No. 20-843

In the Supreme Court of the United States

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

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.

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INTEREST OF THE UNITED STATES

Congress has enacted numerous laws regulating firearms. The United States has a substantial interest in defending the constitutionality of those laws.

STATEMENT

1. Since 1911, New York law has generally prohibited possessing a firearm without a license. N.Y. Penal Law §§ 265.01, 265.20(a)(3). The prohibition applies to handguns, but not to most rifles and shotguns. *Id.* § 265.00. A premises license allows the holder to possess a handgun in a home or place of business, while a carry license allows the holder to carry a handgun in public. *Id.* § 400.00(2). A carry license permits only concealed carry; New York generally does not authorize open carry of handguns. *Ibid.*

An applicant for either type of license must generally show, among other things, that he is at least 21 years old, that he does not have a criminal record, that he has "good moral character," and that "no good cause exists for the denial of the license." N.Y. Penal Law § 400.00(1)(b) and (n). An applicant for a carry license ordinarily must show, in addition, that "proper cause exists for the issuance" of the license. *Id.* § 400.00(2)(f). If an applicant fulfills the qualifications and shows proper cause, the State "shall" issue the license. *Id.* § 400.00(2). A licensing officer's denial of an application is subject to judicial review and may be set aside if it is arbitrary and capricious. *Bando* v. *Sullivan*, 735 N.Y.S. 2d 660, 692 (N.Y. App. Div. 2002).

New York courts have developed a "substantial body of law" defining proper cause. *Kachalsky* v. *County of Westchester*, 701 F.3d 81, 86 (2d Cir. 2012), cert. denied, 569 U.S. 918 (2013). Proper cause exists if the applicant has "an actual and articulable—rather than merely speculative or specious—need for self-defense." *Id.* at 98. Proper cause also exists if the applicant intends to use a handgun "for target practice or hunting." *Ibid.* A licensing officer may restrict the carry license "to the purposes that justified the issuance"—so that, for example, a person who needs a handgun to protect himself at work may carry one at work but not elsewhere. *O'Connor* v. *Scarpino*, 638 N.E. 2d 950, 951 (N.Y. 1994).

2. In *Kachalsky*, the Second Circuit held that New York's proper-cause requirement does not violate the Second Amendment. The court concluded that laws regulating the possession and use of firearms in public should be subject to "intermediate scrutiny." 701 F.3d at 96. In reaching that conclusion, the court emphasized that the interest in self-defense carries less weight in

public than in the home, that public possession of firearms poses unique risks, and that history "clearly indicates a substantial role for state regulation of the carrying of firearms in public." *Ibid.*; see *id.* at 94-96.

The Second Circuit then held that the proper-cause requirement satisfies intermediate scrutiny because it is substantially related to the State's compelling interest in "public safety and crime prevention." *Kachalsky*, 701 F.3d at 97. The court explained that the requirement had been on the books for a century, that courts owe deference to the legislature's predictive judgments about the risks of public carrying of firearms, and that studies showed that widespread access to handguns in public can threaten public safety. *Id.* at 97-99.

3. Petitioners Robert Nash and Brandon Koch are residents of New York, and petitioner New York State Rifle and Pistol Association is an organization that advocates for gun owners in the State. J.A. 99. Nash and Koch applied for unrestricted carry licenses. Licensing officers found that they had not established proper cause to carry handguns at all times, but authorized them to carry for target shooting, hunting, and outdoor activities away from populated areas. J.A. 41, 114. Koch was also authorized to carry "to and from work." J.A. 114.

Petitioners sued in the United States District Court for the Northern District of New York, alleging that the proper-cause requirement violates the Second Amendment. Pet. App. 3-4. The district court dismissed the complaint, explaining that it was bound by the Second Circuit's decision in *Kachalsky*. *Id.* at 3-13. The Second Circuit summarily affirmed. *Id.* at 1-2.

SUMMARY OF ARGUMENT

New York's longstanding proper-cause requirement does not violate the Second Amendment.

A. The Second Amendment protects an individual right to keep and bear arms, but that right is not absolute. For centuries, legislatures in England, the colonies, and the States have protected public safety by adopting reasonable regulations governing who may possess weapons, which weapons they may possess, where and when weapons may be carried, and how they may be manufactured, sold, and stored.

A court considering a challenge to an arms regulation should begin with text, history, and tradition. This Court's decision in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), instructs that those sources may definitively validate or invalidate the challenged law: The Court struck down a uniquely restrictive law banning possession of handguns in the home, but emphasized that the Second Amendment permits a wide range of measures that are fairly supported by our Nation's tradition of gun regulation.

Text, history, and tradition will not conclusively determine the validity of some laws—especially new measures adopted to address new conditions. In such cases, courts should apply the judicial method reflected in the relevant history and tradition by asking whether the challenged law is a reasonable regulation—or, to put it in modern terms, whether the law survives intermediate scrutiny.

Federal law illustrates the types of regulations that legislatures may constitutionally adopt. Congress has disarmed felons and others who may be dangerous or irresponsible. It has forbidden the carrying of arms in sensitive places, such as courthouses and school zones.

And it has extensively regulated commerce in arms. All those regulations pass constitutional muster.

B. New York's proper-cause requirement is likewise constitutional. Throughout the Nation's history, legislatures have adopted regulations to address the distinctive risks posed by the public carrying of concealed or concealable arms. New York's law—which is itself a century old—fits squarely within that long tradition. And even if that tradition left any doubt, New York's proper-cause requirement would also satisfy intermediate scrutiny. It serves public-safety interests of the highest order. It applies only to the carrying of arms in public. It covers handguns, but not most rifles and shotguns. And instead of prohibiting the carrying of handguns entirely, it allows those who need to carry them for self-defense to do so.

ARGUMENT

A. Legislatures May Reasonably Regulate Firearms To Protect Public Safety

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court held that the Second Amendment protects an individual right to possess arms for lawful purposes, including self-defense. And in *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010), the Court held that the Fourteenth Amendment makes that right binding on the States. That right is not, however, absolute. *Heller* and *McDonald* instruct that the scope of the right is determined by history and tradition. And from medieval times until today, the right recognized in those decisions has coexisted with a wide variety of reasonable regulations protecting public safety. Courts

should therefore uphold such a regulation if it is validated by text, history, and tradition or if it satisfies a form of intermediate scrutiny, which is the modern equivalent of the standard traditionally applied to regulations of the right to bear arms.

1. Legislatures have broad authority to regulate firearms

a. Firearms serve valuable purposes, including enabling self-defense. But they can also do immense harm. One of their core functions, after all, is to kill and injure others. For centuries, lawmakers have protected the public by reasonably regulating such matters as who may possess arms, where they may be taken, and how they may be manufactured, transported, sold, stored, and carried.

In England, the tradition of regulating weapons to protect public safety is as old as written law itself. The first English weapons-control measure—a law making it an offense to "furnish weapons to another where there is strife, though no evil be done"—was enacted as part of the earliest Anglo-Saxon legal code in around A.D. 600. Frederic W. Maitland & Francis C. Montague, *A Sketch of English Legal History* 194 (1915); see *id.* at 193. Weapons regulation in America boasts a similarly impressive pedigree. The first legislature established by European settlers in North America, the General Assembly of Virginia, convened in Jamestown in 1619. See Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 57 (2017). "Among its more than thirty enactments * * * was a gun control law, which said 'that no man do sell or give any Indians any piece, shot, or powder, or any other arms offensive or defensive.'" *Ibid.* (brackets and citation omitted).

Those measures were just the beginning of arms regulation in English and American law. "English law restricted firearm possession as early as the thirteenth century." *Young* v. *Hawaii*, 992 F.3d 765, 786 (9th Cir. 2021) (en banc). And in the colonies and then the States, "gun laws were not only ubiquitous, numbering in the thousands, but also spanned every conceivable category of regulation." Spitzer 56.

For example, lawmakers have long disarmed groups deemed unfit to possess weapons. Some laws have disqualified persons outside the political community of the time, such as loyalists in Revolutionary America. *E.g.*, 1776 Mass. Acts 31-36. Others targeted persons who might use arms irresponsibly, such as children and drunks. *E.g.*, 1856 Ala. Acts 17; 1878 Miss. Laws 175. Still other laws punished certain crimes with forfeiture of the criminal's arms. *E.g.*, 1768 N.C. Sess. Laws 169.

Lawmakers also have conditioned the right to possess or carry weapons on individualized judgments about a person's fitness to do so. In the late 13th and early 14th centuries, for example, a series of royal decrees "prohibited 'going armed' without the king's permission." *Young*, 992 F.3d at 786-787. In the 14th century, Parliament forbade anyone from carrying certain weapons without "the King's special license." 7 Rich. 2, c. 13 (1383). And in the 17th century, Parliament authorized the disarming of anyone judged "dangerous to the Peace of the Kingdom." City of London Militia Act 1662, 14 Car. 2, c. 3, § 13.

Lawmakers have, in addition, regulated the types of arms people may carry. To take just a few examples, they restricted lances in the 14th century, 7 Rich. 2, c. 13 (1383); crossbows in the 16th century, 33 Hen. 8, c. 6 (1541); brass knuckles in the 19th century, 1881 Ark.

Acts 192; and machineguns in the 20th and 21st centuries, 18 U.S.C. 922(*o*). See Spitzer 67-71 (collecting many other examples).

Laws also have restricted where and how people may carry arms. We address the history of general public-carry restrictions like New York's proper-cause requirement below. See pp. 15-22, *infra*. In addition, legislatures have long restricted arms in particularly sensitive areas. The Coming Armed to Parliament Act 1313, 7 Edw. 2, banned the activity described in its title. Many American States, starting with Delaware in 1776, banned arms at election precincts. See Del. Const. of 1776, Art. 28; 1869 Tenn. Pub. Acts 23; 1870 Tex. Gen. Laws 63. And in 1824, the Board of Visitors of the University of Virginia, which included both Jefferson and Madison, banned students from possessing weapons on university grounds. See David B. Kopel & Joseph G. S. Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L. Rev. 203, 247-248 (2018).

To give one final example, lawmakers have restricted commerce in firearms. Since at least the 18th century, they have regulated the manufacture, sale, import, export, and transportation of arms. See, *e.g.*, 1794 Pa. Laws 764; 1811 N.J. Laws 300; 1825 N.H. Laws 74.

b. This tradition of extensive gun regulation has always been understood to be entirely consistent with the right to keep and bear arms recognized in the Second Amendment. "[T]he predecessor to our Second Amendment" in the English Bill of Rights, *Heller*, 554 U.S. at 593, declared that "the subjects which are Protestants may have Arms for their Defence suitable to their Conditions *and as allowed by Law*." 1 W. & M. Sess. 2, c. 2 (emphasis added). Echoing that provision, Blackstone

explained that subjects enjoyed the right to have "arms for their defence, suitable to their condition and degree, *and such as are allowed by law*." 1 William Blackstone, *Commentaries on the Laws of England* 139 (1765) (emphasis added). He also described the right as "a public allowance, *under due restrictions*, of the natural right of resistance and self-preservation." *Ibid.* (emphasis added); see *Heller*, 554 U.S. at 593-594 (relying on this passage).

In America, many States adopted constitutional provisions recognizing the same preexisting right secured by the Second Amendment. *Heller* treated 19th-century decisions applying those provisions as evidence of the right's meaning and scope. 554 U.S. at 610-614. And those state-court decisions regularly upheld firearms restrictions. One early opinion explained that the legislature may "adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals." *State* v. *Reid*, 1 Ala. 612, 616 (1840). Another explained that the legislature may regulate arms to protect "the peace and safety of the citizens." *Aymette* v. *State*, 21 Tenn. 154, 159 (1840). Yet another observed that the right to keep and bear arms has historically been "subjected to legal regulations and restrictions, without any question as to the power so exercised." *State* v. *Buzzard*, 4 Ark. 18, 22 (1842) (opinion of Ringo, C.J.). A final opinion stated that the legislature could enact "such police regulations as may be necessary for the good of society," and that "these regulations must be left to the wisdom of the legislature, so long as their discretion is kept within reasonable bounds." *Carroll* v. *State*, 28 Ark. 99, 101 (1872).

c. This Court's decisions in *Heller* and *McDonald* recognized and reaffirmed the traditional limits on the

right to keep and bear arms. In *Heller*, the Court emphasized that the right is "not unlimited." 554 U.S. at 626. It observed that, "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Ibid.* The Court identified several examples of permissible regulatory measures: laws disarming felons and people with mental illnesses, laws forbidding firearms in sensitive places, restrictions on the commercial sale of firearms, and bans on dangerous and unusual weapons. *Id.* at 626-627 & n.26. And the Court made clear that "nothing in [its] opinion should be taken to cast doubt on the[se] longstanding measures." *Id.* at 626. In *McDonald*, in turn, a plurality explicitly "repeat[ed] those assurances." 561 U.S. at 786.

In short, *Heller* and *McDonald* "largely preserved the status quo of gun regulation in the United States." *Heller* v. *District of Columbia*, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (*Heller II*) (Kavanaugh, J., dissenting). Although the decisions struck down "outlier local law[s]" that "went far beyond the traditional line of gun regulation," they confirmed that "traditional and common gun laws in the United States remain constitutionally permissible." *Ibid.* In so doing, they "maintain[ed] the balance historically and constitutionally struck in the United States between public safety and the individual right to keep and bear arms." *Id.* at 1271.

2. A court should uphold an arms regulation if it is validated by text, history, and tradition or if it satisfies intermediate scrutiny

a. This Court's decision in *Heller* instructs that, in reviewing a challenge to an arms regulation, a court

should start with the text of the Second Amendment, the history of the right to keep and bear arms, and the tradition of arms regulation in the United States.

As *Heller* itself illustrates, those sources may definitively invalidate a challenged law. There, the Court held that the District of Columbia's ban on keeping handguns in the home for self-defense violated the Constitution because "[f]ew laws in the history of our Nation have come close to the severe restriction of the District's handgun ban." 554 U.S. at 629.

In many other cases, text, history, and tradition will just as definitively show that a law is constitutional. For example, this Court explained that the tradition of banning "dangerous and unusual weapons" suffices to validate modern laws banning "M-16 rifles and the like." *Heller*, 554 U.S. at 627. Tradition likewise validates the broad categories of "longstanding" regulations approved in *Heller*. *Id.* at 626. As those examples illustrate, exact historical matches are not required; it suffices if the challenged law is "fairly supported" by the relevant tradition. *Id.* at 627.

In applying this approach, courts should follow *Heller* by considering not only the history of the right to keep and bear arms before ratification, but also the Nation's entire tradition of gun regulation. In determining whether the Second Amendment protects an individual right, this Court considered how legislatures, courts, and commentators interpreted the Second Amendment "from immediately after its ratification through the end of the 19th century." 554 U.S. at 605. And in asking the dispositive question here—whether a particular law falls within "the traditional line of gun regulation," *Heller II*, 670 F.3d at 1270 (Kavanaugh, J., dissenting)—the Court's consideration of tradition did not end with

the *fin de siècle* in 1899. Federal laws disarming felons and the mentally ill date to the 20th century, yet *Heller* described those "longstanding prohibitions" as "presumptively lawful." 554 U.S. at 626-627 & n.26; see *United States* v. *Skoien*, 614 F.3d 638, 640-641 (7th Cir. 2010), cert. denied, 562 U.S. 1303 (2011).

b. Sometimes, text, history, and tradition will not yield a conclusive answer. When legislatures impose new regulations in response to new conditions, for example, "there obviously will not be a history or tradition of * * * imposing such regulations." *Heller II*, 670 F.3d at 1275 (Kavanaugh, J., dissenting). But that does not mean those regulations are necessarily invalid. *Ibid.* In some cases, it may be possible to "reason by analogy from history and tradition" to assess a new law. *Ibid.* But where specific analogies are unavailable or do not provide clear guidance, courts will need doctrinal tests. As the author of *Heller* elsewhere recognized, such tests play an "essential" role in reviewing "new restrictions." *United States* v. *Virginia*, 518 U.S. 515, 568 (1996) (Scalia, J., dissenting). And those tests are faithful to history so long as they are "crafted so as to reflect" the "traditions that embody the people's understanding" of the text at issue. *Ibid.* (emphasis omitted).

In the 19th century, state courts reviewed regulations on carrying arms in public by asking whether they were "reasonable." See, *e.g.*, *State* v. *Shelby*, 2 S.W. 468, 469 (Mo. 1886) (legislature may enact "a reasonable regulation of the use of such arms"); *Haile* v. *State*, 38 Ark. 564, 566 (1882) (legislature may regulate arms "in a reasonable manner"); *Carroll*, 28 Ark. at 101 (legislature may regulate arms "within reasonable bounds"). In assessing reasonableness, courts considered the severity

of the burden imposed, distinguishing laws that reasonably regulated the right from laws that laws that nullified it. See, *e.g.*, *English* v. *State*, 35 Tex. 473, 478 (1871) (legislature "may regulate [the right] without taking it away"); *Reid*, 1 Ala. at 616 (legislature may enact "regulations of police," but may not "destr[oy]" the right). They also asked whether the challenged law had "some well defined relation" to a legitimate "end," such as "the prevention of crime." *Andrews* v. *State*, 50 Tenn. 165, 180 (1871).

The modern standard of review that corresponds most closely to that traditional approach—and thus is most faithful to the history and tradition of the right to keep and bear arms—is a form of intermediate scrutiny. The Court has articulated intermediate scrutiny using different formulations, but all consider the nature of the burden imposed and demand a fit between that burden and an important state interest—"a fit that is not necessarily perfect, but reasonable" or "'in proportion to the interest served.'" *Board of Trustees* v. *Fox*, 492 U.S. 469, 480 (1989) (citation omitted); see, *e.g.*, *Turner Broadcasting System, Inc.* v. *FCC*, 520 U.S. 180, 213, 221 (1997); *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791, 798-800 (1989). Since *Heller*, the courts of appeals have consistently applied this form of intermediate scrutiny to most firearms regulations, including public-carry laws. See *Gould* v. *Morgan*, 907 F.3d 659, 672 (1st Cir. 2018) (collecting cases), cert. denied, 141 S. Ct. 108 (2020).

Intermediate scrutiny reflects the relevant history better than strict scrutiny. Strict scrutiny carries with it a strong presumption of unconstitutionality, but that presumption has no place in this context. "After all, history and tradition show that a variety of gun regulations

have co-existed with the Second Amendment right and are consistent with that right, as the Court said in *Heller*. By contrast, if courts applied strict scrutiny, then presumably very few gun regulations would be upheld." *Heller II*, 670 F.3d at 1274 (Kavanaugh, J., dissenting) (footnote omitted).

3. Federal law illustrates the types of regulations that legislatures may constitutionally adopt

Federal law illustrates some of the types of regulations that the Second Amendment permits. Congress has prohibited the possession of firearms by several categories of people, such as felons, see 18 U.S.C. 922(g)(1); fugitives, see 18 U.S.C. 922(g)(2); drug addicts, see 18 U.S.C. 922(g)(3); persons who have been committed to mental institutions, see 18 U.S.C. 922(g)(4); and domestic abusers, see 18 U.S.C. 922(g)(8)-(9). Congress has also restricted the sale of firearms directly to minors. See 18 U.S.C. 922(b)(1) and (x). All those laws fall comfortably within the tradition of laws disarming criminals and irresponsible individuals. See p. 7, *supra*.

Congress also has prohibited the carrying of guns in certain locations, such as school zones, see 18 U.S.C. 922(q)(2)(A); government buildings, see 18 U.S.C. 930; and airplanes, see 49 U.S.C. 46505(b). Those laws, too, comport with the Second Amendment. They impose only a modest burden on the right to bear arms, and they are part of a long tradition of restricting weapons in sensitive places. See p. 8, *supra*.

Finally, Congress has extensively regulated the manufacture, sale, and commercial flow of arms. For example, arms manufacturers and dealers must obtain licenses and must obey recordkeeping requirements. See 18 U.S.C. 923. And buyers must undergo background checks before obtaining firearms from licensed

dealers. See 18 U.S.C. 922(t). Those laws are likewise constitutional. They regulate activities far removed from the core of the Second Amendment and fit with a long tradition of regulating commerce in arms. See p. 8, *supra*.

B. New York's Licensing Regime Permissibly Regulates The Carrying Of Handguns

New York has long sought to protect public safety by requiring a person to establish "proper cause" to obtain a license to carry a handgun in public. N.Y. Penal Law § 400.00(2)(f). Three features, taken together, establish the constitutionality of that requirement. First, it applies only to the carrying of handguns in public, not to the possession of handguns in the home. *Ibid.* Second, it applies to handguns, but not to most rifles and shotguns. *Id.* § 265.00. Third, a person satisfies the requirement by showing that he has "an actual and articulable * * * need for self-defense." *Kachalsky* v. *County of Westchester*, 701 F.3d 81, 98 (2d Cir. 2012), cert. denied, 569 U.S. 918 (2013). Laws with those features fall well within the Nation's tradition of firearm regulation. And even if history and tradition left some doubt, those same features of the law also show that it satisfies intermediate scrutiny.

1. New York's proper-cause requirement is well within the traditional line of gun regulation

History and tradition establish that legislatures may regulate the public carrying of arms more extensively than the private possession of arms; that legislatures may address the distinctive risks posed by the carrying of concealed or concealable arms like handguns; and that legislatures may limit the right to carry arms to those who have a genuine need for self-defense. Judged

in light of those principles, New York's proper-cause requirement passes constitutional muster because it is "within the class of traditional, 'longstanding' gun regulations in the United States." *Heller II*, 670 F.3d at 1270 (Kavanaugh, J., dissenting).

a. History shows that legislatures may regulate the carrying of arms in public more extensively than the possession of arms in the home. For example, there is a long tradition of banning the carrying of weapons in urban, populated, or crowded areas. In 1285, Parliament sought to prevent "Murders, Robberies, and Manslaughters" in the City of London by providing that "none be so hardy to be found going or wandering about the Streets of the City, after Curfew * * * with Sword or Buckler, or other Arms for doing Mischief, * * * unless he be a great Man or other lawful Person of good repute." Statutes for the City of London, 13 Edw. 1. A 1326 order forbade anyone from going armed in the City of London. See *Young*, 992 F.3d at 787. In 1328, the Statute of Northampton provided that no man "be so hardy to come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere." 2 Edw. 3, c. 3. And a statute from the time of Henry IV restricted the carrying of arms in churches. See 4 Hen. 4, c. 29 (1402).

Legislatures have enacted similar laws on this side of the Atlantic. In the 19th century, Tennessee outlawed carrying weapons at fairs and race courses, see 1869 Tenn. Pub. Acts 23; Texas outlawed it at churches, schools, lecture rooms, ballrooms, and social gather-

ings, see 1870 Tex. Gen. Laws 63; and Oklahoma outlawed it in churches, schools, circuses, shows, exhibitions, ball rooms, social gatherings, conventions, and other public assemblies, see 1890 Okla. Sess. Laws 496. Wyoming and Idaho banned carrying firearms in cities, towns, and villages, and Kansas banned it in cities with more than 15,000 inhabitants. See 1876 Wyo. Laws 352; 1888 Idaho Laws 23; 1881 Kan. Sess. Laws 92. Many cities in the West similarly banned carrying guns within city limits. See Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* 165 (2011). "In fact, the famed shootout at Tombstone's O.K. Corral was sparked in part by Wyatt Earp pistol-whipping Tom McLaury for violating Tombstone's gun control laws." Joseph Blocher, *Firearm Localism*, 123 Yale L. J. 82, 84 (2013).

State courts generally upheld those restrictions. The Tennessee Supreme Court, for example, remarked that "a man may well be prohibited from carrying his arms to church, or other public assemblage." *Andrews*, 50 Tenn. at 182. And the Texas Supreme Court considered it "little short of ridiculous" to claim a right to carry arms into "a church, a lecture room, [or] a ball room." *English*, 35 Tex. at 478-479.

b. History also shows that legislatures may address the distinctive dangers posed by the public carrying of concealed or concealable weapons.

As for *concealed* weapons: King James I proclaimed that "the bearing of Weapons covertly * * * hath ever beene * * * straitly forbidden as carrying with it inevitable danger in the hands of desperate persons." King James I, *A Proclamation Against the Use of Pocket Dags* 1 (1613). In the United States, state legislatures began to forbid concealed carry after the War of 1812.

See Spitzer 64-65 & nn. 50-54. All but one state supreme court to consider the matter upheld concealed-carry bans, and the one "outlier" was later overturned by a state constitutional amendment. *Id.* at 61-62 (discussing *Bliss* v. *Commonwealth*, 12 Ky. 90 (1822)); see Ky. Const. of 1850, Art. 12, § 25. An influential commentator cited in *Heller* thus recognized that the right to bear arms "is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons." John Norton Pomeroy, *Introduction to the Constitutional Law of the United States* 152-153 (1868) (cited in *Heller*, 554 U.S. at 626). In 1897, this Court endorsed the same understanding, emphasizing that "the right of the people to keep and bear arms * * * is not infringed by laws prohibiting the carrying of concealed weapons." *Robertson* v. *Baldwin*, 165 U.S. 275, 281-282 (1897). And in *Heller*, the Court discussed "prohibitions on carrying concealed weapons" in the course of explaining that "the right secured by the Second Amendment is not unlimited." 554 U.S. at 626.

As for *concealable* weapons: Parliament under Henry VIII banned the carrying of "little short handguns," which had been "responsible for "diverse detestable and shameful murders, robberies, felonies, riot and rout," "to the great peril and continual fear and danger of the Kings most loving subjects." 33 Hen. 8, c. 6 (1541). Elizabeth I proclaimed that it was unlawful to carry "Pistols" and "other short pieces." Queen Elizabeth I, *A Proclamation Prohibiting the Use and Cariage of Dagges, Birding Pieces, and Other Gunnes, Contrary to Law* 1 (1600). And James I proclaimed that it was unlawful to wear or carry "Steelets, pocket Daggers, and pocket Dags and Pistols, which are weapons utterly unserviceable for defence, Militarie practise, or other

lawfull use, but odious, and noted Instruments of murther, and mischiefe." King James I, *A Proclamation Against Steelets, Pocket Daggers, Pocket Dagges and Pistols*, *reprinted in* 1 Stuart Royal Proclamations 359-360 (James F. Larkin & Paul L. Hughes eds. 1973).

American legislatures passed similar laws. For example, Tennessee in 1821 made it unlawful to carry, "publicly or privately," any "belt or pocket pistol." 1821 Tenn. Pub. Acts 15. Arkansas in 1875 made it unlawful to "wear or carry any pistol of any kind whatever." 1875 Ark. Acts 156. New Mexico in 1860 made it a crime to carry "any class of pistols whatever," "concealed or otherwise." 1860 N.M. Laws 94. Arizona in 1889 banned carrying pistols in populated areas. 1889 Ariz. Sess. Laws 30. And Oklahoma in 1890 made it a crime to carry "any pistol" or "revolver." 1890 Okla. Sess. Laws 495.

These restrictions on the carrying of concealable weapons were not viewed as infringements of the right to keep and bear arms for self-defense. To the contrary, the Tennessee Supreme Court held that it was constitutional to ban the carrying of belt and pocket pistols. *Andrews*, 50 Tenn. at 186. The Georgia Supreme Court was "at a loss to follow the line of thought that extends the [right to bear arms] to the right to carry pistols * * * which, as all admit, are the greatest nuisances of our day." *Hill* v. *State*, 53 Ga. 472, 474 (1874). The Arkansas Supreme Court upheld a ban on pistols as an "exercise of the police power of the State without any infringement of the constitutional right of the citizens." *Fife* v. *State*, 31 Ark. 455, 461 (1876). And a commentator cited in *Heller*, see 554 U.S. at 619, argued that "[c]arrying [pistols] for defence, in the more settled

parts of the land, savors of cowardice rather than of prudence," and that "a well-behaved man has less to fear from violence than from the blunders of himself and friends in managing the pistol he might carry as a protection." Benjamin Vaughan Abbott, *Judge and Jury: A Popular Explanation of Leading Topics in the Law of the Land* 333-334 (1880).

c. Finally, history and tradition also validate laws conditioning the right to carry handguns in public on the need to do so for self-defense. For example, Massachusetts provided in 1836 that, if *A* carried a pistol "without reasonable cause to fear an assault or other injury, or violence to his person," and *B* complained that he reasonably feared injury as a result, *A* could be required to post a bond to cover any harm he might do. 1836 Mass. Rev. Stat. 750. A dozen other States adopted similar provisions. See *Young*, 992 F.3d at 799-800. Those laws may not have banned the carrying of firearms by people without reasonable cause to do so, but they regulated that practice by requiring bond.

Laws from the second half of the 19th century on did impose such bans. The New Mexico Territory banned carrying pistols in settled areas, unless the wearer, his family, or his property was "then and there threatened with danger." 1869 N.M. Laws 72. Texas banned carrying a pistol without "reasonable grounds" to fear an attack that was "immediate and pressing" and "of such a nature as to alarm a person of ordinary courage." 1871 Tex. Gen. Laws 25. West Virginia banned carrying a revolver or pistol, but provided an affirmative defense for anyone who had "good cause" to fear "death or great bodily harm." W. Va. Code, ch. 148, § 7 (1887). Massachusetts banned carrying a pistol or revolver without a license, which would be granted only if the applicant had

"good reason to fear an injury." 1906 Mass. Acts 150. Alabama banned carrying a pistol on the premises of another, but if the defendant had "good reason to apprehend an attack," the jury could consider that fact "in mitigation of the fine or justification of the offense." 1909 Ala. Acts 258-259. And Hawaii forbade carrying a pistol in public without "good cause." 1913 Haw. Acts 25.

Courts found it even easier to uphold those laws than to uphold flat bans on carrying concealable weapons. And contrary to petitioner's suggestion (Pet. Br. 34-35), those decisions did not rest on the erroneous premise that the right to keep and bear arms extended only to military weapons. In upholding the Texas statute, the Texas Supreme Court remarked that it made "all necessary exceptions" for "self-defense," *English*, 35 Tex. at 477, and that the state legislature "appears to have respected the right to carry a pistol openly when needed for self-defense," *State* v. *Duke*, 42 Tex. 455, 459 (1875). West Virginia's highest court upheld the West Virginia law, which in the court's view carried on a tradition going back to the Statute of Northampton. See *State* v. *Workman*, 14 S.E. 9, 11 (1891). And the Alabama Supreme Court upheld Alabama's law as "a mere regulation as to carrying." *Isaiah* v. *State*, 58 So. 53, 54 (1911).

Commentators' writings underscore those points. Blackstone described the right to keep and bear arms as "a public allowance, under due restrictions, of the natural right of resistance and self-preservation, *when the sanctions of society and laws are found insufficient to restrain the violence of oppression*." 1 Blackstone 139 (emphasis added). And a 19th century commentator quoted in *Heller* remarked: "The Constitution secures the right of the people to keep and bear arms. * * * No

doubt, a person *whose residence or duties involve peculiar peril* may keep a pistol for prudent self-defence." *Heller*, 554 U.S. at 619 (quoting Abbott 333) (emphasis added). Those statements suggest that a person who lacks a need for self-defense also lacks a right to carry arms for that purpose.

d. New York's proper-cause requirement fits comfortably within this tradition. New York has not gone as far as the jurisdictions that have flatly prohibited the carrying of arms in urban or populated areas. Nor has it gone as far as those that have flatly prohibited the carrying of handguns. It has instead adopted one of the most modest of the alternatives discussed above: allowing the public carrying of handguns for self-defense, but only upon a showing of necessity. The showing required, moreover, is less onerous than that required under some of the 19th-century laws just cited.

New York's approach also is commonplace today. Many States apart from New York allow a person to carry a handgun in public only if he has a need to do so. For example, California requires "[g]ood cause," Cal. Penal Code § 26150(a)(2) (West 2021); Hawaii requires "reason to fear injury" to person or property, Haw. Rev. Stat. Ann. § 134-9(a) (LexisNexis 2021); Maryland requires "good and substantial reason" to carry the gun, Md. Code Ann., Pub. Safety § 5-306(a)(6)(i) (LexisNexis 2018); Massachusetts requires "good reason to fear injury" or "other reason," Mass. Ann. Laws ch. 140, § 131(c); New Jersey requires a "justifiable need to carry a handgun," N.J. Stat. Ann. § 2C:58-4 (West 2021); and Rhode Island requires a "reason to fear an injury to his person or property" or "other proper reason," R.I. Gen. Laws § 11-47-11(a) (2002).

2. New York's proper-cause requirement also satisfies intermediate scrutiny

Because history and tradition are sufficient to validate New York's longstanding law, the Court need go no further. But if any doubt remained, the same features that show that New York's licensing regime comports with tradition also show that it satisfies intermediate scrutiny.

a. New York's proper-cause requirement imposes only a modest burden on the right guaranteed by the Second Amendment. To start, the requirement applies only to public places, not to the home. The right to self-defense has always been more limited in public than in the home. Coke and Blackstone emphasized that "the house of every one is as to him as his castle and fortress, as well for his defence against injury and violence, as for his repose." *Semayne's Case*, 77 Eng. Rep. 194, 195 (K.B. 1604); see 3 Blackstone 288. And this Court stated in *Heller* that "the need for defense of self, family, and property is most acute" in "the home," and that the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S. at 628, 635.

The public square is different. As Judge Bybee explained for the en banc Ninth Circuit, our tradition makes defense in public spaces "peculiarly the duty of the states," not armed private citizens. *Young*, 992 F.3d at 814. The Framers of the Second Amendment did not assume that "their whole scheme of law and order, and government and protection, would be a failure, and that the people, instead of depending upon the laws and the public authorities for protection, were each man to take care of himself." *Hill*, 53 Ga. at 479.

In addition, New York's licensing regime applies to handguns, but not to rifles and shotguns. See *Kachalsky*, 701 F.3d at 85. Petitioners, of course, prefer to carry handguns. But as one 19th century court remarked, "where certain weapons are forbidden to be kept or used by the law of the land, in order to the prevention of crime—a great public end—no man can be permitted to disregard this general end, and demand of the community the right, in order to gratify his whim or willful desire to use a particular weapon in his particular self-defense." *Andrews*, 50 Tenn. at 188.

Finally, instead of banning handguns outright, New York took "a more measured approach," allowing those who need to carry handguns for self-defense to do so. *Kachalsky*, 701 F.3d at 98. New York's approach is consistent with the nature of the Second Amendment right. The Amendment does not protect a general right to possess weapons for any purpose whatever; rather, it protects a right to possess weapons for self-defense. *Heller*, 554 U.S. at 577. And New York's carry regime allows people to carry guns for that purpose; an "actual and articulable * * * need for self defense" counts as proper cause. *Kachalsky*, 701 F.3d at 98.

b. The burden imposed by New York's proper-cause requirement serves interests of the highest order: protecting life and limb. Firearms carried in public can be used for murder, rape, robbery, assault, and more. In 2019, firearm homicides caused 14,414 deaths in the United States. See Centers for Disease Control and Prevention (CDC), U.S. Dep't of Health & Human Servs., *Web-Based Injury Statistics Query and Reporting System*, *Fatal Injury and Violence Data* (2020). And in 2012, firearm assaults accounted for an estimated 59,077 nonfatal injuries. See CDC, *Web-Based*

Injury Statistics Query and Reporting System, Nonfatal Injury Data (2020).

The State cannot avoid those problems simply by denying guns to people with criminal records. In *Kachalsky*, New York introduced evidence showing that "a majority of criminal homicides and other serious crimes are committed by individuals who have not [previously] been convicted of a felony." D. Ct. Doc. 52 at 14, *Kachalsky* v. *County of Westchester*, No. 10-cv-5413 (S.D.N.Y. Feb. 23, 2011).

Guns carried in public also can pose serious dangers even in the hands of well-meaning citizens. An otherwise law-abiding citizen may reach for his gun in anger, say in a bar fight, a moment of road rage, or a quarrel over whether to wear a mask in a store. A declarant in *Kachalsky* explained:

> The easy accessibility of a gun in public can increase the danger associated with emotional confrontations, such as road rage incidents, disputes over broken relationships, or suicide attempts. One who is depressed or cannot control anger or emotions may pose a greater danger in public if he or she can simply draw a gun from the waistband. * * * Uninvolved and innocent bystanders can be placed at great risk.

D. Ct. Doc. 60, at 2, *Kachalsky*, *supra* (No. 10-cv-5413) (Feb. 23, 2011) (Fazio Decl.). The point is nothing new. In the 19th century, too, courts perceived the "danger to the whole community, which would result from the common practice of going about with pistols in a belt, ready to be used on every outbreak of ungovernable passion." *Haile*, 38 Ark. at 566.

What is more, the decision whether to shoot in public "must be made in only a moment, and yet is enormously

complicated." Fazio Decl. at 2. One must consider whether the target poses a threat, whether that threat is sufficiently serious to justify the use of deadly force, whether alternatives short of deadly force would defuse the situation, whether firing would put any bystanders at risk, and more. Even "highly trained police officers" sometimes make mistakes when deciding to shoot; ordinary citizens presumably are even likelier to err. *Id.* at 3. And such errors are "a far greater concern in street situations," which are likely to be less familiar to the shooter, than in the home. *Ibid.*

The widespread carrying of guns in public places can also endanger police officers. This Court has recognized that "every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded." *Terry* v. *Ohio*, 392 U.S. 1, 23 (1968). The Court also has "specifically recognized" the "inordinate risk" that an officer faces when approaching someone who may be armed. *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam). As a declarant observed in *Kachalsky*: "An increasing prevalence of handgun carrying will pose particular problems for officers in already dangerous situations. It will endanger officers who stop people on the street or who stop motorists during a car stop by making it more likely that such people are armed." D. Ct. Doc. 62 at 5-6, *Kachalsky*, *supra* (No. 10-cv-5413) (Feb. 23, 2011).

Although all forms of firearms can pose those risks, "the handgun is the major hazard, particularly in big cities." D. Ct. Doc. 53, at 2, *Kachalsky*, *supra* (No. 10-cv-5413) (Feb. 23, 2011) (Zimring Decl.). Open carrying of long guns may implicate distinct interests in prohibiting the carrying of firearms in a manner that intimidates or frightens others. Cf. Resp. Br. 37 & n.19. But

at least a criminal who carries a rifle or shotgun to his destination is likely to attract attention; passersby and police officers can remain on their guard. Zimring Decl. at 2-3. By contrast, "[t]he person with a concealed handgun in his pocket generates no special notice until the weapon appears at his criminal destination. The robber or assaulter looks no different from any other user of common public spaces." *Id.* at 3. "[O]ther citizens and police don't know [the handgun] is in their shared space until it is brandished." *Id.* at 4.

This "ability to escape special scrutiny" makes the handgun "the dominant weapon of choice for gun criminals." Zimring Decl. at 3. In fact, in a 1997 survey of prisoners who were armed during the crime for which they were imprisoned, more than 80% said that they were armed with a handgun. See *Heller*, 554 U.S. at 698 (Breyer, J., dissenting). Today, as when New York adopted the proper-cause requirement, the "particular kind of arm" targeted by the requirement is "the handy, the usual, and the favorite weapon of the turbulent criminal class." *People ex rel. Darling* v. *Warden of City Prison*, 139 N.Y.S. 277, 285 (N.Y. App. Div. 1913).

The proper-cause requirement mitigates all those risks. It ensures that the only people who carry handguns in public are those who need to do so. And because licensing officers may restrict the right to carry to the purpose that justified issuance of the license (see p. 2, *supra*), the proper-cause requirement ensures that even those who carry guns do so only when they must and where they must. The proper-cause requirement thereby reduces the prevalence of unnecessary guns in public places, diminishing all the dangers discussed above—the risk that guns will be used to commit a crime, be fired in anger, be fired when they should not

have been, or otherwise endanger police officers and bystanders. See pp. 24-27, *supra*.

At a minimum, courts should defer to New York's judgment that the proper-cause requirement effectively serves those interests. The legislature "is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data'" that bear upon complex empirical questions. *Turner Broadcasting*, 520 U.S. at 195 (citation omitted). The question for a court applying intermediate scrutiny is "not whether [the legislature], as an objective matter, was correct," but "whether the legislative conclusion was reasonable." *Id.* at 211. The empirical judgment underlying the proper-cause requirement plainly was.

In short, the burden imposed by New York's carry regime is "in proportion to the interest served." *Fox*, 492 U.S. at 480 (citation omitted). The regime therefore satisfies intermediate scrutiny, as most courts of appeals to consider similar laws have held. See *Gould*, 907 F.3d at 673-677 (1st Cir.); *Kachalsky*, 701 F.3d at 83-84 (2d Cir.); *Drake* v. *Filko*, 724 F.3d 426, 436-440 (3d Cir. 2013), cert. denied, 572 U.S. 1100 (2014); *Peruta* v. *County of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 1995 (2017); but cf. *Wrenn* v. *District of Columbia*, 864 F.3d 650, 664-667 (D.C. Cir. 2017) (holding a similar law invalid without applying intermediate scrutiny).

3. Petitioners' contrary arguments lack merit

a. Petitioners devote most of their brief (at 4-13, 25-40) to showing that the Second Amendment is not limited to the home. But that is not the issue. The issue is whether New York's proper-cause requirement is a permissible regulation of the carrying of handguns outside the home. Almost none of the historical evidence

amassed by petitioners speaks to *that* question. Indeed, petitioners have failed to cite even a single case from the 19th or early 20th centuries holding (or even stating in dictum) that a legislature violates the right to keep and bear arms by conditioning the right to carry handguns in public on a showing of need.

Petitioners instead principally rely (Pet. 9, 33-34 & n.3) on a handful of cases from the antebellum South, most of which *approved* bans on concealed carry while disapproving (usually in dictum) bans on open carry. See *Andrews*, 50 Tenn. at 187; *State* v. *Chandler*, 5 La. Ann. 489, 490 (1850); *Nunn* v. *State*, 1 Ga. 243, 251 (1846); *Aymette* v. *State*, 21 Tenn. 154, 155, 160 (1840); *Reid*, 1 Ala. at 619.

Those decisions have little to do with this case. Some of them disapproved restrictions on openly carrying long guns, not restrictions on openly carrying easily concealable weapons such as handguns. See, *e.g.*, *Andrews*, 50 Tenn. at 179, 186 (upholding a ban on carrying belt and pocket pistols, but suggesting that bans on carrying rifles, shotguns, muskets, and repeaters would violate the state constitution); *Aymette*, 21 Tenn. at 160-161 (suggesting that the legislature could not prohibit openly carrying muskets and rifles). None of those decisions, moreover, involved a ban with a self-defense exception comparable to New York's proper-cause requirement. As discussed above, the courts that considered laws with such exceptions had little trouble upholding them. See p. 21, *supra*.

b. Petitioners also attempt to minimize the legal significance of the features of New York's carry regime discussed above. Petitioners' contentions, however, contradict the relevant history and tradition.

Petitioners argue (Pet. Br. 49) that, because the Second Amendment protects both the right to "keep" and the right to "bear" arms, it makes no difference that New York's proper-cause requirement applies only to the carrying of arms in public. That does not follow. The Fourth Amendment protects "persons, houses, papers, and effects," yet houses receive more protection than persons, papers, and effects. See *Lange* v. *California*, 141 S. Ct. 2011, 2017-2018 (2021). And the Fifth Amendment requires due process for a deprivation of "life, liberty, or property," yet deprivations of life or liberty demand more process than deprivations of property. See *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976). So too, the Second Amendment's use of the verbs "keep" and "bear" does not preclude legislatures and courts from following the centuries-long tradition distinguishing between those activities.

Petitioners also contend (Pet. Br. 44) that, just as it did not matter in *Heller* that the District of Columbia permitted possession of long guns, it does not matter here that New York's proper-cause rule does not apply to most rifles and shotguns. That, too, is incorrect. This Court noted in *Heller* that "handguns are the most popular weapon chosen by Americans for self-defense *in the home*." 554 U.S. at 629 (emphasis added). Outside the home, by contrast, handguns have long been subject to special regulation because of the special dangers they pose to public safety. See pp. 18-20, *supra*.

Finally, petitioners assert (Pet. Br. 41) that this Court would not allow the government to condition the exercise of any other right on a showing of need. But the interpretation of the Second Amendment should turn on that Amendment's history and tradition, not on the different history and tradition of other rights. And

in any event, petitioners' argument fails on its own terms. Under the Free Speech Clause, an association's right to avoid disclosing the names of its members sometimes depends on whether it needs that protection to avoid "threats, harassment, or reprisals." *Buckley* v. *Valeo*, 424 U.S. 1, 74 (1976) (per curiam). Under the Sixth Amendment, the state's authority to freeze untainted assets before trial depends in part on whether the funds are "needed to retain counsel of choice." *Luis* v. *United States*, 136 S. Ct. 1083, 1088 (2016) (plurality opinion) (citation omitted). Need requirements are hardly unknown to constitutional law.

c. Petitioners' objections to other specific features of New York's licensing regime are also unpersuasive.

Petitioners assert that, in practice, New York restricts the right to carry firearms to a "small subset" of the community and "'totally bans'" the carrying of firearms for everyone else. Pet. Br. 41 (citation omitted). But petitioners have not substantiated those characterizations, and they appear to be incorrect. New York represents, for example, that during a recent two-year period "at least 93% of applicants" received a license allowing public-carry in some circumstances, and "at least 65% of applicants received an unrestricted license." Resp. Br. 14 n.10.

Petitioners also assert (Pet. Br. 42) that a licensing officer's proper-cause determination is "practically unreviewable" and that the resulting discretion could be used to "selectively disarm" disfavored groups. But the Anglo-American tradition of gun regulation has long included individualized assessments of a person's need to carry a firearm. See pp. 7, 20-22, *supra*. And again, petitioners have not supported their assertions about

the operation of New York's law. To the contrary, licensing officers are constrained by a "substantial body of law instructing licensing officials on the application of [the proper-cause] standard." *Kachalsky*, 701 F.3d at 86. That body of law establishes, among other things, that an "actual and articulable * * * need for self-defense" amounts to proper cause. *Id.* at 98.

If petitioners believed that the licensing officers erred in finding that they lacked such a need, they could have sought judicial review. See p. 2, *supra*. And to the extent petitioners argue that their particular need for self-defense is such that it violates the Second Amendment to deny them unrestricted concealed-carry permits, cf. Pet. Br. 18-20, they are wrong. As discussed above, New York's self-defense exception is more generous than the exceptions that were provided (and upheld by state courts) in the 19th century. See pp. 20-21, *supra*. In all events, an argument grounded in the particular needs alleged in petitioners' complaint could establish, at most, that the proper-cause requirement may violate the Second Amendment as applied to them—not that the requirement is unconstitutional on its face.

Last, petitioners object (Pet. Br. 43) that New York allows them to carry handguns for some purposes, including hunting and target practice, but does not give them the unrestricted right to carry handguns for self-defense. That objection lacks force. Hunters use guns to shoot wildlife in sparsely populated fields and forests. Target shooters use guns to shoot bullseyes and metallic silhouettes in shooting ranges. Petitioners, by contrast, seek to carry handguns in the bustle of cities and towns for (potential) use against other people. It is reasonable for New York to recognize the differences between those activities.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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