapons had to be carried in such a manner as would terrify the King's people. Obviously, carrying a concealed weapon outside of public view cannot terrify the public.

The King's Bench again confronted the Statute of Northampton in the criminal matter of *Sir John Knight's Case*, (1686) 87 Eng. Rep. 75. The defendant was accused, under the statute, of "walk[ing] about the streets armed with guns, and that he went into the church of St. Michael, in Brostol, in the time of divine service, with a gun, to terrify the King's subjects, *contra formam statuti*." *Id.* at 76. Chief

Justice Herbert ruled "that the meaning of the statute…was to punish people who go armed to terrify the King's subjects." *Id*. The King's Bench once again ruled that carrying weapons in public was not, by itself, sufficient to violate the Statute of Northampton—such weapons had to be carried with the intention of terrifying the general public. The statute did *not* forbid the carrying of concealed weapons for purposes of self-defense.

Finally, one of the leading treatises on English law at the time of the Declaration of Independence explicitly recognizes a right to carry weapons outside the home for purposes of self-defense, and that the Statute of Northampton did not purport to interfere with that right. *See* William Hawkins, 1 *Treatise of the Pleas of the Crown* 266-268, ch. 63 §§4-11 (6th ed. 1777). It holds that "no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people…." *Id*. at 267, ch. 63 §9. Consequently, "persons of quality are in no danger of offending against this statute by wearing common weapons…upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence or disturbance of the peace." *Id*. In addition, "persons armed with privy coats of mail, to the intent to defend themselves, against their adversaries, are not within the meaning of this statute, because they do nothing *in terrorem populi*."

If the wearing of armor for purposes of self-defense cannot amount to terrorizing the general public, much less can carrying a concealed weapon for purposes of self-defense be considered a threat to the public order. On the contrary, English law recognized that individuals had a right to carry concealed weapons for

the purposes of self-defense. But the Second Circuit below has refuse to recognize this, and consequently has interpreted the Second Amendment in a manner that denies individuals the right to carry concealed weapons as a means of defending themselves outside of the home. This Court's intervention is sorely needed to clear up the confusion surrounding the historical record and recognize that the Second Amendment extends to self-defense outside the home.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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