

IN THE
Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL
ASSOCIATION, INC., ROBERT NASH,
BRANDON KOCH,

Petitioners,

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.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF FOR *AMICUS CURIAE* THE GOLDWATER
INSTITUTE IN SUPPORT OF PETITIONERS**

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STATEMENT OF INTEREST¹

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, policy briefings, and advocacy. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates cases, and it files *amicus* briefs when its or its clients' objectives are directly implicated.

Pursuant to its mission of ensuring individual liberty, *amicus curiae* has a particularized interest in preserving the right for American citizens across the country to bear arms. The Institute currently represents plaintiffs challenging Illinois's implementation of its law that requires individuals to obtain a state permit before possessing any firearm. *Marszalek v. Kelly*, No. 1:20-cv-04270 (N.D. Ill. July 20, 2020). In this case, the Institute submits this brief to emphasize that reversing the unconstitutional law and policy challenged here would implicate only a limited number of other jurisdictions that likewise persist in violating the Second Amendment.

1. *Amicus* provided timely notice to both parties of its intent to file this brief. The parties provided *amicus* with written consent to file this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

The Second Amendment guarantees that “the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. Petitioners demonstrate how and why current New York law violates this plain promise. Requiring citizens to show “proper cause” as a prerequisite to exercising their constitutional right strips the right to bear arms from the general public and grants it instead to a limited few in extraordinary circumstances.

New York is among only six jurisdictions that impose such restrictions on the right of law-abiding citizens to carry a firearm in public – the other restrictive jurisdictions are California, Hawaii, Maryland, Massachusetts, and New Jersey. Although ten jurisdictions are typically identified as having “may issue” regimes, under which concealed carry licensing decisions are discretionary, in practice only these six states confer virtually unlimited discretion on officials and operate to bar most citizens from obtaining a license. The remaining forty-four states and Washington, D.C. provide citizens with a clear path to carry a firearm in public, through a combination of allowing open carry without a permit, guaranteed issuance of concealed carry permits, and policies under which officials never reject concealed carry permits for lack of “proper cause” when the other permit requirements are met. Therefore, a decision in favor of Petitioners would not bring about a sweeping change in the legal landscape, as some suggest, but would simply bring New York in line with other states. It would also revive the rights of a discrete minority of American citizens to carry a firearm in public in both New York and the five other restrictive states where they are currently effectively prohibited from doing so.

ARGUMENT

I. Overview of Concealed Carry Law in the United States

The right to carry a firearm in public can be exercised in two ways: through open carry and concealed carry. “Open carry” refers to a person’s right to carry a visible firearm in public. “Concealed carry” refers to a person’s right to carry a concealed firearm in public.

Currently, thirty-five states allow open carry without a permit. See Katharina Bucholz, *Which States Allow the Permitless Carry of Guns?*, STATISTA (June 18, 2021), <https://www.statista.com/chart/20047/gun-carry-laws-in-us-states/>.² The remaining states either require a permit for open carry, or prohibit open carry even with a permit.

New York prohibits open carry but allows concealed carry with a permit. However, as Petitioners explain, New York’s law is so restrictive that individuals can only obtain permits under exceedingly limited circumstances. And, as discussed below, New York is among only a handful of states that impose such restrictions on an individual’s ability to carry a concealed firearm.

Every state and the District of Columbia allow at least *some* citizens to carry a concealed handgun. See

2. Texas will join that group of states on September 1, 2021. See Nicole Cobbler, *Here’s What You Need to Know About Texas’ Permitless Carry Law Set to Take Effect in September*, AUSTIN AM. STATESMAN (June 23, 2021), <https://www.statesman.com/story/news/politics/state/2021/06/23/heres-what-know-permitless-carry-texas/7770098002/>.

Concealed Carry, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>. Nineteen states allow concealed carry *without* a permit. *See id.*³ Each of these permit-less states, except Vermont, will still issue concealed carry permits so that residents can exercise concealed carry rights in other states that afford reciprocity to the issuing state’s permit. *Id.* The other thirty-one states and D.C. allow concealed carry *with* a permit.⁴

As a matter of basic classification, the states are generally grouped into two categories based on their standards for granting a concealed carry permit. The first, and much larger category, is “shall issue” states. The second, much smaller category, is “may issue” states. This nomenclature derives from the language used in the states’ concealed carry statutes. Statutes in the “shall issue” states contain a term such as “shall” or “must” that

3. These states are Alaska, Arizona, Idaho, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming. *See Concealed Carry*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>. Each of these states, except for Vermont, will still issue concealed carry licenses so that residents can carry in other states that require permits but afford reciprocity to the issuing state’s license. *Id.*

4. These 31 states are Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin. *See id.*

require the issuance of a concealed carry permit when the applicant meets statutory requirements. Statutes in the “may issue” states contain permissive terms like “may” that give the permitting authority discretion to decide whether to issue a concealed carry permit on a case-by-case basis even when the applicant meets the statutes’ requirements.

As discussed further below, there are forty-one “shall issue” states and nine “may issue” states, as well as D.C. In practice, however, some states that use “may issue” language still limit the permitting authority’s discretion to deny a permit when the statutory requirements are met. Under a proper working definition, 44 states and D.C. are *de jure* or *de facto* “shall issue” jurisdictions, and only six states are true “may issue” jurisdictions. Because New York is in the small minority of “may issue” jurisdictions, invalidating its concealed carry law will not significantly disrupt the nationwide status quo. Rather, it will bring New York and the few similarly restrictive states in line with the national norm.

II. The Majority of Jurisdictions in the United States Provide a Clear and Objective Path to Carry a Firearm in Public

A. Forty-one states have “shall issue” statutes.

Forty-one states require their officials to issue concealed carry licenses to applicants who meet objective statutory requirements. These states, and each of their “shall issue” permitting statutes, are set forth in Table 1.

Table 1

State	Concealed Carry Statute
Alabama	ALA. CODE § 13A-11-75
Alaska	ALASKA STAT. § 18.65.700
Arizona	ARIZ. REV. STAT. ANN. § 13-3112
Arkansas	ARK. CODE ANN. § 5-73-308
Colorado	COLO. REV. STAT. § 18-12-206
Florida	FLA. STAT. § 790.06
Georgia	GA. CODE ANN. § 16-11-129
Idaho	IDAHO CODE § 18-3302K
Illinois	430 ILL. COMP. STAT. 66/10
Indiana	IND. CODE § 35-47-2-3
Iowa	IOWA CODE § 724.7
Kansas	KAN. STAT. ANN. § 75-7c03
Kentucky	KY. REV. STAT. ANN. § 237.110
Louisiana	LA. STAT. ANN. § 40:1379.3
Maine	ME. STAT. tit. 25, § 2003
Michigan	MICH. COMP. LAWS § 28.425b
Minnesota	MINN. STAT. § 624.714
Mississippi	MISS. CODE ANN. § 45-9-101
Missouri	MO. REV. STAT. § 571.101
Montana	MONT. CODE ANN. § 45-8-321
Nebraska	NEB. REV. STAT. ANN. § 69-2430
Nevada	NEV. REV. STAT. § 202.3657
New Hampshire	N.H. REV. STAT. ANN. § 159.6
New Mexico	N.M. STAT. ANN. § 29-19-4
North Carolina	N.C. GEN. STAT. § 14-415.11

North Dakota	N.D. CENT. CODE § 62.1-04-03
Ohio	OHIO REV. CODE ANN. § 2923.125
Oklahoma	OKLA. STAT. tit. 21, § 1290.12
Oregon	OR. REV. STAT. § 166.291
Pennsylvania	18 PA. CONS. STAT. § 6109
South Carolina	S.C. CODE ANN. § 23-31-215(A)
South Dakota	S.D. CODIFIED LAWS § 23-7-7
Tennessee	TENN. CODE ANN. § 39-17-1366
Texas	TEX. GOV'T CODE ANN. § 411.177
Utah	UTAH CODE ANN. § 53-5-704.5
Vermont ⁵	N/A
Virginia	VA. CODE ANN. § 18.2-308.04
Washington	WASH. REV. CODE § 9.41.070
West Virginia	W. VA. CODE § 61-7-4
Wisconsin	WIS. STAT. § 175.60
Wyoming	Wyo. Stat. Ann. § 6-8-104

One example of a “shall issue” state is South Carolina, whose law provides that the state “must issue a permit... to carry a concealable weapon” to a person upon the submission of an application and meeting several other requirements.⁶ S.C. CODE ANN. § 23-31-215(A). If the

5. In Vermont, concealed carry is legal without a permit. The state does not issue concealed carry permits. Vermont has been grouped with “shall issue” states because Vermont citizens have a straightforward path to carrying concealed firearms. *See 5 Answers About Gun Rights in Vermont*, BURLINGTON FREE PRESS (Feb. 1, 2018) (noting that Vermont does not issue permits for concealed carry).

6. Examples of these other requirements include providing a copy of a driver’s license or identification card (which shows the

person wishing to obtain a permit to carry a concealed weapon meets these objective criteria, South Carolina’s permitting authority must grant the permit.

Some “shall issue” statutes authorize officials to exercise some slight discretion in the license-granting process. For example, in Pennsylvania a sheriff must deny a permit if she determines that “[a]n individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.” 18 PA. CONS. STAT. § 6109(e)(1). Although this subjective determination might occasionally restrict an individual’s ability to bear arms, it does not create a default rule that citizens *cannot* bear arms as “may issue” statutes do.⁷

person is at least twenty-one years of age), proof of residence, proof of vision at 20/40, proof of training, and a complete set of fingerprints. S.C. CODE ANN. § 23-31-215(A).

7. Indeed, Pennsylvania enacted its shall-issue statute after a Commonwealth court interpreted its previous “may issue” statute as giving local officials discretion. *See Gardner v. Jenkins*, 541 A.2d 406, 408 (Pa. Commw. Ct. 1988) (determining that use of the word “may” demonstrated “the intent of the legislature was to make such issuance not mandatory, but discretionary in that sheriffs are empowered to exercise judgment in applying the statute’s standards to decide if applicants should be licensed.”); *Caba v. Weaknecht*, 64 A.3d 39, 61 (Pa. Commw. Ct. 2013) (observing that the concealed carry statute was amended to say “shall be issued” within seven months of *Gardner* and recognizing this change as “clear legislative intent to both guide and limit the discretion of the licensing authority with respect to the grant, denial, and revocation of licenses”). Now, ordinary people can exercise their right to carry a firearm outside of their homes by applying for a permit that in normal circumstances the state must grant.

B. Only nine states and D.C. have “may issue” statutes.

There are ten jurisdictions with “may issue” permitting laws, as set forth in Table 2. In practice, however, not all these laws function as true “may issue” statutes; four of them act more like *de facto* “shall issue” regimes. As a result, a decision in favor of Petitioners only stands to upset—rightly—the permitting schemes of just five states other than New York.

Table 2

State	Concealed Carry Statute
California	CAL. PENAL CODE § 26150
Connecticut	CONN. GEN. STAT. § 29-28(b)
D.C.	D.C. CODE § 22-4506(a)
Delaware	DEL. CODE ANN. tit. 11, § 1441
Hawaii	HAW. REV. STAT. § 134-9(a)
Maryland	MD. CODE ANN. PUB. SAFETY § 5-306(a)(6)(ii)
Massachusetts	MASS. GEN. LAWS ch. 140, § 131(d)
New Jersey	N.J. STAT. ANN. § 2C:58-4(c)
New York	N.Y. PENAL LAW § 400.00(2)
Rhode Island	R.I. GEN. LAWS § 11-47-11

One example of a “may issue” state is New York, where a private citizen must show “a proper cause” to acquire a concealed carry license. N.Y. PENAL LAW § 400.00(2). As Petitioners have thoroughly discussed in their briefs, this law effectively bans most citizens from exercising their

Second Amendment right to bear arms. The statute does excuse members of certain occupations, such as prison guards and judges, from justifying their need to carry a gun. *See id.* But for people outside of those professions, obtaining a permit is virtually impossible.

As the courts in New York have explained, “[a] generalized desire to carry a concealed weapon to protect one’s person and property does not constitute ‘proper cause.’” *In re O’Connor*, 585 N.Y.S.2d 1000, 1003 (N.Y. Cty. Ct. 1992). Rather, to bear arms, one must demonstrate some exceptional circumstance. *See Klenosky v. N.Y. City Police Dep’t*, 75 A.D.2d 793, 793 (N.Y. App. Div. 1980) (appellant lacked proper cause because he “did not sufficiently demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession.”). For residents of New York City, that requires “[e]xposure of the applicant to extraordinary personal danger, documented by proof of recurrent threats to life or safety requiring authorization to carry a handgun.” 38 RCNY §5-03. As a result, an average person simply cannot carry a firearm in any capacity outside of the home. Indeed, while 7.6% of adult Americans have a concealed carry permit, only 1.27% of the New York State adult population does. *See* John R. Lott, Jr. and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2020*, CRIME PREVENTION RES. CTR. 3, 21 (2020), <https://ssrn.com/abstract=3703977> [hereinafter *2020 Report*].

As the example of New York demonstrates, in a jurisdiction that does not allow open carry and has a “may issue” concealed carry permit law, public officials can, and often do, make it virtually impossible to possess

a firearm outside of the home. Indeed, that very problem is at the heart of the petition for certiorari that the Court granted in this case.

C. Four of the ten “may issue” jurisdictions behave like “shall issue” states, so a decision for Petitioners would only affect six states.

Although the concealed carry permit statutes of Connecticut, Delaware, and Rhode Island each expressly contain a “may issue” standard, in practice these states issue licenses on a shall-issue basis to regular citizens seeking to carry a firearm for self-defense. Additionally, while D.C.’s permitting statute contains a “may issue” standard, in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017) the D.C. Circuit issued a permanent injunction against the enforcement of this law on constitutional grounds, which has put D.C. on similar footing as “shall issue” states.

1. Connecticut

In Connecticut, a local authority “may issue a temporary state permit” to “a suitable person” who applies to carry a pistol or revolver. CONN. GEN. STAT. § 29-28(b). While this grants local authorities the discretion to reject permit applications based on a loose “suitable person” standard, in practice Connecticut functions more like a “shall issue” state. If a rejected permit seeker appeals her application, the State of Connecticut Board of Firearms Permit Examiners will require the issuing authority to “provide the Board with sufficient evidence upon which to make a de novo determination of the appellant’s unsuitability to carry handguns.”

Policies and Procedures for Appeals Before the Board of Firearms Permit Examiners, State of Connecticut Board of Firearms Permit Examiners (Apr. 13, 2017), <https://portal.ct.gov/BFPE/Laws/Policy-and-Procedures/Policies-and-Procedures>. This requires the initial decisionmaker to justify a permit denial with evidence of an applicant’s dangerousness. Thus, although the statute grants authorities the discretion to reject permit applications, baseless rejections will not stand. That justification requirement in turn has influenced how permit issuers evaluate applications, evidenced by the above-average percentage of adult Connecticut residents with a concealed carry permit, 9.57%. *See 2020 Report*, at 20. As with “shall issue” statutes, in practice there must be an unusual, individualized circumstance to ultimately prevent someone from bearing arms outside of the home. The result is that members of the general public regularly obtain permits.

2. Delaware

Delaware’s concealed carry permit statute provides that “[t]he Court may or may not, in its discretion, approve any application”. DEL. CODE ANN. tit. 11, § 1441(d). Although that appears to grant wide discretion to deny applications, in fact permits are generally issued to applicants whose background checks do not reveal any problems. *See CCDW Granted and Denied Filing Statistics*, DE COURTS, <https://courts.delaware.gov/superior/weapons.aspx> (revealing that only eight Delaware concealed carry license applications or renewals of 9,740 processed were denied in the first six months of 2021). Moreover, Delaware allows anyone to carry a firearm if it is not concealed. *See Open Carry in Delaware*, GIFFORDS

L. CTR., <https://giffords.org/lawcenter/state-laws/open-carry-in-delaware/> (“Delaware does not prohibit the open carrying of firearms in public.”). Thus, denial of a concealed carry permit does not completely deprive a citizen of the Second Amendment right to bear arms as it does in states that prohibit open carry.

3. Rhode Island

Rhode Island law provides two methods of obtaining a concealed carry permit. First, a “may issue” law allows the attorney general to grant a license to carry a pistol or revolver “upon a proper showing of need.” R.I. GEN. LAWS § 11-47-18. Second, city and county authorities must grant a concealed carry license “if it appears that the applicant has good reason to fear an injury to his or her person or property or has another proper reason for carrying a pistol or revolver, and that he or she is a suitable person to be so licensed.” R.I. GEN. LAWS § 11-47-11.

The second statute might appear to be “may issue,” given the “proper reason” and “suitable person” language, making Rhode Island a “may issue” state. In practice, however, this statute is effectively “shall issue.” The Rhode Island Supreme Court requires justification for the denial of a concealed carry application. *See Mosby v. Devine*, 851 A.2d 1031, 1051 (R.I. 2004) (“A rejected applicant is entitled to know the evidence upon which the department based its decision and the rationale for the denial.”). Additionally, the court has explicitly condemned the practice of denying concealed carry § 11-47-11 applications for lack of need. *See Gadomski v. Tavares*, 118 A.3d 387, 392 (R.I. 2015) (“Demonstration of a proper showing of need, which is a requirement under § 11-47-18, is not a component of § 11-47-11.”).

4. Washington, D.C.

In the District of Columbia, the police chief may issue a carry license “if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol, and that he or she is a suitable person to be so licensed.” D.C. CODE § 22-4506(a). To establish a proper reason for issuance of the permit, an applicant must “at a minimum” demonstrate “special need for self-protection distinguishable from the general community as supported by evidence of specific threats or previous attacks that demonstrate a special danger to the applicant’s life.” D.C. CODE § 7-2509.11. This plainly creates a “proper cause” licensing scheme like that of New York or California.

However, in *Wrenn*, the United States Court of Appeals for the District of Columbia Circuit concluded that “the individual right to carry common firearms beyond the home for self-defense—even in densely populated areas, even for those lacking special self-defense needs—falls within the core of the Second Amendment’s protections.” 864 F.3d at 661. As a result, the Court issued permanent injunctions prohibiting enforcement of this local law on constitutional grounds. *See id.* at 668. The decision in this case regarding the constitutionality of New York’s permitting statute will likely determine the continuing validity of these injunctions. Meanwhile, by court order, the District of Columbia effectively has a “shall issue” regime.

III. Like New York, the Five Other Restrictive “May Issue” States Unduly Limit the Rights of Individuals to Carry a Firearm in Public.

Because Connecticut, Delaware, Rhode Island, and D.C. provide a clear path for most individuals to carry a firearm in public, their “may issue” statutes are distinct from the licensing standards of New York and the five other “may issue” states: California, Hawaii, Maryland, Massachusetts, and New Jersey. As in New York, the concealed carry permit statutes in these five states impose a “proper cause” standard that is impossible for all but a privileged few to meet.⁸

A. California

California law provides that “the sheriff of a county may issue a license” to a concealed carry applicant if the applicant shows proof of good moral character, takes a training course, has a good cause to request issuance, and is a resident. CAL. PENAL CODE § 26150. But the term “may” allows a sheriff not to issue a license even if all prerequisites are met.

8. Local officials in some California, Massachusetts, and New York counties do not actually exercise their statutory discretion. Instead, they issue concealed carry permits as if in a “shall issue” jurisdiction. Because this brief aims to demonstrate that a decision for Petitioners would have limited geographic impact, *amicus* makes the conservative decision to extrapolate the most restrictive treatment for the entirety of these states. Anecdotal evidence suggests that the most restrictive measures actually only apply in these states’ largest cities like Boston, New York, and San Francisco.

Moreover, the requirement of “good cause” is an inherently subjective standard that can be decided arbitrarily on a case-by-case basis. There is nothing in the statute’s language that prevents a particularly gun-wary sheriff from denying every application. It is therefore no surprise that, “[i]n many parts of California, permits only go to the most politically connected applicants.” *See 2020 Report*, at 7. California courts have recognized that this “gives extremely broad discretion to the sheriff concerning the issuance of such licenses.” *Nichols v. County of Santa Clara*, 223 Cal. App. 3d 1236, 1241 (Cal. Dist. Ct. App. 1990). As a result, permits have been withheld even in instances where the applicant has demonstrated tremendous need. *See, e.g., Gifford v. City of L.A.*, 88 Cal. App. 4th 801, 805 (Cal. Dist. Ct. App. 2001) (upholding a permit denial even after an advisory review panel noted that “[g]ood cause still exists; receives personal threats” for an investigative journalist who had previously received multiple death threats); Matt Drange, *Want to Carry A Concealed Gun? Live in Sacramento, Not San Francisco*, REVEAL (June 12, 2015), <https://revealnews.org/article/want-to-carry-a-concealed-gun-live-in-sacramento-not-san-francisco/> (detailing how a woman who had a criminal protective order, a corrections officer who had been threatened by inmates, and a former deputy district attorney scared of retribution from past felons were all denied licenses).

For citizens who live in certain areas in the state, local officials will almost *never* recognize any good cause. *See id.* (noting that only three concealed carry permits were issued in San Francisco county over the course of a nearly five-year period). In San Francisco, no good cause exists to carry a firearm without

convincing, documented evidence of significant danger. *See San Francisco Police Department CCW Licensing Policy*, <https://www.sanfranciscopolice.org/sites/default/files/2018-11/25869-CCWLicensingPolicy%5B1%5D.pdf> (“[T]he Chief has determined on the basis of experience and judgment that good cause to issue a CCW license to San Francisco residents will generally only exist in conditions of necessity.”). In effect, a person must wait to document a death threat before she can carry a firearm for self-defense. Thus, as of 2020, only 0.39% of the adult population in California has a concealed carry permit. *See 2020 Report*, at 21.

In addition to removing citizens’ ability to defend themselves, these opaque, subjective, and restrictive licensing standards invite arbitrary decision-making, abuse, and, as a result, mistrust. Officials are in a position to favor applicants to whom they have personal, family, or political ties. This is not to say that all concealed carry permit processes in California have become an old-boy, favor-exchanging farce. But discretionary standards create opportunities for that type of abuse. *See, e.g., Kelly v. City of New Haven* 275 Conn. 580, 614–15 (noting that discretion in public promotional decisions must be limited to curtail nepotism and favoritism). And some have questioned whether the right to bear arms in Los Angeles County has been placed behind a paywall. *See Gene Maddaus, Sheriff Lee Baca and the Gun-Gift Connection*, L.A. WEEKLY (Feb. 14, 2013), <https://www.laweekly.com/sheriff-lee-baca-and-the-gun-gift-connection/> (observing clear financial ties between the sheriff and many concealed permit holders in a locality “known for being stingy with concealed-weapons permits”).

B. Hawaii

In Hawaii, a citizen must apply for a permit even to acquire a firearm and separately apply for a carry license, and a concealed carry permit may be granted by the local chief of police only “[i]n an exceptional case.” HAW. REV. STAT. §§ 134-2, 134-9(a). Hawaii thus has the most explicitly restrictive firearm licensing law. Officials stick closely to this language and have refused *all* recent applications for concealed carry permits unrelated to work. In 2020, Hawaii police departments approved 25,024 applications for firearm acquisition. *See* Paul Perrone, *Firearm Registrations in Hawaii, 2020*, DEP’T ATT’Y GEN. (2021), <https://ag.hawaii.gov/cpja/files/2021/03/Firearm-Registrations-in-Hawaii-2020.pdf> [hereinafter Perrone, *Firearm Registrations*]. The same year, only 23 private citizens applied for a carry license that was not tied to their job—i.e., simply for personal self-defense. *See id.* at 10.

It might seem surprising that just 23 out of 25,024 Hawaiian gunowners would even seek to carry their firearms outside of the home. *See id.* However, that small percentage likely reflects resignation to the reality that an attempt to exercise the right to bear arms would be futile. After all, last year Hawaii counties denied *all* of the carry applications they received from private citizens who sought a permit for a reason unrelated to a job. *See id.* To have any public-carry right in Hawaii you must be a security guard, and the counties did approve the applications of 123 private security firm employees. *See Young v. Hawaii*, 992 F.3d 765, 860 (9th Cir. 2021) (O’Scannlain, J., dissenting) (acknowledging an ample factual record demonstrates that Hawaii has “*extinguished* the public-carry rights of those who are not security guards.”); Perrone, *Firearm Registrations* (documenting the number of applications

granted). But even taking those approvals into account, a mere 0.02% of Hawaiian adults hold a concealed carry permit. *See 2020 Report*, at 21.

C. Maryland

In Maryland, a concealed carry permit may be issued to a person who “has a good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.” MD. CODE ANN. PUB. SAFETY § 5-306(a)(6)(ii). Under this restrictive standard, only 0.59% of the adult population in Maryland held a concealed carry permit in 2020. *See 2020 Report*, at 21.

Thus, Maryland has found few “[g]ood and substantial reasons” for anyone to exercise the right to bear arms. The state has long held that an official’s evaluation of an applicant’s danger trumps how the applicant perceives the threat level. *See Snowden v. Handgun Permit Review Board*, 45 Md. App. 464, 469-71 (Md. Ct. Spec. App. 1980) (“The statute makes clear that it is the Board not the applicant, that decides whether there is ‘apprehended danger’ to the applicant.”); *Woollard v. Gallagher*, 712 F.3d 865, 871 (4th Cir. 2013) (reaffirming the denial of a man’s permit renewal shortly after a person that had broken into his home and assaulted him, justifying the initial permit, was released from prison).

The State Police informational website references *Scherr v. Handgun Permit Review Board*, 163 Md. App. 417 (Md. Ct. Spec. App. 1980) as an example of a judicial opinion on what constitutes a “good and substantial reason” for a permit to be granted. *See Handgun Wear and Carry Permit*, <https://mdsp.maryland.gov/Organization/>

Pages/CriminalInvestigationBureau/LicensingDivision/Firearms/WearandCarryPermit.aspx. In that case, a local officer admitted that for a threat to rise to the level of a “good and substantial reason” and consequently merit a concealed carry permit, an applicant needed police reports that substantiated the claim. 163 Md. App. at 427 (“And we require that you have police reports to substantiate that, because often, people come to us and say that they’ve been involved in activities or have been threatened and assaulted, when it never occurred.”). Consequently, a Maryland citizen may only arm himself to defend against future transgressions after he has already experienced some threat or assault.

D. Massachusetts

Massachusetts’ licensing authorities similarly have the discretion to grant a concealed carry permit only “if it appears that the applicant . . . has good reason to fear injury to the applicant or the applicant’s property or for any other reason.” MASS. GEN. LAWS ch. 140, § 131(d). In that state, decisionmakers have the power to issue restricted carry licenses—that is, licenses to carry only under particular circumstances—and frequently exercise that power. For example, an applicant might request a general carry permit, which would allow him to carry concealed in most situations. But if the sheriff approved his application, the resulting permit might still come with an employment restriction. This would allow the person only to carry a firearm during, and in travel associated with, dangerous business activities. *See LTC Restrictions and Definitions*, DCJIS, <https://www.boston.gov/sites/default/files/embed/f/firearms-license-restrictions.pdf> (providing examples of various Massachusetts firearm license restriction).

Boston police have an unofficial practice to place restrictions on *all* first-time concealed carry permits. *See Phipps v. Police Commissioner of Boston*, 119 N.E.3d 341, 352 n.21 (Mass. App. Ct. 2019) (“McDonough agreed that his decision to restrict Phipps’s license to target and hunting was his ‘normal course of procedure when processing licenses to carry,’ specifically, to restrict all first-time applicants’ licenses to target and hunting except for police officers or attorneys, who, once approved as suitable, were issued unrestricted licenses.”). Therefore, although the state is only slightly below the national average with 7.32% of adult citizens possessing a concealed carry permit, that does not reflect the reality that only a highly qualified right to bear arms exists in some Massachusetts localities like Boston. *See 2020 Report*, at 21.

E. New Jersey

All applications for a concealed carry permit in New Jersey must come with “a written certification of justifiable need to carry a handgun, which shall be under oath.” N.J. STAT. ANN. § 2C:58-4(c). Private citizens face a particularly high burden, needing to “specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant’s life that cannot be avoided by means other than by issuance of a permit to carry a handgun.” *Id.* This language actively eliminates the only path for regular New Jerseyans to bear arms outside of the home. Surely, some citizens would reasonably desire to carry a firearm for self-defense purposes *before* they experience attacks or threats that make them fear for their lives. This standard fails to account for the reality that the dangers prompting people to carry firearms often

come without a warning. And, of course, it fails to account for the Second Amendment's lack of any such limitation on the right to bear arms. With such restrictive language, it comes as no surprise that only 0.002% of eligible adults in New Jersey have a concealed carry permit. *See 2020 Report*, at 21.

CONCLUSION

Without some means to sway a local official, it is extraordinarily difficult, and almost impossible, to obtain a concealed carry permit in California, Hawaii, Maryland, Massachusetts, New Jersey, and New York. This effectively eliminates the general public's right to bear arms. The Court should reverse the decision below and recognize that the Second Amendment guarantees the right of ordinary private citizens to bear arms in some capacity outside their homes.

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