

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 THE NEW YORK STATE POLICE, ET AL.,
Respondents.

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

BRIEF OF THE NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC., AND THE NATIONAL
URBAN LEAGUE AS AMICI CURIAE
IN SUPPORT OF RESPONDENTS

SHERRILYN A. IFILL
JANAI S. NELSON
SAMUEL SPITAL*
KRISTEN JOHNSON
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC
40 RECTOR STREET
5TH FLOOR
NEW YORK, NY 10006
(212) 965-2200
SSPITAL@NAACPLDF.ORG

* COUNSEL OF RECORD

MAHOGANE D. REED
NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND,
INC.
700 14TH STREET NW
SUITE 600
WASHINGTON, DC 20005

MARC H. MORIAL
DANIELLE COOPER
DAUGHTRY
NATIONAL URBAN LEAGUE
80 PINE STREET
NEW YORK, NY 10005

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTERESTS OF AMICI CURIAE.....1

INTRODUCTION AND SUMMARY OF
ARGUMENT2

ARGUMENT5

 I. History Supports States’ and Localities’
 Authority to Impose Public Carry Restrictions,
 Particularly to Protect Black People.6

 A. Before the Civil War and Ratification of
 the Fourteenth Amendment, Restrictions on the
 Public Carry of Firearms Were Widespread.....6

 B. Post-Civil War Attitudes on Gun Rights
 Centered Protecting Black Freedmen and
 Unionists From Racial Violence.8

 II. Concealed Carry Restrictions Remain an
 Important Tool for Reducing Handgun Violence. 14

 A. Concealed Carry Restrictions are a Tool for
 Addressing the Vexing Problem of Handgun
 Violence in Cities.14

 B. Permissive Concealed Carry Escalates
 Risk of Violent Confrontation Against Black
 People and Threats of Violence.19

 III. Past or Present-Day Racial Discrimination
 in the Enforcement of Gun Regulations Is a Grave

and Unconstitutional Harm, but It Does Not
Support Petitioners' Second Amendment
Argument.....24
CONCLUSION 26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>District of Columbia v. Heller</i> , 554 U.S. 579 (2021).....	5
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	15
<i>N.Y. State Rifle and Pistol Ass’n, Inc. v. Cuomo</i> , 804 F.3d 242 (2d Cir. 2015).....	15
<i>Robertson v. Baldwin</i> , 165 U.S. 275 (1897).....	5
<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1880).....	25
<i>Village of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	25, 26
<i>Washington v. Davis</i> , 429 U.S. 229 (1976).....	25
<i>Whren v. United States</i> , 517 U.S. 806 (1996).....	26
Constitutional and Statutory Provisions	
U.S. Const. amend. II.....	24

1870 S.C. Sess. Laws 402, No. 288, An Act to Define the Criminal Jurisdiction of Trial Justices.....	12
Act of Dec. 25, 1837, 1837 Ga. Laws 90	8
Act of Feb. 1, 1839, No. 77, 1838 Ala. Laws 67	8
Act of Feb. 2, 1838, ch. 101, 1838 Va. Acts 76.....	8
Act of Feb. 3, 1813, ch. 89, 1812 Ky. Acts 100.....	8
Act of Feb. 10, 1831, ch. 26, § 58, 1831 Ind. Acts 180, 192	8
Act of Jan. 14, 1820, ch. 23, 1819 Ind. Acts 39.....	8
Act of Mar. 25, 1813, 1812 La. Acts 172.....	8
Fourth Military Dist. Gen. Order No. 28 (Vicksburg, Miss. Sept. 9, 1867)	13
1871 Ky. Acts 89, An Act to Prohibit the Carrying of Concealed Deadly Weapons, ch. 1888, §§ 1-2, 5.....	12
Orville Park, PARK'S ANNOTATED CODE OF THE STATE OF GEORGIA 1914, Penal Code, Article 3, Carrying of deadly weapons at courts, etc., § 348.....	12

ch. 44, div. VIII, art. I, § 13, Revised Statutes of the State of Arkansas, Adopted at the October Session of the General Assembly of Said State, A.D. 1837.....	8
--	---

Other Authorities

Alexia Cooper and Erica L. Smith, <i>Homicide Trends in the United States, 1980–2008</i> , U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS	18
Carole Emberton, <i>The Limits of Incorporation: Violence, Gun Rights, and Gun Regulation in the Reconstruction South</i> , 17 STAN. L. & POL'Y REV. 615 (2006)	13
Cassandra K. Crifasi, <i>et al.</i> , <i>Association Between Firearm Laws and Homicide in Urban Counties</i> , 95 J. URB HEALTH 773–76 (2018).....	17
Clayton E. Cramer, <i>et al.</i> , <i>This Right Is Not Allowed by Governments That Are Afraid of the People: The Public Meaning of the Second Amendment</i> , 17 GEO. MASON L. REV. 823 (2009).....	10, 11
CTR. FOR AM. PROGRESS, <i>Frequently Asked Questions About the Disarm Hate Act</i> (Sept. 18, 2019)	23

CTRS FOR DISEASE CONTROL & PREVENTION, Web-based Injury Statistics Query and Reporting System (WISQARS), “Fatal Injury Reports,”	17
CTRS. FOR DISEASE CONTROL & PREVENTION, <i>A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data,</i> February 2021.....	18, 19
CTRS. FOR DISEASE CONTROL & PREVENTION, <i>Health Equity, Leading Causes of Death for Non-Hispanic Black Males, United States, 2016</i>	18
Dan Morgan, <i>Hate Crimes Against Asian and Black People Rise Sharply in the U.S., FBI Says,</i> CNBC, Aug. 30, 2021	23
EQUAL JUSTICE INITIATIVE, <i>Reconstruction in America: Racial Violence After the Civil War, 1865– 1876 (2020)</i>	9
Eric Foner, <i>Reconstruction: America’s Unfinished Revolution</i> (Harper Collins 1988)	9
Eric Foner, <i>The Second Founding: How the Civil War and Reconstruction Remade the Constitution</i> (W.W. Norton, 2019)	10, 11

GIFFORDS LAW CENTER, <i>Guns in Public: Concealed Carry</i>	16
Jack Maddox, <i>Florida Teen Dead After Row that Began with Loud-Music Complaint, Suspect Jailed</i> , CNN, Sept. 5, 2014.....	20
Janell Ross, <i>In Every Tally of Hate Crimes, Blacks Are the Most Frequent Victims</i> , NBC NEWS, Nov. 21, 2018	22
John J. Donohue, et al., <i>Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis</i> , NAT'L BUREAU ECON. RESEARCH (2018).....	16, 19
Joseph Blocher and Reva B. Siegel, <i>When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller</i> , 116 NW. U.L. REV. 139 (2021).....	23
Joseph Blocher, <i>Firearm Localism</i> , 123 YALE L.J. 82 (2013)	14, 15
Kathryn Varn and Dan Sullivan, <i>Michael Drejka Convicted of Manslaughter in Markeis McGlockton's Death</i> , TAMPA BAY TIMES, Aug. 23, 2019	21

Katie Balevic, <i>A South Carolina Woman Carrying a Loaded Gun Attacked a Police Detective After Refusing to Wear a Mask at an Aquarium</i> , <i>YAHOO! NEWS</i> , Sept. 8, 2021	20
Ken Schwencke, <i>Confusion, Fear, Cynicism: Why People Don't Report Hate Incidents</i> , <i>PROPUBLICA</i> , July 31, 2017	22
Kim Parker et al., <i>America's Complex Relationship With Guns, The Demographics of Gun Ownership</i> , <i>PEW RESEARCH CENTER</i> June 22, 2017.	16
Lawrence M. Friedman, <i>A History of American Law</i> (New York: Simon & Schuster 2d ed. 1985)	10
Maria Panaritis, <i>This Road Rage Verdict Delivers Justice for Bianca Roberson, But it Leaves Us Baffled</i> , <i>PHILA. INQUIRER</i> , Dec. 19, 2018.....	21
Mark Anthony Frassetto, <i>The Law and Politics of Firearms Regulation in Reconstruction Texas</i> , 4 <i>TEX. A&M L. REV.</i> 95 (2016)	9, 10, 12, 13

Mark Duggan, NAT'L BUREAU OF ECON. RESEARCH, NBER Working Paper Series, <i>More Guns, More Crime</i> , NBER Working Paper No. 7967 (2000).....	15
Michael R. Rand, <i>Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft</i> , U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, Crime Data Brief, (Apr. 1994)	18
Michael Siegel, et al., <i>Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States</i> , 107 AM. J. OF PUB. HEALTH 1923-29 (2017).....	16
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, Criminal Justice Research Report, <i>Hate Crime in New York State 2019 Annual Report</i>	22
PBS, <i>Reconstruction: The Second Civil War, Southern Violence During Reconstruction</i>	9
PROCON.ORG, <i>Carrying a concealed handgun increases the chances of a confrontation becoming lethal</i> , Sept. 9, 2015.	19

Rachel E. Morgan and Jennifer L. Truman, <i>Criminal Victimization, 2019</i> , U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS	17
Robert H. Churchill, <i>Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment</i> , 25 <i>Law. & Hist. Rev.</i> 139, 143 (2007).....	6
Ruben and Cornell, <i>Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context</i> , 125 <i>YALE L.J. F.</i> 121 (2015).....	7, 8
SEATTLE TIMES STAFF, <i>Shots Fired in Road Rage Confrontation Near Lower West Seattle Bridge</i> , Aug. 25, 2021.....	20
Second Military Dist. Gen. Order No. 10 (Charleston, S.C. Apr. 11, 1867)	13
Tanner Stening, <i>Why Hate Crimes Are Underreported—and What Police Departments Have to Do with it</i> , NE. UNIV. NEWS, Aug. 23, 2021.....	22

TEXAS CONSTITUTIONAL CONVENTION (1868–1869), <i>Journal of the Reconstruction Convention: Which Met at Austin, Texas</i> 199 (Tracy, Siemering & Co. 1870).....	10
U.S. DEP’T OF JUSTICE, FBI CRIMINAL JUSTICE INFO. SERVS., <i>2019 Hate Crime Statistics</i>	22
William J. Novak, <i>The People’s Welfare: Law and Regulation in Nineteenth- Century America</i> 53–54 (1996).....	7
Yolanda T. Mitchell and Tiffany L. Bromfield, <i>Gun Violence and the Minority Experience</i> , NAT’L COUNCIL ON FAMILY RELATIONS, Report: Understanding Gun Violence from a Family Perspective (Winter 2018).	17

INTERESTS OF AMICI CURIAE¹

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is the nation's first and foremost civil rights and racial justice organization. LDF was founded by Thurgood Marshall in 1940 to help Black people secure their civil and constitutional rights through litigation and advocacy challenging racial discrimination. Since its founding, LDF has been fully committed to transforming this nation's promise of liberty and equality into reality for all Americans. More recently, LDF has advocated for interpretations of the Second Amendment that fully acknowledge its implications for Black people and other people of color. In cities and states across the country, handgun violence deprives many residents of an equal opportunity to live, much less to succeed. The effects of gun violence on Black Americans are particularly acute, as Black people, and specifically Black men, are disproportionately likely to experience a gun injury or death. LDF thus has an interest in this case, which raises significant issues regarding the scope of authority of state and local officials to enact regulations that promote public health and safety by reducing gun deaths, gun injuries, and gun-related violence.

¹ Pursuant to Supreme Court Rule 37.3, counsel for the Respondent has consented to the filing of this brief, and counsel for the Petitioner has granted blanket consent for the filing of amicus curiae briefs. Pursuant to Rule 37.6, LDF and the National Urban League affirm that no counsel for any party authored this brief in whole or in part and that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

The National Urban League is an historic civil rights organization dedicated to helping African Americans and historically underserved residents to achieve their highest potential, self-reliance, power, civil rights, and social parity. For more than a century, the National Urban League has worked to uplift communities through economic empowerment, equality, and social justice. Founded in 1910 in New York City, the National Urban League has established a network of 91 local affiliate Urban League organizations in 37 states and the District of Columbia, who serve more than 300 communities and more than two million people annually. Our constituents live in the very communities that suffer from the cycle of gun violence and trauma. The National Urban League’s work is directly impacted by gun violence and the flow of legal and illegal firearms through circulation.

INTRODUCTION AND SUMMARY OF ARGUMENT

For more than a century, this Court has recognized that states can, consistent with the Second Amendment, impose reasonable limitations on firearm possession outside the home, including by implementing laws that prohibit or limit the carrying of concealed weapons in public spaces. In accordance with this principle, and in fulfilling their well-recognized public safety obligations, many states—including New York—have long limited citizens’ ability to carry concealed handguns to instances of a demonstrable need for self-defense and issued other restrictions on carrying firearms in public. Petitioners argue that, by requiring applicants to show a

particularized—as opposed to a general—need for self-defense before issuing a license to carry concealable firearms, New York and other jurisdictions that similarly limit public carrying of firearms violate the Second Amendment. For the reasons explained by Respondents, Petitioners’ argument is foreclosed by the text of the Second Amendment, this Court’s precedent, and the historical understanding of the Second Amendment dating back to the beginning of the Republic, which all confirm that states may impose reasonable regulations of public carry.

Of particular importance to the historical inquiry, public carry restrictions were common at the time the Fourteenth Amendment was ratified and proliferated throughout the South in the years immediately following the Fourteenth Amendment’s ratification. Several states passed and enforced public carry restrictions prior to the passage of the Fourteenth Amendment, and there is no indication that the Reconstruction Congress and pro-Reconstruction state legislatures intended to prohibit public carry laws by adopting the Fourteenth Amendment. On the contrary, post-Civil War Republican-led state governments passed and upheld prohibitions on the public carrying of firearms, some of which were enacted for the precise purpose of protecting Black freedmen from the wrath of former Confederates and sympathizers committed to maintaining white supremacy in the South. This Reconstruction-era understanding of states’ authority to restrict public carry belies any argument that, in applying the Second Amendment to the states through the Fourteenth Amendment, the Reconstruction

Congress and state legislatures intended to prohibit reasonable restrictions on public carry.

Public carry restrictions remain an important feature of states and localities' public safety regimes today. Research demonstrates that jurisdictions that limit handgun possession report fewer gun-related homicides and violent crimes. This is especially true in the nation's most populous urban areas, where Black people and other people of color—and especially young Black men—disproportionally suffer from injury or death due to gun violence.

Regimes like New York's that limit concealed carry licenses to applicants with a demonstrable, non-speculative need for imminent self-defense may also prevent non-violent disputes from escalating to deadly encounters. Studies confirm that not only does the likelihood of handgun violence increase where there are more concealed handguns on the street, but widespread gun possession on public streets often escalates what would otherwise be non-lethal disputes into deadly assaults. These acts often threaten the public safety of Black people and other people of color. As highlighted by numerous high-profile incidents in recent years, many people of color have died at the hands of white people who, out of fear or other biases, use concealed firearms against minority victims. The Court should not interpret the Second Amendment to inhibit jurisdictions' longstanding authority to impose reasonable regulations on concealed carry for public safety.

Finally, LDF and the National Urban League acknowledge and take seriously Petitioners' and their amici's assertions that New York's firearms

regulations are tainted by racial discrimination in their origins and enforcement. However, the proper remedy for these arguments, if proved, is not an expansive, ahistorical approach to the Second Amendment that would undermine states' ability to reasonably regulate gun possession in ways that protect Black communities and other communities of color. Rather, the proper constitutional remedy for intentionally discriminatory laws lies in the Fourteenth Amendment's Equal Protection Clause.

ARGUMENT

Reasonable restrictions on the right to publicly carry a firearm have deep roots in the American tradition. More than a century ago, this Court observed that the Second Amendment right to bear arms “is not infringed by laws prohibiting the carrying of concealed weapons.” *Robertson v. Baldwin*, 165 U.S. 275, 281–82 (1897). And less than a decade ago, this Court confirmed that the right to carry firearms is “not unlimited,” *District of Columbia v. Heller*, 554 U.S. 579, 595 (2021), but rather incorporates the limitations embedded within the “historical understanding of the scope of the right,” *id.* at 625. Given the strength of the tradition of public carry restrictions, it is no surprise that *Heller* provided as a primary “example” of the Second Amendment’s historical limits the “prohibitions on carrying concealed weapons” that were upheld by “the majority of the nineteenth-century courts to consider the question.” 554 U.S. at 626.

Petitioners disregard this precedent, its historical foundation, and New York’s fundamental public safety justification for concealed carry restrictions in

favor of an expansive interpretation of the Second Amendment that would entitle them to carry a handgun “whenever and wherever” a need for defense might arise. Pet. Br. 30. Petitioners’ position is wrong. In addition to other historical sources that support states’ authority to proscribe public carry of firearms, the prevailing perspectives of pro-Reconstruction governments following the Civil War confirms that public carry restrictions have long been viewed as permissible under the Second Amendment—as applied to the States through the Fourteenth Amendment—and as an indispensable tool in ensuring physical protection for Black people and other disfavored or minority groups. Still today, concealed carry and other public carry restrictions play a fundamental role in reducing handgun violence generally and against Black people and other people of color specifically.

I. History Supports States’ and Localities’ Authority to Impose Public Carry Restrictions, Particularly to Protect Black People.

A. Before the Civil War and Ratification of the Fourteenth Amendment, Restrictions on the Public Carry of Firearms Were Widespread.

Since the early days of the Republic, firearms and ammunition regulations have been at the heart of states and localities’ police power and regulatory authority. As one scholar writes, “[h]undreds of individual statutes regulated the possession and use of guns in colonial and early national America.” Robert H. Churchill, *Gun Regulation, the Police*

Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 *Law. & Hist. Rev.* 139, 143 (2007); *see also* William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* 53–54 (1996) (“[I]t was never doubted in this well-regulated [American] society that something as potentially injurious to the public as gun powder . . . was decidedly regulatable.”).

Before the Civil War, and consistent with our principles of federalism, different states took different approaches to regulating handguns outside the home. But public carry restrictions appeared in jurisdictions throughout the country. Firearm restrictions were popular in New England and other states, which prohibited concealed carry to control handgun violence.² Frontier towns in the Midwest restricted public carry to reduce violence and attract businessmen who might not invest in places where they felt endangered.³

Laws in the South were mixed. Toting firearms, openly or in secret, was prevalent in Southern states, where the culture of slavery was deeply embedded, and where some whites purported to carry weapons “as a protection against the slaves.”⁴ Even in the South, however, some states recognized the danger,

² *See* Ruben and Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 *YALE L.J.* F. 121, 128–134 (2015), https://www.yalelawjournal.org/pdf/Ruben-Cornell_PDF_jiipxsss.pdf (discussing how Massachusetts, Wisconsin, Maine, Michigan, Virginia, Minnesota, Oregon and Pennsylvania all limited public carry for public safety reasons).

³ *See Id.*

⁴ *Id.* at 126.

including the “secret advantages,” posed by concealed carry, outlawing it while permitting public carry.⁵ The public prevalence of firearms, and particularly concealable ones, led to high murder rates in Southern states that states in other regions sought to avoid through a less permissive approach on public carry.⁶

This variation on firearm restrictions reflected jurisdiction-specific norms and attitudes about handgun possession. But there was no question that jurisdictions that wished to impose limitations on handguns for public safety could do so. That view was held, and that authority was invoked, by many post-Civil War Republican governments, which passed public carry restrictions to curb racial violence against Black freedmen.

B. Post-Civil War Attitudes on Gun Rights Centered Protecting Black Freedmen and Unionists From Racial Violence.

The Civil War wrought a new social order that loosened formerly enslaved Black people from bondage, and Reconstruction saw this country’s first

⁵ *Id.* at 126–27; *see* Act of Feb. 3, 1813, ch. 89, 1812 Ky. Acts 100; Act of Mar. 25, 1813, 1812 La. Acts 172; Act of Feb. 1, 1839, No. 77, 1838 Ala. Laws 67; Act of Dec. 25, 1837, 1837 Ga. Laws 90; Act of Feb. 10, 1831, ch. 26, § 58, 1831 Ind. Acts 180, 192; Act of Jan. 14, 1820, ch. 23, 1819 Ind. Acts 39; Act of Feb. 2, 1838, ch. 101, 1838 Va. Acts 76; Revised Statutes of the State of Arkansas, Adopted at the October Session of the General Assembly of Said State, A.D. 1837, at 280 (William MoK. Ball & Sam C. Roane eds., 1838) (including “[w]earing concealed weapons” in its list of “offences against the public peace, and affecting the security of persons and property” in ch. 44, div. VIII, art. I, § 13).

⁶ Ruben and Cornell, *supra* note 2, at 126.

mass effort to place them on equal footing with their white counterparts. But not everyone welcomed the end of slavery and the new social order.

Immediately following the end of the Civil War, violence against Black people and their white allies by intransigent white Southerners committed to maintaining white supremacy ran rampant throughout Southern states.⁷ White Southerners stoked fear among Black freedmen by all manner of weapons and violent methods, including through mass lynchings.⁸ But firearms posed a unique problem. In Texas, there were reports of “shooting and hanging of Negroes by the half dozen at a time, for the crime of leaving their former Masters.”⁹ In Louisiana, it was reported that white citizens “govern[ed] . . . by the pistol and the rifle.”¹⁰ Another post-War report described formerly enslaved Black

⁷ See Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877*, 119 (Harper, Collins 1988); EQUAL JUSTICE INITIATIVE, *Reconstruction in America: Racial Violence After the Civil War, 1865–1876*, 42–55 (2020), <https://eji.org/wp-content/uploads/2020/07/reconstruction-in-america-report.pdf>; see also PBS, *Reconstruction: The Second Civil War, Southern Violence During Reconstruction*, <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-southern-violence-during-reconstruction/> (describing “sporadic local violence” after the Civil War, describing how if there was improper etiquette or a Black person did not tip his hat to a white person “suddenly people are shooting each other.”)

⁸ See EQUAL JUSTICE INITIATIVE, *supra* note 7.

⁹ Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in Reconstruction Texas*, 4 TEX. A&M L. REV. 95, 100 n.20 (2016) (quoting Barry A. Crouch & Donaly E. Brice, *The Governor’s Hounds: The Texas State Police, 1870–1873* 11–12 (2011)).

¹⁰ Foner, *supra* note 7, at 119.

people being treated “unmercifully, and shot down like wild beasts, without any provocation.”¹¹ The Texas Constitutional Convention Report described that between 1865 and 1867, for every white person murdered by a Black person, 37 Black people were murdered by white people.¹² And many of the white murder victims were killed because of their support for Black civil rights and the policies of Reconstruction.¹³ All the while, Black people in many jurisdictions were without means to defend themselves: many recalcitrant Southern states passed postbellum Black Codes that attempted to re-establish white supremacy and subjugate recently freed Black people.¹⁴

This widespread violence against Black people and staunch efforts to strip Black freedmen of their new freed status was top of mind when the 39th Congress convened to negotiate and enact what would become the Fourteenth Amendment. Following the Civil War and the destruction of de jure slavery through the passage of the Thirteenth Amendment, the Congressional Joint Committee on Reconstruction conducted extensive hearings on the post-War conditions of the South.¹⁵ During these hearings,

¹¹ Frassetto, *supra* note 9.

¹² TEXAS CONSTITUTIONAL CONVENTION (1868–1869), *Journal of the Reconstruction Convention: Which Met at Austin, Texas* 199 (Tracy, Siemering & Co. 1870).

¹³ *Id.* at 195.

¹⁴ Lawrence M. Friedman, *A History of American Law* 504 (New York: Simon & Schuster 2d ed. 1985).

¹⁵ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*, 55 (W.W. Norton, 2019); Clayton E. Cramer, *et al.*, *This Right Is Not Allowed by*

Committee members received testimony about the “shocking violations of basic rights of former slaves” and their allies, and the “violent outrages against the freed people.”¹⁶ The Reconstruction Congress sought to remedy both of these ills through passage of civil rights statutes like the Freedmen’s Bureau Acts of 1865 and 1866 and the Civil Rights Act of 1866.

The Reconstruction Congress’s efforts culminated in the passage of the Fourteenth Amendment. Through provisions broadly defining “citizens of the United States” to include “[a]ll person born or naturalized in the United States,” and conferring on all citizens the “privileges or immunities” of the United States and “equal protection of the laws,” the Fourteenth Amendment cemented in America’s founding document a pathway to equal rights and equal citizenship for Black freedmen. In doing so, there is no evidence or indication that Congress sought to invalidate, or thought it was invalidating, the existing laws throughout the country that limited public carry and imposed other safety-related restrictions on firearm possession. The post-War proliferation of firearm restrictions throughout the South by supporters of Reconstruction indicates the contrary was true.

Republican-led governments in Southern states, many of which assumed office immediately following the ratification of the Fourteenth Amendment, took

Governments That Are Afraid of the People: The Public Meaning of the Second Amendment, 17 GEO. MASON L. REV. 823, 855–56 (2009).

¹⁶ Foner, *The Second Founding*, *supra* note 15, at 55, 60; Cramer, *supra* note 15, at 856.

direct steps toward protecting Black freedmen from racial handgun violence perpetrated by recalcitrant whites.¹⁷ Some Republican-led governments did so by limiting public carrying of firearms. Such restrictions on public carry proliferated in states like South Carolina in 1871¹⁸ and Georgia in 1914,¹⁹ which respectively prohibited carrying weapons in public and in certain public settings. In 1871, Kentucky passed a law prohibiting the carrying of concealed weapons except in cases of a specific threat.²⁰

Another example of Republican-backed Reconstruction-era gun legislation comes from Texas. In 1870, Edmund J. Davis, a Republican who fully supported civil rights for Black people and the aims of Reconstruction, was elected governor of the State of Texas.²¹ In his inaugural message, Davis called the legislature's attention to "the consideration of measures to establish law and order throughout the State, and the punishment or repression of crime."²² He proposed several measures for reducing crime in the state, including establishing a racially integrated

¹⁷ See, e.g., Frassetto, *supra* note 9, at 108.

¹⁸ 1870 S.C. Sess. Laws 402, No. 288, An Act to Define the Criminal Jurisdiction of Trial Justices (a prohibition on carrying weapons in public).

¹⁹ Orville Park, PARK'S ANNOTATED CODE OF THE STATE OF GEORGIA 1914, Penal Code, Article 3, Carrying of deadly weapons at courts, etc., § 348. (prohibition on carrying weapons at public assemblies).

²⁰ 1871 Ky. Acts 89, An Act to Prohibit the Carrying of Concealed Deadly Weapons, ch. 1888, §§ 1–2, 5.

²¹ See Frassetto, *supra* note 9, at 102.

²² *Id.*

state police force.²³ He also specifically called on limits to public gun possession.²⁴

In 1871, the Republican-controlled state legislature passed precisely such a law. In response to widely publicized racial violence against Black people in Madison County, Texas, the state legislature prohibited carrying handguns and other weapons in public without a specific threat to a person's safety.²⁵ This statute was widely supported by Republican members and senators in the legislature, including all the legislature's Black assemblymembers and senators.²⁶ Republican lawmakers in other states likewise restricted the public carrying of firearms to protect Black citizens from the "dire problem" of white-supremacist "gun violence against freedmen."²⁷

Thus, at the height of Reconstruction, state legislatures prioritized the reduction of violence and the safety and protection of Black freedmen. And state legislatures readily relied on public carry restrictions and other firearm regulations to do so.²⁸ This strongly indicates that the Reconstruction-era

²³ *Id.* at 102–03.

²⁴ *Id.* at 103–04.

²⁵ *Id.* at 105–06.

²⁶ *Id.* at 106.

²⁷ Carole Emberton, *The Limits of Incorporation: Violence, Gun Rights, and Gun Regulation in the Reconstruction South*, 17 *STAN. L. & POL'Y REV.* 615, 617–18, 620–21 (2006); *see also* Second Military Dist. Gen. Order No. 10 (Charleston, S.C. Apr. 11, 1867) (banning public from "carrying deadly weapons"); Fourth Military Dist. Gen. Order No. 28 (Vicksburg, Miss. Sept. 9, 1867) (banning assemblies of "armed organizations or bodies").

²⁸ Emberton, *supra* note 27.

understanding was that the Fourteenth Amendment (and its incorporation of the Second Amendment) was not designed to prohibit such regulations.

II. Concealed Carry Restrictions Remain an Important Tool for Reducing Handgun Violence.

Concealed carry restrictions remain a fundamental feature of public safety. Many jurisdictions, and especially cities, continue to impose concealed carry limitations and other public carry restrictions to address higher rates of gun violence that unfortunately remain common in densely populated urban centers, and which disproportionately contribute to the premature deaths of Black boys and men. Widespread public carry also increases the risk of violent racialized confrontations, which have resulted in many high-profile killings of Black people. Concealed carry restrictions promote public spaces where all people are free of fear that they will be targeted by someone with a firearm.

A. Concealed Carry Restrictions are a Tool for Addressing the Vexing Problem of Handgun Violence in Cities.

Concealed carry restrictions remain a fundamental feature of public safety in many jurisdictions.²⁹ Such restrictions are one part of one solution to the large problem of the high levels of injuries and fatalities from gun violence in

²⁹ See Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 90 (2013).

communities across the country.³⁰ That states and localities retain the flexibility to assess their public health and safety needs, and to determine the best means of achieving them, is critical. *See McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (recognizing states’ “ability to devise solutions to social problems that suit local needs and values”). Consistent with the federalist design of our Constitution, states’ authority to fashion reasonable restrictions on firearm possession has resulted in variation in the degree of firearm regulation across jurisdictions.³¹

Concealed carry restrictions are a viable violence-reduction tool in multiple jurisdictions. When more people carry guns in public, violent crime increases.³² Concealed carry restrictions, by reducing the number of guns on the street, can result in fewer violent crimes. Thus, several states, including New York, require some showing of necessity to carry a

³⁰ Concealed carry restrictions are, of course, not the only solution, nor even the best solution, for addressing gun violence. *See N.Y. State Rifle and Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015). Firearm restrictions do not address the myriad reasons why people feel the need to carry guns in the first place, including economic insecurity and lack of access to basic necessities. The question of how to reduce gun violence is beyond the expertise of amici curiae and beyond the scope of this brief, but holistic approaches to community health and safety, such as that taken by violence interrupter programs, is an important step toward reducing the number of people who carry guns and reducing gun violence.

³¹ *See* Blocher, *supra* note 29.

³² Mark Duggan, NAT’L BUREAU OF ECON. RESEARCH, NBER Working Paper Series, *More Guns, More Crime*, NBER Working Paper No. 7967 (2000), https://www.nber.org/system/files/working_papers/w7967/w7967.pdf.

concealable firearm in public.³³ Many studies have concluded that these restrictions effectively reduce firearm violence. One study found that in states with more permissive concealed carry laws, violent crime rates were 13-to-15 percent higher than they might be if concealed carry were more closely regulated.³⁴ Weak concealed carry laws are also associated with 11 percent higher rates of homicide committed with handguns—the most concealable firearm and the gun of choice for most gun owners³⁵— compared with states with stronger permitting requirements.³⁶

This is especially true in urban areas. Data confirm that large urban counties in states with liberal public carry laws have increased levels of firearm homicides relative to similarly sized counties

³³ GIFFORDS LAW CENTER, *Guns in Public: Concealed Carry*, <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/> (last visited Sept. 18, 2021).

³⁴ John J. Donohue, et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, NAT'L BUREAU ECON. RESEARCH (2018), https://www.nber.org/system/files/working_papers/w23510/w23510.pdf.

³⁵ Kim Parker et al., *America's Complex Relationship With Guns, The Demographics of Gun Ownership*, PEW RESEARCH CENTER June 22, 2017, <https://www.pewresearch.org/social-trends/2017/06/22/the-demographics-of-gun-ownership/>.

³⁶ Michael Siegel, et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. OF PUB. HEALTH 1923–29, 1923 (2017), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.304057?journalCode=ajph>.

in states with more restrictions on concealed carry weapons.³⁷

The lifesaving impact of concealed carry and other public carry restrictions in urban areas is especially important to communities of color. Black people are at a high risk of dying from gun violence: “In general, U.S. residents are 128 times more likely to be killed by everyday gun violence than by international terrorism; Black people specifically are 500 times more likely to die this way.”³⁸ Black Americans are also ten times more likely than white Americans to die from gun violence.³⁹ Young Black males are at a greater risk of sustaining injuries or dying from

³⁷ Cassandra K. Crifasi, *et al.*, *Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. URB HEALTH, 773–76 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6181823/?report=reader>.

³⁸ Yolanda T. Mitchell and Tiffany L. Bromfield, *Gun Violence and the Minority Experience*, NAT’L COUNCIL ON FAMILY RELATIONS, Report: Understanding Gun Violence from a Family Perspective (Winter 2018). Indeed, “[b]ecause people continue to live in segregated neighborhoods in the United States, they tend to commit crimes against other people of the same race.” (internal citation omitted). *Id.* Indeed, DOJ statistics demonstrate that violent acts tend to be committed against members of the same race of the offender. *See*, Rachel E. Morgan and Jennifer L. Truman, *Criminal Victimization, 2019*, Table 15, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS, <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf> (showing that offenders were white in 61% of violent incidents committed against white victims, Black in 70% of incidents committed against Black victims and Hispanic in 43% of incidents committed against Hispanic victims).

³⁹ CTRS FOR DISEASE CONTROL PREVENTION, Web-based Injury Statistics Query and Reporting System (WISQARS), “Fatal Injury Reports,” <https://www.cdc.gov/injury/wisqars>.

handgun violence than any other demographic group.⁴⁰ Nationwide, firearm homicide remains the leading cause of death for young Black men, who are nearly 14 times more likely to die in a firearm homicide than white men, and 8 times more likely to die in a firearm homicide than the general population.⁴¹ The problem is even more acute for young Black men and teens aged 15 to 34, who although make up just 2 percent of the nation's population, were among 37 percent of gun homicides

⁴⁰ Handguns continue to contribute to the high homicide rates, as most homicides have historically been committed with handguns. Alexia Cooper and Erica L. Smith, *Homicide Trends in the United States, 1980–2008*, 27 fig.42, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS, <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf#page=27>; see also Michael R. Rand, *Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, Crime Data Brief, (Apr. 1994), <https://bjs.ojp.gov/redirect-legacy/content/pub/pdf/gc.pdf> (explaining that as of 1994, young Black males “continued to be the population subgroup most vulnerable to handgun crime victimization”).

⁴¹ See CTRS. FOR DISEASE CONTROL & PREVENTION, *Health Equity, Leading Causes of Death for Non-Hispanic Black Males, United States, 2016* https://www.cdc.gov/healthequity/lcod/men/2016/nonhispanic-black/index.htm#anchor_1571149616; CTRS. FOR DISEASE CONTROL & PREVENTION, *A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data* 14, February 2021, <https://efsgv.org/wp-content/uploads/2019CDCdata.pdf>.

in 2019.⁴² That is 20 times higher than white males of the same age group.⁴³

A decision by this Court limiting jurisdictions' ability to address the vexing problem of firearm violence would prevent states and localities from implementing reasonable measures designed to address gun violence, and in particular its devastating impact on Black men and boys. Given the longstanding tradition of restrictions on public carry and their use to control violent crime in densely populated areas, there is no basis for the Court to issue such a ruling.

B. Permissive Concealed Carry Escalates Risk of Violent Confrontation Against Black People and Threats of Violence.

Carrying a concealed handgun increases the chances of a confrontation becoming lethal. This is well documented. Research shows that “members of the public who carry guns risk escalating everyday disagreements into public shootouts, especially in places where disputes frequently occur—in bars, at sporting events, or in traffic.”⁴⁴ These tragic events are not isolated or rare. There are multiple stories of these escalated confrontations: a retired police officer with a legally concealed handgun shot and killed

⁴² CTRS. FOR DISEASE CONTROL & PREVENTION, *A Public Health Crisis*, *supra* note 41.

⁴³ *Id.*

⁴⁴ PROCON.ORG, *Carrying a concealed handgun increases the chances of a confrontation becoming lethal*, Sept. 9, 2015, <https://concealedguns.procon.org/arguments/carrying-a-concealed-handgun-increases-the-chances-of-a-confrontation-escalating-and-turning-lethal/>; Donohue, *supra* note 34, at 6.

another man during an argument over text messaging in a movie theater; a woman carrying a concealed weapon attacking a police detective after refusing to wear a mask;⁴⁵ a road rage confrontation where a “verbal altercation about merging” ended with two concealed carry licensees shooting at one another⁴⁶.

Black people are often the victims in scenarios where confrontation escalates to violence and even death when one or more person involved is carrying a weapon, whether open or concealed. This includes numerous examples where the perpetrator, motivated by racial bias, acts out of purported fear or defense of self or others. The murder of Trayvon Martin, a Black teenager, by a white supremacist George Zimmerman, who shot Trayvon with his concealed handgun, is one of the highest profile cases to fully display the dangers concealed carry permit holders pose in otherwise non-violent confrontations. Many other cases demonstrate this danger. Jordan Davis, a Black 17-year-old high school student, was one such victim.⁴⁷ He and a few of his teenage friends were at a gas station when they were approached by Michael

⁴⁵ Katie Balevic, *A South Carolina Woman Carrying a Loaded Gun Attacked a Police Detective After Refusing to Wear a Mask at an Aquarium*, *YAHOO! NEWS*, Sept. 8, 2021, <https://news.yahoo.com/south-carolina-woman-carrying-loaded-210538929.html>.

⁴⁶ SEATTLE TIMES STAFF, *Shots Fired in Road Rage Confrontation Near Lower West Seattle Bridge*, Aug. 25, 2021, <https://www.seattletimes.com/seattle-news/crime/shots-fired-in-road-rage-confrontation-near-lower-west-seattle-bridge/>.

⁴⁷ Jack Maddox, *Florida Teen Dead After Row that Began with Loud-Music Complaint, Suspect Jailed*, *CNN*, Sept. 5, 2014, <https://www.cnn.com/2012/11/26/us/florida-music-shooting/index.html>.

Dunn, a white man, who did not like how loudly they were playing their music.⁴⁸ When Jordan and his friends refused to turn their music down, Dunn, who was carrying a concealed weapon, shot at the car the boys were in, fatally striking Davis.⁴⁹ Dunn drove away and later said he shot Davis because he feared for his safety.⁵⁰

Markeis McGlockton, a Black man, was shot and killed by a white person after a disagreement over a handicap parking space led to a confrontation that, according to the killer, caused the white man to fear for his life.⁵¹ Bianca Roberson, a Black woman, was killed in a road-rage incident in Philadelphia; the perpetrator, a white man, killed Roberson with his lawfully carried handgun and later claimed he had been frightened when he shot at Roberson, a claim that the judge in his case rebuked him for making.⁵²

In other cases, this escalation reflects the same kind of violent anti-Black racism that was common during Reconstruction. White nationalism and other forms of white supremacy have continued to inspire

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Kathryn Varn and Dan Sullivan, *Michael Drejka Convicted of Manslaughter in Markeis McGlockton's Death*, TAMPA BAY TIMES, Aug. 23, 2019, <https://www.tampabay.com/news/pinellas/2019/08/24/michael-drejka-convicted-of-manslaughter-in-markeis-mcglocktons-death/>.

⁵² Maria Panaritis, *This Road Rage Verdict Delivers Justice for Bianca Roberson, But it Leaves Us Baffled*, PHILA. INQUIRER, Dec. 19, 2018, <https://www.inquirer.com/news/columnists/road-rage-killing-bianca-roberson-david-desper-chester-county-prison-west-goshen-20181219.html>.

racialized shootings targeting communities of color. Hate crime data, albeit flawed,⁵³ provides a glimpse into the levels of anti-Black bias that persist in this country, and the risk to Black communities when such hate is combined with handgun possession in public. Black Americans “have been the most frequent victims of hate crime in every tally of bias incidents generated since the FBI began collecting such data in the early 1990s.”⁵⁴ According to 2019 FBI data, nearly 60 percent of hate crimes are committed on the basis of race, the majority of which (nearly 50 percent)⁵⁵ were motivated by anti-Black bias.⁵⁶ And reports suggest that anti-Black hate crimes rose nearly 40%

⁵³ It is well documented that hate crimes are underreported—both by victims to local police and by local police to the FBI. See Tanner Stening, *Why Hate Crimes Are Underreported—and What Police Departments Have to Do with it*, NE. UNIV. NEWS, Aug. 23, 2021, <https://news.northeastern.edu/2021/08/23/why-hate-crimes-are-underreported-and-what-police-departments-have-to-do-with-it/>, and Ken Schwencke, *Confusion, Fear, Cynicism: Why People Don't Report Hate Incidents*, PROPUBLICA, July 31, 2017, <https://www.propublica.org/article/confusion-fear-cynicism-why-people-dont-report-hate-incidents>. Nevertheless, hate crime data reflect an undeniable portion of the racial terror experienced by Black people in this country.

⁵⁴ Janell Ross, *In Every Tally of Hate Crimes, Blacks Are the Most Frequent Victims*, NBC NEWS, Nov. 21, 2018, <https://www.nbcnews.com/news/nbcblk/every-tally-hate-crimes-blacks-are-most-frequent-victims-n938541>.

⁵⁵ U.S. DEPT OF JUSTICE, FBI CRIMINAL JUSTICE INFO. SERVS., *2019 Hate Crime Statistics*, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/victims>.

⁵⁶ NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, Criminal Justice Research Report, *Hate Crime in New York State 2019 Annual Report*, 3 tbl.2, <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2019-annual-report.pdf>.

in 2020 compared to 2019.⁵⁷ Many of these hate crimes involve firearms. Analysis of National Crime Victimization Survey data reveals that between 2010 and 2016, roughly 56,100 hate crimes were committed in the United States that involved the use or threat of a gun.⁵⁸

Hate crimes and acts of violent extremism have a pernicious impact on the targeted communities—not just the most proximate victim of a particular crime but the broader community of which the victim is a member. That is precisely the purpose of these acts: to threaten, to intimidate, and to terrorize, not just an individual but the entire membership of a historically vulnerable community, with a message of fear and hatred.⁵⁹

No one should be afraid to walk down the street, enter their place of worship, or otherwise gather with members of their community out of fear that they will be targeted by someone with a firearm. Yet, it is increasingly common for massed groups of heavily armed gun owners to engage in open carry, invading

⁵⁷ Dan Morgan, *Hate Crimes Against Asian and Black People Rise Sharply in the U.S., FBI Says*, CNBC, Aug. 30, 2021, <https://www.cnn.com/2021/08/30/fbi-says-hate-crimes-against-asian-and-black-people-rise-in-the-us.html>.

⁵⁸ CTR. FOR AM. PROGRESS, *Frequently Asked Questions About the Disarm Hate Act* (Sept. 18, 2019), available at <https://www.americanprogress.org/issues/guns-crime/reports/2019/09/18/474670/frequently-asked-questions-disarm-hate-act/>.

⁵⁹ Joseph Blocher and Reva B. Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller*, 116 NW. U.L. REV. 139 (2021), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1467&context=nulr>.

public spaces occupied by unarmed members of the community. The basic human right to live free from fear is directly threatened when hate-fueled individuals have easy access to firearms.

III. Past or Present-Day Racial Discrimination in the Enforcement of Gun Regulations Is a Grave and Unconstitutional Harm, but It Does Not Support Petitioners' Second Amendment Argument.

In seeking to expand the Second Amendment, Petitioners and their amici argue that New York's firearms regulations have been tainted by racial discrimination in their origins and enforcement. *See* Pet. Br. at 10; *see also* Brief of National African American Gun Association; Brief of Black Guns Matter, *et al.*; Brief of Black Attorneys of Legal Aid, *et al.*; Brief of Italian-American Jurists and Attorneys. LDF and the National Urban League take these arguments seriously. Any such discrimination, if proved, would be patently unconstitutional and must be remedied by courts, legislatures, and administrative bodies. Indeed, the racially discriminatory enforcement of criminal laws is a nationwide epidemic that denies full citizenship to Black people and other people of color and undermines our most basic ideals as a constitutional democracy. It must be uprooted through sustained advocacy, including litigation.

But such discrimination would not upset the overwhelming textual, precedential, and historical evidence that the Second Amendment permits states to impose reasonable restrictions on firearm possession outside. Nor would it alter states'

authority and fundamental duty to protect the public—including Black people and other people of color—from gun violence. Indeed, although LDF and the National Urban League contend that this Court’s incorporation doctrine should be guided by the Reconstruction Congress’s fundamental goal of ensuring full citizenship for Black people, *see Strauder v. West Virginia*, 100 U.S. 303 (1880), historical precedent from the era of Reconstruction makes clear that those who negotiated, enacted, and supported the Fourteenth Amendment understood the risks posed by widespread public carry to Black people achieving full citizenship.

Rather, the constitutional solution to any evidence of discrimination in the adoption or enforcement of New York’s—or any other state’s—gun laws and regulations is for courts to vindicate claims challenging such discrimination under the Equal Protection Clause of the Fourteenth Amendment. Indeed, the “central purpose” of the Equal Protection Clause is to address allegations of “official conduct discriminating on the basis of race.” *Washington v. Davis*, 429 U.S. 229, 239 (1976).

In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), this Court outlined a framework for identifying and remedying facially race-neutral statutes that were passed with racially discriminatory intent in violation of the Fourteenth Amendment. Under the *Arlington Heights* framework, courts have an opportunity to consider several factors that may raise an inference of discriminatory purpose, including the disparate

impact of the statute on racial minorities and the historical background of the challenged law. Thus, even if Petitioner's arguments about the racist provenance of the Sullivan Law are right, an Equal Protection challenge under the Fourteenth Amendment and using the *Arlington Heights* framework would be the proper avenue to seek a constitutional remedy.

Similarly, a Fourteenth Amendment selective enforcement challenge would be the proper way to address allegations that the handgun limitation is and has been disparately applied against people of color. Brief of Black Attorneys of Legal Aid, *et al.* This Court has long recognized that "the Constitution prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States*, 517 U.S. 806, 813 (1996). But again, the constitutional basis for objecting to intentionally discriminatory application of the law is the Equal Protection Clause. *Id.*

CONCLUSION

This Court should affirm the judgment of the Second Circuit.

Respectfully submitted,

SHERRILYN A. IFILL
JANAI S. NELSON
SAMUEL SPITAL*
KRISTEN JOHNSON
NAACP LEGAL DEFENSE
AND EDUCATIONAL
FUND, INC
40 RECTOR STREET, 5TH
FLOOR
NEW YORK, NY 10006
(212) 965-2200
SSPITAL@NAACPLDF.ORG

MAHOGANE D. REED
NAACP LEGAL
DEFENSE AND
EDUCATIONAL FUND,
INC.
700 14TH STREET NW,
SUITE 600
WASHINGTON, DC
20005

MARC H. MORIAL
DANIELLE COOPER
DAUGHTRY
NATIONAL URBAN
LEAGUE
80 PINE STREET
NEW YORK, NY 10005

September 21, 2021

*COUNSEL OF RECORD