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In the  
**Supreme Court of the United States**

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

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS  
SUPERINTENDENT OF THE NEW YORK STATE POLICE,  
RICHARD J. MCNALLY, JR., IN HIS OFFICIAL CAPACITY AS  
JUSTICE OF THE NEW YORK SUPREME COURT, THIRD  
JUDICIAL DISTRICT, AND LICENSING OFFICER FOR  
RENSSELAER COUNTY,  
*Respondents.*

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

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BRIEF OF THE CITY OF CHICAGO AND ELEVEN OTHER  
CITIES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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**TABLE OF CONTENTS**

	<b>Page:</b>
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT .....	3
I. State and Local Firearms Regulations Are Crucial to Fighting the Gun Violence that is Rampant in America .....	4
A. Chicago Has a History of Gun Violence and Effective Enforcement of Firearms Regulations.....	5
B. Other Cities and Counties Have Experiences Similar to Chicago’s .....	10
II. Localized Discretion in Firearms Regulation Is Essential and Can Coexist with Second Amendment Rights.....	18
A. State and Local Governments have Broad Discretion in Their Efforts to Protect the Safety of Their Residents .....	18
B. The Second Amendment Does Not Deprive States and Local Governments of the Ability to Experiment with Stringent Firearms Regulations.....	20
C. New York’s Discretionary Licensing Regime is the Sort of Constitutional Experimentation Needed to Combat Firearms Violence in Urban Centers .....	23
CONCLUSION .....	27

## TABLE OF AUTHORITIES

	<b>Page(s):</b>
<b>Cases:</b>	
<i>Brescia v. McGuire</i> , 509 F. Supp. 243 (S.D.N.Y. 1981).....	20
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	7, 20, 21, 25
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<i>Gould v. Morgan</i> , 907 F.3d 659 (1st Cir. 2018) .....	24, 25
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<b>Constitutional Provision:</b>	
U.S. Const. amend. II.....	<i>passim</i>
<b>Statutes:</b>	
Md. Code Ann., Crim. Law § 4-202.....	26
Md. Pub. Safety § 5-306 .....	26
N.J.S.A. § 2C:58-4 .....	26

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

*Amici* are twelve American cities working to fight the devastating effects of firearms violence every day: Chicago, Illinois; Baltimore, Maryland; Cincinnati, Ohio; Columbus, Ohio; Dayton, Ohio; Los Angeles, California; Philadelphia, Pennsylvania; Portland, Oregon; San Diego, California; San Francisco, California; Seattle, Washington; and St. Paul, Minnesota.

State constitutions and statutes vest local governments with police powers to enact and enforce regulations designed to prevent shootings within their jurisdictions; to take dangerous weapons and violent offenders off the streets; and to engage in initiatives designed to reduce the costs of firearms violence. *Amici*'s efforts are unique to each local governmental unit, and they evolve over time with new enactments, amendments, and repeals. *Amici* tailor their efforts to the nature and extent of the firearms violence they experience, and they experiment with regulatory and enforcement initiatives in order to seek solutions and stem the tide of firearms violence.

America's densely populated cities have suffered extensive loss of life, threats to public safety, threats to law enforcement, disruption to their economies, and substantial health care costs from firearms violence. While particular laws and strategies may differ, *amici* agree that local governmental units need

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<sup>1</sup>All parties consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person other than *amici* made a monetary contribution to its preparation or submission.

discretion to make these important policy decisions. Local governments are the governmental units closest to the people, with the greatest incentive to ensure the safety and vitality of their neighborhoods and business communities. State and local governments thus have a critical interest in maintaining maximum flexibility to protect public safety through firearms regulation.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Local governments have no greater purpose than to suppress violent crime and thereby protect their citizens. Firearms, particularly concealable handguns, can frustrate that purpose. Now more than ever, local governments need maximum flexibility in addressing the carrying of firearms. New York's licensing scheme is the sort of effort needed to combat firearms violence.

Chicago's history is instructive. Under state and local law, Chicago has enforced requirements for the concealed carry of firearms, prohibitions on carry in sensitive places, and an assault weapons ban, among other firearms restrictions. These laws have produced positive results, but a crisis of deaths due to gun violence continues. Tragically, in *Amici* cities and other urban communities, gun violence is increasing. Shootings occur at schools, parks, streets, sidewalks, and entertainment venues. Public officials are possible targets, while the threat to law enforcement personnel is ever-present. To combat this scourge of gun violence, local governments enact a variety of requirements tailored to their own circumstances.

Local governments need broad discretion in establishing local standards regarding firearms. The

Second Amendment does not bar states and local governments from experimenting with stringent firearms regulations when warranted. New York's duly enacted licensing scheme should be upheld.

### ARGUMENT

Gun violence is on an alarming upswing in the United States. The COVID-19 pandemic and protests over police brutality led to a surge of firearm sales and gun violence in 2020.<sup>2</sup> As of September 15, 2021, gun violence has killed more than 30,000 Americans this year,<sup>3</sup> with 2021 on track to be the deadliest year of gun violence in more than two decades.<sup>4</sup> And in American cities, concealable handguns are of particular concern because they can be carried without being noticed, which makes city streets, parks, and public accommodations that much more susceptible to gun violence.<sup>5</sup>

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<sup>2</sup>*Shootings Never Stopped During the Pandemic: 2020 was the Deadliest Gun Violence Year in Decades*, Wash. Post (Mar. 23, 2021, 11:42 PM), <https://www.washingtonpost.com/nation/2021/03/23/2020-shootings/> (“In 2020, people purchased about 23 million guns, a 64 percent increase over 2019 sales.”).

<sup>3</sup>See Gun Violence Archive (last updated Sept. 15, 2021), <https://www.gunviolencearchive.org/>.

<sup>4</sup>Reis Thebault et al., *2020 was the Deadliest Gun Violence Year in Decades. So Far, 2021 is Worse*, Wash. Post (June 14, 2021), <https://www.washingtonpost.com/nation/2021/06/14/2021-gun-violence/>.

<sup>5</sup>Franklin E. Zimring, *Handgun Control, The Second Amendment, and Judicial Legislation in the D.C. Circuit: A Note on Parker v. District of Columbia*, 11 New Crim L. R. 312, 315 (2008).



Petitioners would have this Court develop Second Amendment law in a way that would drastically reduce the options available to state and local governments to reduce gun violence. This Court should decline the invitation to create such precedent. Any reduction in the ability of *Amici* to enact and enforce stringent firearms regulation sets us back, not forward, in our quest to resolve America's handgun violence crisis.

The rise in firearms violence makes it all the more important to allow state and local governments maximum flexibility to enact and enforce firearms regulations. So long as a firearms regulation leaves open an appropriate avenue for qualified, law-abiding citizens to exercise Second Amendment rights to keep and bear arms for self-defense, state and local governments should be given wide berth in their initiatives to end firearms violence. New York's licensing scheme is one example of such a firearm restriction, as are a host of other regulations enacted or enforced in the jurisdictions of *Amici*.

**I. State and Local Firearms Regulations Are Crucial to Fighting the Gun Violence that is Rampant in America.**

America's urban centers have long been plagued by gun violence. Concealable handguns, in particular, are wreaking havoc on their communities. New York's concealed carry law is one among many of the crucial tools that state and local governments across the country have adopted to combat this problem. These laws need not be disturbed in order for gun owners to exercise Second Amendment rights.

### **A. Chicago Has a History of Gun Violence and Effective Enforcement of Firearms Regulations.**

America's densely populated cities and counties are engaged in a tireless effort to stem the tide of firearms violence. The City of Chicago is a prime example. Chicago has a long history of fighting firearms violence through various legislative and law enforcement initiatives.<sup>6</sup> The regulation of firearms in Chicago extends as far back as 1861.<sup>7</sup> Those regulations changed over the decades, including in the 1960s, when homicides in Chicago increased dramatically, with “the number of homicides nearly doubling from the start of the decade to its end.”<sup>8</sup> A surge in unemployment, gentrification efforts segregating black families, and an increase in gang violence were all factors in the high homicide numbers.<sup>9</sup>

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<sup>6</sup>Kyle Bentle et al., *40,000 Homicides: Retracing 63 Years of Murder in Chicago*, Chicago Tribune (Apr. 27, 2021, 12:14 PM), <https://www.chicagotribune.com/news/breaking/ct-history-of-chicago-homicides-htmlstory.html>.

<sup>7</sup>See *Private Laws of Illinois* 144 (enacted 1861) (prohibiting the “discharge, within the city limits, [of] any . . . fire-arms of any description” without permission of the mayor or common council).

<sup>8</sup>Bentle, *supra* note 6.

<sup>9</sup>John Hagedorn & Brigid Rauch, *Housing, Gangs, and Homicide: What We Can Learn From Chicago*, 42 *Urban Affairs Rev.* 435, 446 (Mar. 2007), <http://uar.sagepub.com/cgi/content/abstract/42/4/435> (concluding that Chicago, along with Los Angeles and New York, experienced massive displacements of black citizens in order “to make room for expressways and high-rise housing”); Bentle, *supra* note 6.

In response to rising violence, the Illinois General Assembly passed the Firearm Owner's Identification Card Act ("FOID Card Act"). 430 ILCS 65 (1968). The goal of the Act was to "identify those persons eligible to possess and acquire firearms and firearm ammunition."<sup>10</sup> An Illinois resident who acquires or possesses firearms or ammunition must have valid FOID card.<sup>11</sup>

Chicago homicides peaked at 970 in 1974,<sup>12</sup> and remained high – around 800 homicides per year – through the end of the 1970s.<sup>13</sup> In reaction to the increased availability of handguns and firearm violence, Chicago took additional measures, enacting a handgun ban in 1982.<sup>14</sup> Over the next decades, the City employed additional policing strategies to address firearms violence, including Chicago Alternative Policing Strategy ("CAPS"), where local police officials meet with residents to engage in community problem solving, and Project Safe Neighborhoods, in which Chicago Police collaborate with prosecutors and community organizers on data-

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<sup>10</sup>*Frequently Asked Questions*, Illinois State Police, Firearm Services Bureau, <https://www.ispfsb.com/Public/Faq.aspx>.

<sup>11</sup>*Id.*

<sup>12</sup>1974 Annual Report, Chicago Police Department, <https://home.chicagopolice.org/wp-content/uploads/2014/12/1974-Annual-Report.pdf>.

<sup>13</sup>*See* 1975-80 Annual Reports, Chicago Police Department, <https://home.chicagopolice.org/statistics-data/statistical-reports/annual-reports/>.

<sup>14</sup>*Journal of Proceedings*, Chicago City Council, at 10049 (Mar. 19, 1982).

driven violence reduction strategies.<sup>15</sup> In 2010, Chicago experienced its lowest homicide total in decades – 440 homicides, 354 of which were committed with firearms.<sup>16</sup>

Several major regulatory changes were made in the wake of this Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Chicago repealed its handgun ban in July 2010. Chicago police officers continued to enforce other firearms restrictions, including an Illinois statute that broadly prohibited carrying firearms in public. 720 ILCS 5/24-2 (2010). That statute was repealed in 2013 after the Seventh Circuit's decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), and was replaced with the Firearm Concealed Carry Act, which sets standards for obtaining a permit to carry firearms in Illinois. 430 ILCS 66/1, et seq. The Concealed Carry Act requires an applicant to have a FOID card; imposes some additional disqualifiers, such as for recent misdemeanors involving physical force or driving under the influence of drugs; and requires firearms training and gun-safety education.

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<sup>15</sup>*What is CAPS?*, Chicago Police Department, <https://home.chicagopolice.org/community-policing-group/how-caps-works/what-is-caps/>; Andrew V. Papachristos et al., *Project Safe Neighborhoods in Chicago: Looking Back a Decade Later*, 107 J. Crim. L. & Criminology 131, 136-39 (2017); Andrew V. Papachristos et al., *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, 4 J. Empirical Legal Studies 223 (2007), <https://www.justice.gov/usao-ndil/page/file/1176621/download>.

<sup>16</sup>2010 Annual Report, Chicago Police Department, at 22, <https://home.chicagopolice.org/wp-content/uploads/2014/12/2010-Annual-Report.pdf>.

430 ILCS 66/25; *id.* 66/75. The statute also prohibits carrying firearms in numerous sensitive places, such as government buildings, places where large numbers of people gather (*e.g.*, public transportation, stadiums, airports), and places where children or other vulnerable people are likely to gather (*e.g.*, schools, child-care centers, playgrounds, hospitals). *Id.* 66/70.

Chicago's enforcement of the FOID Card Act, the Concealed Carry Act, and other firearms regulations produces results. They are used to take hundreds of criminals and thousands of firearms off the streets each year. Chicago police officers made 701 arrests for violations of the FOID Card Act and Concealed Carry Act in 2020 and have made almost 450 so far in 2021.<sup>17</sup> And officers recovered 11,273 firearms in 2020, as well as 8,171 so far in 2021, including more than 300 assault weapons.<sup>18</sup> Since 2016, the Chicago Police Department has been able to recover more than 1,100 assault weapons as a result of Chicago's assault weapons ban.<sup>19</sup>

In recent years, Chicago has been facing the same uptick in urban violence as the rest of the nation. In 2020, the COVID-19 pandemic led to widespread shut-downs of schools, businesses, and other workplaces, and skyrocketing unemployment rates. Additionally, in the aftermath of a police officer's

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<sup>17</sup>*Firearm Recoveries, Arrests, Homicides & Shootings City of Chicago January 1, 2020 - August 31, 2020, January 1, 2021 - August 31, 2021*, Data Fulfillment and Analysis Section Report, Chicago Police Department (Aug. 31, 2021).

<sup>18</sup>*Id.*

<sup>19</sup>Data Fulfillment & Analysis Section Report, Chicago Police Department (June 9, 2021).

killing of George Floyd in Minneapolis, protests erupted in major cities all over the country, including Chicago, fueling more violence in urban areas. In July 2020 alone, Chicago experienced 105 homicides and 584 shootings.<sup>20</sup>

In 2020, there were 771 homicides, 693 by firearms, making 2020 “Chicago’s second-deadliest year in the past two decades.”<sup>21</sup> In 2021 thus far, there have been 2,335 shooting incidents and 493 homicides by firearms in the City.<sup>22</sup> On the Fourth of July holiday weekend alone, 104 individuals were shot in Chicago, including thirteen children, and nineteen of them died.<sup>23</sup> Over the most recent Labor Day weekend, there were at least eight children and twelve adults wounded or killed by firearms.<sup>24</sup>

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<sup>20</sup>*Chicago Homicides & Shootings Rise Sharply in 2020*, NBC News (Aug. 1, 2020), <https://www.nbcchicago.com/news/local/chicago-homicides-rose-by-139-percent-from-last-july-officials-say/2315318/>.

<sup>21</sup>*Firearm Recoveries, Arrests, Homicides & Shootings City of Chicago*, *supra* note 17; Sam Charles, *After 3 Years of Progress, Chicago’s Murder Tally Skyrockets in 2020*, Chicago Sun Times (Dec. 31, 2020, 2:38 PM), <https://chicago.suntimes.com/crime/2020/12/31/22208002/chicago-murders-2020-skyrocket-crime-violence-cpd-homicides>.

<sup>22</sup>*Id.*

<sup>23</sup>Madeline Kenney & Emmanuel Camarillo, *Chicago’s Most Violent Weekend of 2021: 104 Shot, 19 of Them Killed, 13 Kids Among the Wounded*, Chicago Sun Times (Jul. 6, 2021, 11:52 AM), <https://chicago.suntimes.com/crime/2021/7/3/22561910/chicago-weekend-shootings-july-2-5-homicide-gun-violence>.

<sup>24</sup>Erik Ortiz, *Boy, 4, Shot in Head, Killed as Gun Violence Plagues Chicago’s Labor Day Weekend*, NBC News (Sept. 6,

Chicago's enforcement of the FOID Card Act, concealed carry restrictions, and other firearms regulations are critical to prevention of still further violence.

### **B. Other Cities and Counties Have Experiences Similar to Chicago's.**

Chicago is only one example among many municipalities experiencing a rise in gun violence – this experience is typical in urban centers across the country. Indeed, once all the data is complete, 2020 will likely “mark the biggest single-year national jump in homicides since national crime statistics began to be released in the 1960s.”<sup>25</sup>

*Amici* are representative of the many thousands of American cities and counties impacted by this escalation of firearms violence. Portland, for example, has experienced a recent, unprecedented spike in gun violence. By July 2021, the Portland Police Bureau had reported 192 shooting incidents resulting in injury, compared to 92 in 2020 and 50 in 2019 for the same time period.<sup>26</sup> Seattle has likewise experienced a 41 percent increase in firearm-related incidents—

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2021, <https://www.nbcnews.com/news/us-news/boy-4-dies-after-being-shot-head-gun-violence-plagues-n1278566>.

<sup>25</sup>*How Bad is the Rise in US Homicides?*, The Guardian (June 30, 2021), <https://www.theguardian.com/us-news/2021/jun/30/us-crime-rate-homicides-explained>.

<sup>26</sup>*Police Bureau*, The City of Portland Oregon, <https://www.portlandoregon.gov/police/81203>.

314 incidents through July 2021 compared to 223 incidents through the same time period in 2020.<sup>27</sup>

Cities besides *Amici* are seeing the same pattern. In Oakland, guns were involved in 84 of the 102 homicides committed in 2020 – the city’s most violent year since 2012.<sup>28</sup> By August 2021, there were 78 homicides, compared to 54 during 2020 and 49 in 2019 over the same period.<sup>29</sup> By the end of April 2021, the Oakland Police Department had reported a recovery of 334 firearms – an average of three per day.<sup>30</sup>

Urban gun violence is experienced in all sorts of public spaces – streets, sidewalks, parks, schools, entertainment and recreation facilities. There has been an alarming number of school shootings across the United States – fifteen shootings in 2021, and seventy-four since 2018.<sup>31</sup> Many school shootings are

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<sup>27</sup>*Seattle Police Department*, City of Seattle, <https://www.seattle.gov/police/information-and-data/crime-dashboard>.

<sup>28</sup>Darwin BondGraham, *Gun Violence: The Other Public Health Crisis That Spiked in Oakland Last Year*, *The Oaklandside* (Apr. 27, 2021), <https://oaklandside.org/2021/04/27/gun-violence-shootings-epidemic-public-health-crisis-oakland-2020-covid/>.

<sup>29</sup>Annie Sciacca, *Oakland Gun Violence Prompts Community Leaders to Ask for Outside Help, State of Emergency*, *East Bay Times* (Aug. 11, 2021), <https://www.eastbaytimes.com/2021/08/10/gun-violence-in-oakland-prompts-community-leaders-to-ask-for-outside-help/>.

<sup>30</sup>BondGraham, *supra* note 28.

<sup>31</sup>*School Shootings This Year: How Many and Where*, *Education Week* (last updated Sept. 7, 2021), <https://www.edweek.org/leadership/school-shootings-this-year-how-many-and-where/2021/03>.



carried out with handguns; for example, in the school shooting with the highest death toll to date, at Virginia Tech in 2007, 32 people were killed and seventeen wounded by a single individual with two pistols.<sup>32</sup> In addition to the tragic loss of life, school shootings traumatize students and their families and require massive emergency responses from local, state, and federal agencies. And even just the threat of school shootings has caused lockdowns of schools and businesses, increased security, and fear-inducing “active shooter drills” for all ages.<sup>33</sup>

Urban areas also tend to have large venues and host major events where thousands gather for concerts, sporting events, rallies, parades, and other public events. Unfortunately, these events are sometimes targets for mass shootings. Several notable examples include the mass shootings that took place at the Pulse Nightclub in Orlando, Florida in June 2016 (50 killed, 53 injured); at a concert in Las Vegas, Nevada in October 2017 (59 killed, 489 injured); and more recently at a concert in Miami-

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<sup>32</sup>See *Virginia Tech shooting leaves 32 dead*, History.com, <https://www.history.com/this-day-in-history/massacre-at-virginia-tech-leaves-32-dead>.

<sup>33</sup>See John Hinton, *Chaos Surrounding Student's Fatal Shooting Affected Many in Winston Salem*, *Winston-Salem Journal*, at A3 (Sept. 3, 2021); Alia Wong, *Kids Going Back to School in a Pandemic are Met with Another Trauma: Active Shooter Drills*, USA Today (last updated Apr. 5, 2021), <https://www.usatoday.com/story/news/education/2021/03/31/active-shooter-drills-kids-return-person-school-covid/7009223002/>; *Schools In Bartlett Locked Down Through Day Due To Report Of Armed Runaway*, <https://chicago.cbslocal.com/2021/09/08/bartlett-school-lockdown-armed-teenage-runaway/>.

Dade County, Florida in May 2021 (3 killed, 20 injured).<sup>34</sup>

Cities and counties are further impacted by gun violence directed at public officials. By the very nature of their service, public officials must meet with the public and can unwittingly become targets of those with a grudge and a concealed handgun. Two of Chicago's mayors, for example, were killed while in office by assailants with handguns. Mayor Carter Harrison, Sr., was shot while serving his fifth term as Mayor of Chicago, in 1893.<sup>35</sup> Mayor Anton Cermak, was shot in 1933, while appearing with President-Elect Franklin D. Roosevelt, who was the assassin's target.<sup>36</sup> Other mayors, including San Francisco Mayor George Moscone in 1978, have been killed by handguns while in office.<sup>37</sup>

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<sup>34</sup>Mass Shootings, All Years, *Gun Violence Archive*, <https://www.gunviolencearchive.org/mass-shooting> (last visited June 21, 2021).

<sup>35</sup>Alison Martin, *This Week in History: Mayor Carter Harrison Shot in Mansion*, Chicago Sun-Times (Oct. 29, 2020), <https://chicago.suntimes.com/2020/10/29/21537308/this-week-in-history-carter-harrison-assassination-chicago>.

<sup>36</sup>Peter Kendall, *The Shooting of Anton Cermak*, Chicago Tribune (Dec. 19, 2007), <https://www.chicagotribune.com/nation-world/chi-chicagodays-cermak-story-story.html>. In addition to unsuccessful assassination attempts on President-Elect Roosevelt and on several other Presidents, four of forty-six American Presidents have been assassinated with firearms, three by concealable handguns—William McKinley, James Garfield, and Abraham Lincoln. See *U.S. presidential assassinations and attempts*, Los Angeles Times (Jan. 12, 2012), <https://timelines.latimes.com/us-presidential-assassinations-and-attempts/>.

<sup>37</sup>See *San Francisco Still Stunned By 1978 Moscone-Milk Assassinations*, CBSN Bay Area (Nov. 27, 2018),

The risk of gun violence also falls significantly on law enforcement personnel. In New York City, for example, “[e]very NYPD officer murdered in the line of duty since . . . 2005 has been killed with a handgun.”<sup>38</sup> Similarly, over the past decade across the country, “over 500 police officers [were] killed in the line of duty by guns,” including the five Dallas police officers killed in the deadliest attack on police since 9/11.<sup>39</sup> And in Maryland’s experience, 83.5% of law enforcement officers who have died in the line of duty from non-vehicular, non-natural causes died as a result of intentional gunfire, usually from a handgun.<sup>40</sup>

Responding to these threats to public safety, municipalities rely upon an array of requirements for licenses or permits. While several jurisdictions provide for discretionary licensing like the New York statute at issue here, other states provide the issuing authority with a more limited amount of discretion to deny permits to people who may meet basic qualification standards but exhibit some public safety

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<https://sanfrancisco.cbslocal.com/2018/11/27/san-francisco-still-stunned-by-1978-city-hall-assassinations/>.

<sup>38</sup>Declaration of Andrew Lunetta, *Kachalsky v. Cty. of Westchester*, Second Circuit Case No. 11-3642, ECF No. 62 at 546.

<sup>39</sup>Lupe Valdez, Dallas County Sheriff, *Our Police Officers Need Protection From Gun Violence Too*, The Hill (May 17, 2017, 11:40 AM), <http://thehill.com/blogs/pundits-blog/civil-rights/333819-our-police-officers-need-protection-from-gun-violence-too>.

<sup>40</sup>Declaration of Terrence B. Sheridan, *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), Fourth Circuit Case No. 12-1437, ECF No. 37 at 117.

concerns.<sup>41</sup> Most states require some form of firearms safety training.<sup>42</sup> As under federal law, felons are generally prohibited from firearm access, and many states exclude other categories of criminals, like those convicted of misdemeanors for violent or firearms-related crimes.<sup>43</sup> Some state and local governments have safe storage laws that require guns to be kept in a locked container when not being carried, have a locking device on the gun, or be kept away from minors and other individuals prohibited from possessing firearms.<sup>44</sup> These safe storage laws are meant to prevent accidental discharges by gunowners that can harm themselves or innocent bystanders, prevent children from obtaining access to their parents' guns and using them with fatal consequences, and prevent the theft of firearms.

States and local governments also rely on laws designed to prevent gun sales to criminals and other disqualified individuals. Thirteen states and the District of Columbia require universal background checks at the point of sale for all sales and transfers of firearms, whether they are purchased from a

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<sup>41</sup>*See Concealed Carry*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*See id.*; Belmont, Cal. Code of Ordinances § 15-38 (2020); Los Angeles, Cal. Municipal Code § 55.21(b) (2019); Oakland, Cal. Code of Ordinances §§ 9.37, 9.39 (2021); Highland Park, Ill. Code of Ordinances § 136.010 (2021); Takoma Park, Md. Code of Ordinances § 14.16.040(B) (2021); Portland, Or. City Code § 14A.60.050 (2021); Municipal Code of Seattle, WA §§ 10.79.020 (2018) & 10.79.030 (2018).

licensed dealer or an unlicensed seller.<sup>45</sup> Several states and local governments impose waiting periods, ranging from 72 hours to 14 days, between the purchase of a gun and when the buyer can take possession of it.<sup>46</sup>

All states have laws that prohibit the open or concealed carry of guns in certain categories of places. Many prohibit guns in government buildings and polling places, as well as particular kinds of businesses, like banks, bars, childcare facilities, and hospitals.<sup>47</sup> Some prohibit firearms at places and events where large numbers of people gather, like parks, churches, amusement parks, stadiums, demonstrations, and other public events.<sup>48</sup>

Other state and local regulations focus on prohibiting particularly dangerous firearms. Eight states have laws banning assault weapons and/or

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<sup>45</sup>*Universal Background Checks*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/>.

<sup>46</sup>*Waiting Periods*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/gun-sales/waiting-periods/>; Hartford, Conn. Code of Ordinances § 21-59(a) (1977) (2 weeks); Carroll County, Md. § 112.06(A) (2004) (ten days).

<sup>47</sup>*Local Restrictions*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/location-restrictions/>.

<sup>48</sup>*Id.*; Bell, Cal. Municipal Code § 12.36.030 (2021) (“No person shall have in his or her possession in any public park any firearm. . . .”); Los Angeles, Cal. Municipal Code § 55.07 (2019) (prohibiting carry or possession of specified weapons and other objects while attending public demonstrations or rallies).

large capacity magazines,<sup>49</sup> as do some cities and counties.<sup>50</sup> Other local governments prohibit “Saturday night specials” or sawed-off shotguns.<sup>51</sup>

These regulations are valuable tools in the efforts of cities and counties to keep or take guns out of the hands of criminals and others who would misuse them.

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<sup>49</sup>*Assault Weapons*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/>.

<sup>50</sup>See, e.g., Municipal Code of Chicago, Ill., §§ 8-20, *et seq.*; Cook County, Ill. Code §§ 54-210, *et seq.* Sunnyvale, Cal. Municipal Code §§ 9.44.030–060.

<sup>51</sup>Alameda County, Cal. Municipal Code § 9.12.110 (1996) (banning sales of “Saturday night specials,” also known as “junk guns,” which are “poorly manufactured and are not suitable for, or readily adaptable to, sporting purposes”; and “present a threat to the public welfare and law enforcement officers”); Capitola, Cal. Municipal Code § 9.22.010 (2021) (same); Contra Costa County, Cal. Municipal Code § 54-20.012 (2021) (same). Dallas, Or. Code of Ordinances § 5.100(1)(c) (banning possession of “any shot gun with a barrel length less than 18 inches or an overall length of less than 26 inches or a rifle with a barrel length of less than 16 inches or an overall length of less than 26 inches.”); Livonia, Mich. Code of Ordinances § 9.94.030 (banning “[p]ossession of short-barreled shotgun, short-barreled rifle, or specified dangerous weapons”); Madison Heights, Mich. Code of Ordinances § 17-142(a) (2021) (banning possession of “any machine gun, sawed off shotgun,” or silencer); Manton, Mich. Code of Ordinances § 22-94 (a) (2021) (same); Michiana, Mich. Code of Ordinances § 235-42 (2019) (same); Mount Clemens, Mich. Code of Ordinances § 20.010 (2021) (same); Redford Charter Township (Wayne County) Code of Ordinances § 58-276 (2021) (same); Southgate, Mich. Code of Ordinances § 692.02 (2021) (same).

## **II. Localized Discretion in Firearms Regulation Is Essential and Can Coexist with Second Amendment Rights.**

State and local authorities must be afforded discretion if they are to fulfill their highest purpose – protecting and promoting the physical safety of all people within their borders. Like the laws enacted and enforced by *Amici*, New York’s concealed carry licensing regime is the product of careful deliberation on the part of New York lawmakers on how to best effectuate this objective and should not be disturbed.

### **A. State and Local Governments have Broad Discretion in Their Efforts to Protect the Safety of Their Residents.**

This Court has observed that there is “no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.” *United States v. Morrison*, 529 U.S. 598, 618 (2000). The police power “springs from the obligation of the state to protect its citizens and provide for the safety and good order of society.” *Panhandle E. Pipe Line Co. v. State Highway Comm’n of Kansas*, 294 U.S. 613, 622 (1935).<sup>52</sup>

Commensurate with the weight of this responsibility, states retain “great latitude under

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<sup>52</sup>See also *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“The promotion of safety of persons and property is unquestionably at the core of the State’s police power . . .”); *United Auto., Aircraft & Agric. Implement Workers of Am. v. Wisconsin Emp’t Relations Bd.*, 351 U.S. 266, 274 (1956) (“The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern.”).

their police powers to legislate as to the protection of the lives, limb, health, comfort and quiet of all persons.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quotation omitted); *accord Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). State and local lawmakers discharge this responsibility by “carefully and thoughtfully creat[ing] their own framework of standards . . . to suit public safety needs.”<sup>53</sup> These homegrown standards reflect “the great diversity in geography, population, culture, and tradition” of lawmakers’ constituents.<sup>54</sup> They are not only “decisions by state and local authorities about how to best ensure public safety,”<sup>55</sup> but also reflect “the will of their citizens” and symbolize “the core democratic principle that . . . elected representatives make those laws.”<sup>56</sup>

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<sup>53</sup>Letter from David LaBahn, President & CEO, Ass’n of Prosecuting Attorneys to Congressional Leaders (Nov. 27, 2017).

<sup>54</sup>Letter from 17 Attorneys General to Congressional Leaders (Oct. 22, 2017).

<sup>55</sup>*Id.*

<sup>56</sup>Andrew Warren, State Attorney for the 13th Judicial Circuit, *Concealed-Carry Reciprocity Would Be Bad for Florida*, Tampa Bay Times (Dec. 5, 2017), [http://www.tampabay.com/opinion/columns/Column-Concealed-carry-reciprocity-would-be-bad-for-Florida\\_163306216](http://www.tampabay.com/opinion/columns/Column-Concealed-carry-reciprocity-would-be-bad-for-Florida_163306216). *See also* Tom Jackman, *Police Chiefs Implore Congress Not to Pass Concealed-Carry Reciprocity Gun Law*, Wash. Post (Apr. 19, 2018), [https://www.washingtonpost.com/news/true-crime/wp/2018/04/19/nations-police-chiefs-implore-congress-not-to-pass-concealed-carry-reciprocity-gun-law/?noredirect=on&utm\\_term=.73bc281f4c6c](https://www.washingtonpost.com/news/true-crime/wp/2018/04/19/nations-police-chiefs-implore-congress-not-to-pass-concealed-carry-reciprocity-gun-law/?noredirect=on&utm_term=.73bc281f4c6c) (quoting Boston Police Commissioner William Evans as attributing “Massachusetts[] . . . lowest gun deaths of any state” to state permitting requirements and “watch[ing] guns and who possesses them very closely”).



Likewise, the challenged New York statute applies local standards to issuing unrestricted concealed carry permits, reflecting the legislature’s judgment that the statute will promote public safety.<sup>57</sup> As a measure designed “to regulate in the interest of [New Yorkers] public safety,” it is entitled to the benefit of the state’s latitude in the exercise of “the heart of [its] police power.” *Brescia v. McGuire*, 509 F. Supp. 243, 247 (S.D.N.Y. 1981); *see also United States v. Krueger*, 809 F.3d 1109, 1124 (10th Cir. 2015) (Gorsuch, J., concurring) (“Ours is not supposed to be the government of the Hunger Games with power centralized in one district, but a government of diffused and divided power, the better to prevent its abuse.”).

**B. The Second Amendment Does Not Deprive States and Local Governments of the Ability to Experiment with Stringent Firearms Regulations.**

This Court has repeatedly emphasized that the Second Amendment does not grant the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). The court below appropriately interpreted

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<sup>57</sup>*See Libertarian Party of Erie Cty. v. Cuomo*, 300 F. Supp. 3d 424, 443 (W.D.N.Y. 2018) (“Unquestionably, [New York State] has ‘substantial, indeed compelling, governmental interests in public safety and crime prevention.’”) (quoting *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012); *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 282 (E.D.N.Y. 1995) (stating that “[t]he promotion of public safety is ‘unquestionably at the core’ of the municipality’s police power”) (citing *Kelley v. Johnson*, 425 U.S. 238, 247 (1976)).

these precedents as speaking to the states' duty and discretion to regulate firearms short of imposing certain categorical bans. See *Kachalsky*, 701 F.3d at 94 (reasoning that the *Heller* Court stressed “that banning usable handguns in the home is a ‘policy choice[ ]’ that is ‘off the table . . . , but that a variety of other regulatory options remain available”) (internal citations omitted); see also *New York State Rifle & Pistol Ass’n v. City of New York*, 86 F. Supp. 3d 249, 258 (S.D.N.Y. 2015) (stating that “*Heller* expressly provided that certain regulations are ‘presumptively valid,’ . . . presum[ing] a licensing scheme” and that the Court in *McDonald* “emphasized that the Second Amendment ‘limits, but by no means eliminates,’ governmental discretion to regulate activity falling within the scope of the right”) (internal citations omitted), *aff’d*, *New York State Rifle & Pistol Ass’n v. City of New York*, 883 F.3d 45 (2d Cir. 2018). State and local lawmakers properly exercise their prerogatives to establish firearms policy when they enact restrictions that protect public safety while allowing qualified, law-abiding citizens the ability to exercise the core right to firearms possession in the home and when the need for self-defense is most acute. Such prohibitions do not run afoul of the Second Amendment. As Judge Wilkinson of the Fourth Circuit has observed:

No one really knows what the right answer is with respect to the regulation of firearms. . . . I am unable to draw from the profound ambiguities of the Second Amendment an invitation to courts to preempt this most volatile of political subjects and arrogate to themselves decisions that have been historically assigned to other, more democratic,

actors. . . . Disenfranchising the American people on this life and death subject would be the gravest and most serious of steps. It is their community, not ours. It is their safety, not ours. It is their lives, not ours.

*Kolbe v. Hogan*, 849 F.3d 114, 149-50 (4th Cir. 2017) (en banc) (Wilkinson, J., concurring).

The importance of vesting discretion with state and local governments to make and enforce firearms regulations cannot be overstated. State and local governments like New York have boots on the ground and are thus best equipped to know “who’s carrying guns” and “how to manage . . . public safety.”<sup>58</sup> Not surprisingly, law enforcement leaders nationwide embrace this principle. The National Law Enforcement Partnership to Prevent Gun Violence – a coalition of law enforcement organizations – asserts that “[s]tates and localities should maintain their rights to legislate concealed carry laws that best meet the needs of their citizens.”<sup>59</sup> And the Major Cities Chiefs Association endorses concealed carry laws that are “tailored to the needs of regions and local communities over a period of many years.”<sup>60</sup> This

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<sup>58</sup>*New York Officials Oppose Bill Extending Concealed Carry Across State Lines*, CBS New York (Aug. 8, 2017, 6:29 PM) (discussing the proposed Concealed Carry Reciprocity Act in Congress and how it would threaten New York’s ability to protect itself because it would require New York to honor the validity of gun permits issued in other states), <https://newyork.cbslocal.com/2017/08/08/concealed-carry-new-york/>.

<sup>59</sup>Letter from the National Law Enforcement Partnership to Prevent Gun Violence to Congress (July 7, 2017).

<sup>60</sup>Press Release, Major Cities Chiefs Association, Major Cities Chiefs Denounce Combining Concealed Carry Reciprocity

local tailoring and experimentation is particularly important in densely populated urban areas most susceptible to the negative ramifications of firearms violence.<sup>61</sup>

**C. New York’s Discretionary Licensing Regime is the Sort of Constitutional Experimentation Needed to Combat Firearms Violence in Urban Centers.**

New York City faces many of the same sort of challenges as *Amici* and other densely populated cities when it comes to stemming the tide of firearms violence. The statute at issue in this case is an important tool in that effort. Under the statute, an applicant for “[a] license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to . . . have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance.” N.Y. Penal Law § 400.00(2)(f). The determination whether “proper cause exists” is made by “the licensing officer in the city or county, . . . where the applicant resides,

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

<sup>61</sup>Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 99-100 (2013) (“the vast majority of gun control regulations in the United States are local, and are tailored to the particular risks of gun use in densely populated areas”) (citation omitted).

is principally employed or has his or her principal place of business.” *Id.* § 400.00(3)(a).

New York’s discretionary licensing standard has considerable empirical support.<sup>62</sup> For example, one study showed that shall-issue concealed-carry permitting laws were associated with 6.5% higher total homicide rates, 8.6% higher firearm-related homicide rates, and 10.6% higher handgun-specific homicide rates compared with may-issue states.<sup>63</sup> In another study that examined the relationship between state firearm laws and overall homicide and suicide rates, researchers found that non-discretionary licensing laws were associated with a 9% increase in homicide.<sup>64</sup>

New York is not alone in selecting this sort of discretionary licensing scheme. Massachusetts, New Jersey, Maryland, and California are among the jurisdictions with similar laws – and the First, Third, Fourth, and Ninth Circuits have all upheld those laws. *Gould v. Morgan*, 907 F.3d 659, 673–74 (1st Cir. 2018); *Drake v. Filko*, 724 F.3d 426, 440 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 882–83 (4th Cir.

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<sup>62</sup>Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 *Am. J. Pub. Health* 1923, 1927-29 (2017); John Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis* 63-65, Nat’l Bureau of Econ. Research, Working Paper No. w23510 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2988731](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2988731).

<sup>63</sup>Siegel, *supra* note 62, at 1927.

<sup>64</sup>Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991-2016: A Panel Study*, 34 *J. Gen. Internal Med.* 2021, 2024 (2019), <https://link.springer.com/article/10.1007/s11606-019-04922-x>.

2013); *Peruta v. Cty. of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016). In upholding these regimes, these courts specifically cited deference to legislative judgments as a key factor in their decision-making. See *Gould*, 907 F.3d at 673–74; *Drake*, 724 F.3d at 439; *Woollard*, 712 F.3d at 881; *Peruta*, 824 F.3d at 945; see also *Kachalsky*, 701 F.3d at 99 (“[it] is the legislature’s job, not [the court’s], to weigh conflicting evidence and make policy judgments”).

For example, the First Circuit upheld a Massachusetts law that restricted concealed carry permits to those with “good reason to fear injury to the applicant or the applicant’s property or for any other reason,”<sup>65</sup> giving “substantial deference to the predictive judgments of [the] state legislature.” *Gould*, 907 F.3d at 673–75. The court held that the statute was a legitimate exercise of “the legislature’s prerogative — not ours — to weigh the evidence, choose among conflicting inferences, and make the necessary policy judgments.” *Id.* at 676. The court acknowledged that the restriction burdened Second Amendment rights to some degree, but it did not altogether prevent the exercise of those rights, as did the handgun ban this Court held unconstitutional in *Heller*. *Id.* at 674. The restriction did not affect the core right to have a firearm in the home at all, and it provided applicants with the opportunity to show a heightened need to carry a firearm in public. *Id.*

Similarly, the Third Circuit upheld the constitutionality of a New Jersey statute granting local authorities broad discretion to issue concealed carry permits to those with “a justifiable need to carry

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<sup>65</sup>MASS. GEN. LAWS ch. 140 § 131(a); *id.* § 131(d).

a handgun.” *See Drake*, 724 F.3d at 440; N.J.S.A. § 2C:58-4. The court concluded that the regulation reasonably fit the state interest in public safety and deferred to New Jersey’s “policy judgment that the state can best protect public safety by allowing only those qualified individuals who can demonstrate a ‘justifiable need’ to carry a handgun to do so.” *Id.* at 439.

The Fourth Circuit upheld the constitutionality of a Maryland statute conditioning eligibility for public carry “on having [a] ‘good and substantial reason.’” *Woollard*, 712 F.3d at 868 (quoting Md. Pub. Safety § 5-306). The court found this requirement a “reasonable fit,” deferring to the legislature’s “appropriate balance” of interests in light of findings that a “high percentage of violent crimes . . . involve[d] the use of handguns” and that “additional regulations on the . . . carrying . . . of handguns [were] necessary to preserve the peace and tranquility of the State . . . .” *Id.* at 876-77, 881 (quoting Md. Code Ann., Crim. Law § 4-202).

New York’s firearm regulatory regime similarly reflects a legislative determination that “widespread access to handguns in public increases the likelihood that felonies will result in death and fundamentally alter the safety and character of public spaces.” *Kachalsky*, 701 F.3d at 99. It is wholly appropriate to defer to New York’s policy judgment that vesting authority in local officials to make individual determinations about what constitutes “proper cause” is “substantially related to New York’s interests in public safety and crime prevention.” *Id.* at 98.

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Stringent firearms regulations have long co-existed with Second Amendment rights. State and local governments have been given broad flexibility to experiment with regulations and policing strategies, particularly when they leave sufficient room for qualified, law-abiding citizens to exercise Second Amendment rights. That flexibility is still needed – indeed, it is needed more than ever. *Amici* urge the Court to decide this case in a manner that continues to afford the leeway that is crucial to our continued efforts to end firearms violence.

### CONCLUSION

The judgment below should be affirmed.

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