

No. 20-843

IN THE
Supreme Court of the United States

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

v.

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

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

**BRIEF OF MARCH FOR OUR LIVES ACTION FUND AS
AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF INTEREST.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT	3
I. THE PREVENTION OF GUN VIOLENCE IS AN ISSUE OF CRITICAL IMPORTANCE TO YOUNG AMERICANS	3
A. Samantha Mayor	5
B. Elimar Depaula	7
C. Victoria Gwynn	9
D. Selene San Felice.....	10
E. DeAndra Dycus	12
F. Maggie Montoya.....	14
G. Brandon Wolf.....	15
H. Senator Dayna Polehanki.....	18
II. STATES HAVE A COMPELLING INTEREST IN PROTECTING CITIZENS AND SAFEGUARDING THEIR ABILITY TO EXERCISE FUNDAMENTAL FREEDOMS	20
III. EXPANDING THE CORE PROTECTIONS OF THE SECOND AMENDMENT BEYOND THE HOME WOULD SMOTHER DEMOCRATIC DEBATE ON THIS IMPORTANT ISSUE.....	25
CONCLUSION	27

TABLE OF AUTHORITIES

	<u>Page(s)</u>
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STATEMENT OF INTEREST¹

Amicus Curiae March For Our Lives Action Fund (“MFOL”) is a non-profit organization of young people from across the country who are fighting for sensible gun violence prevention policies that will save lives. MFOL was formed after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018, and immediately began organizing the largest single day of protest against gun violence in history. Hundreds of thousands of people joined its March 24, 2018 march in Washington, D.C., and sibling marches all over the world.²

¹ All parties consented to the filing of this brief, and no party or counsel for a party authored it in whole or in part. No party, counsel for party, or person other than *Amicus Curiae* or counsel made any monetary contribution intended to fund its preparation or submission.

² “[T]he March for Our Lives event brought out 1,380,666 to 2,181,886 people at 763 locations.” Kanisha Bond et al., *Did You Attend the March for Our Lives? Here’s What it Looked Like Nationwide*, Wash. Post (Apr.

Since then, students seeking to effect change have formed MFOL chapters across the country. These young people—all too familiar with mass shootings and other forms of gun violence—have a vital interest in ensuring that the Constitution is correctly interpreted to allow for the enactment of reasonable gun violence prevention measures, including public carry licensing regimes, to protect all Americans.

MFOL has participated as *amicus curiae* in other cases that affect its core interest in preventing gun violence. It has filed *amicus* briefs in this Court in *N.Y. State Rifle & Pistol Ass’n, Inc v. City of New York*, 590 U.S. __ (2020) (involving New York City’s restrictions on transportation of firearms), and in the Michigan Supreme Court in *Wade v. Univ. of Mich.*, MSC No. 156150 (oral argument pending, involving the validity of a University of Michigan regulation prohibiting possession and carrying of firearms on campus).

INTRODUCTION AND SUMMARY OF ARGUMENT

As this Court and other courts nationwide have recognized, there is a pressing “problem of handgun violence in this country.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). The epidemic of gun violence, which extends far beyond handguns, has provoked sustained engagement by the public and policymakers in an effort to develop solutions to this critically important problem.

This brief presents the voices and experiences of individuals from Florida to Kentucky to Colorado who have been affected directly by gun violence, or the threat of it. For the young people whose stories are highlighted here,

13, 2019), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/13/did-you-attend-the-march-for-our-lives-heres-what-it-looked-like-nationwide/>.

preventing gun violence and regulating the carry of firearms are nothing short of existential issues impacting their everyday lives, the public health and safety, and the continued vitality of our democracy.

In light of these concerns, this brief urges this Court to adhere to its promise that its Second Amendment jurisprudence “by no means eliminates” the ability of Americans and their governments “to devise solutions to social problems that suit local needs and values.” *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010). This promise has carefully left room for appropriate government responses to the scourge of gun violence that both protect physical safety and allay the fear that many Americans experience every day. A ruling that effectively prohibits sensible firearm policies would silence the voices of millions of Americans—many of whom are young people coming of age in an era of school shootings and rampant urban gun violence—short-circuit the democratic process, and endanger the American public. It also would interfere with Americans’ exercise of fundamental constitutional rights—such as the right to assembly, speech, and worship—that are increasingly hampered by the threat of gun violence in public spaces.

ARGUMENT

I. THE PREVENTION OF GUN VIOLENCE IS AN ISSUE OF CRITICAL IMPORTANCE TO YOUNG AMERICANS.

The epidemic of gun violence in this country has had a disproportionate impact on young people,³ and many of

³ Americans between the ages of 15 and 29 accounted for just 2.2% of deaths nationwide in 2016, but 31% of all firearm deaths and nearly 50% of firearm-related homicides. Chelsea Parson et al., *America’s Youth Under Fire*, Ctr. for Am. Progress (May 4, 2018), <https://www.americanprogress.org/issues/guns-crime/reports/2018/05/04/450343/americas-youth-fire/>. And the United

those affiliated with MFOL have been affected—directly or indirectly—by school shootings and urban gun violence. They, like the rest of the “Mass Shooting Generation,”⁴ are uniquely qualified to participate in the public debate about gun violence prevention efforts at the state, local, and national levels.

Seven personal accounts are shared here to acquaint the Court with the pain and trauma that gun violence has inflicted on Americans—and primarily young people. These voices represent tens of thousands of other young people who, weighed down by the daily threat of gun violence,⁵ want their state and local leaders to do all that they can to make their communities safer and to foster an environment conducive to the exercise of fundamental rights guaranteed under the Constitution. We include one additional

States “has the highest rate of firearm-related deaths among children in high-income countries, as well as the highest rate of gun ownership and the loosest laws.” Michelle Cortez, *Fewer American Kids Die in States With Tougher Gun Laws, According to This New Study*, TIME (July 15, 2019), <https://time.com/5626352/gun-laws-fewer-child-deaths/>.

⁴ See Audra Burch et al., *A ‘Mass Shooting Generation’ Cries Out for Change*, N.Y. Times (Feb. 16, 2018), <https://www.nytimes.com/2018/02/16/us/columbine-mass-shootings.html>. Indeed, “the pervasiveness of lockdowns and school-shooting drills in the U.S. has created a culture of fear that touches nearly every child across the country.” Joe Pinsker, *When Was the Last Time American Children Were So Afraid?*, The Atlantic (May 9, 2019), <https://www.theatlantic.com/education/archive/2019/05/lockdown-drill-fear/589090/>; see also MFOL, *Generation Lockdown*, YouTube (Apr. 29, 2019), <https://www.youtube.com/watch?v=0IM4p62p3M0>.

⁵ According to the American Psychological Association, 75% of “Gen Z” youth, aged 15 to 21, cite mass shootings as a primary source of stress, and more than 20% report that the possibility of a shooting at their school is a source of stress on a day-to-day basis. Am. Psychol. Assoc., *Stress in America: Generation Z*, 1–2 (2018), <https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf>.

personal account that highlights the grave threat that unregulated public carry of firearms presents to free speech, debate, and the proper functioning of our democracy.

A. Samantha Mayor

Samantha Mayor loved Valentine's Day so much that she dreamed of getting married on the holiday. On February 14, 2018, Samantha—then a 16-year-old junior at Marjory Stoneman Douglas High School in Parkland, Florida—left a Valentine's card for each of her parents on the kitchen table before leaving for school. A few hours into the school day, Samantha began feeling unwell and considered leaving before her final period of the day. But one of her friends had to deliver a class presentation, so Samantha decided to stay.

Halfway through her last class, Samantha noticed loud noises coming from the hallway. Assuming that the commotion was caused by an emergency drill, Samantha and other students rose reluctantly and gathered in a corner opposite the classroom door.

Suddenly, bullets tore into the room. Smoke was everywhere. A piece of the classroom wall was blown into Samantha's mouth and eyes. Dazed and in disbelief, she told herself that the school must have concocted some elaborate safety simulation. It was not until a classmate slumped into her, screaming in pain, that she understood the shooting was very real. The classmate had been shot in the arm, and his cries were unlike anything Samantha had ever heard.

Using their jackets as tourniquets, Samantha's classmates tended to their peers' wounds. Only once their teacher called to report the number of injured students did Samantha look down, notice a hole in her leggings, and realize that she had been shot. Blood poured out of the hole in her kneecap and onto the tiled floor.

When police reached the classroom door, Samantha was convinced that the shooter had returned. "I started telling myself that it was okay. I was coming to terms with dying." As officers rushed in, some students screamed or moaned in pain; others lay silent. Samantha begged officers to tend to her classmate, Carmen. It was not until she was lifted from the room that she could see that Carmen was dead. The officer carrying Samantha instructed her to cover her eyes so she would not see the bodies of her classmates in the hallway.

Outside, Samantha was placed into an ambulance with two other students, one of whom had shrapnel lodged in her face. Samantha borrowed a classmate's phone to text loved ones, letting them know that she had survived.

Samantha was covered in so much blood when she arrived at the hospital that doctors had to cut away her clothes to determine where she had been shot. She underwent surgery to repair her knee joint and spent three days recovering in the hospital, followed by months in a full-leg brace and then physical therapy.

Later, when shopping for a prom dress, Samantha struggled to find one that could hide the new scar on her leg. Like that scar, Samantha's psychological trauma has far outlasted her physical pain and recovery. She still experiences frequent nightmares so real that she wakes up in terror. Now a junior at Indiana University, Samantha strategically selects her seating assignments during in-person classes, constantly surveying her surroundings and monitoring those who walk by classroom doors. She doubts that she will ever fully recover from the shooting: "This is something I will have to live with my entire life."

At first, Samantha did not want to share her experience. But she felt an obligation to tell her story and support gun violence prevention efforts. "If it could help prevent future tragedies, then I would be wrong not to share what

happened to me.” On March 24, 2018, Samantha addressed a crowd of 20,000 who gathered in Parkland outside of her high school. She recounted the horrors of the shooting, called for stricter gun violence prevention laws, and held a sign that read, “I march because I was almost silenced.”

B. Elimar Depaula

After her sophomore year of college, 19-year-old Elimar (“Ellie”) Depaula took a job as a paralegal at a law firm in suburban Maryland. On August 8, 2019, after a tiring day at work, she decided to join her boyfriend to meet with one of his friends. They got into their car around 5 p.m., but within minutes Ellie fell asleep in the passenger seat. Soon after, she was jolted awake when the car screeched to a stop. Her boyfriend had accidentally cut off another driver, who then began to tailgate their car. Each time they switched lanes or made a turn, the other driver followed suit.

Ellie and her boyfriend entered their friend’s neighborhood and pulled over to the side of the road. The car tailing them did the same. The other driver and his girlfriend exited and approached Ellie’s boyfriend’s car, shouting about how he had cut them off. As the argument escalated, Ellie remained seated and quiet. Eventually, the other driver returned to his car, only then to pull up to Ellie’s boyfriend’s car, brandish a gun, and swerve away. Feeling unsafe, Ellie implored her boyfriend to leave the neighborhood. “I just got a really bad feeling in my stomach.”

As they began to drive away, Ellie saw the other driver standing, armed, in the street ahead of them. Ellie’s boyfriend shouted at the other driver, who raised his gun and began firing. Ellie ducked and felt her body jerk forward. Right away she knew that she had been shot, and she felt blood rushing down her back. Trying to remain calm, Ellie directed her boyfriend to drive to the hospital, and they

sped off. She summoned all of her strength to stay awake during the ride. “My body felt so weak. But I didn’t want to rest and close my eyes, because I thought I was going to die.” She gripped the center console and began praying, begging God to save her.

Arriving at the hospital, Ellie tried to exit the car but could not move her legs. She was picked up and loaded onto a stretcher, suddenly feeling excruciating pain radiating from her back. Several hours later, Ellie was transferred by helicopter to a nearby trauma center.

As soon as she arrived at the trauma center, Ellie underwent a battery of tests. Doctors asked her to wiggle her toes, but she was unable to. “I was so confused because I could control the top part of my body, but I didn’t feel the bottom half.” Ellie’s doctors informed her that she was paralyzed from the waist down. She spent the next month at a rehabilitation facility where she re-learned how to perform basic daily tasks like using the bathroom, showering, and dressing herself. When her family picked her up from the facility, Ellie broke down sobbing during the car ride home. “I just couldn’t imagine my life like this—how much everything had changed.”

Through sheer determination, Ellie has built up the strength to use a walker—something her doctors doubted would be possible. But despite her impressive physical recovery, Ellie acknowledges that she will never be the same. For months after the shooting, she fell into a deep depression. She stopped eating for days at a time and struggled with her Christian faith, wondering how God could allow such a tragedy. And the bullet that paralyzed Ellie remains lodged inside of her, next to her kidney and liver—a physical reminder of what happened.

A fit of road rage forever altered the trajectory of Ellie’s life. She has a message, borne from her experience: “Think about your family. Think about if your loved one’s life was

changed in the blink of an eye—if someone shot them for no reason at all, just because they had a gun. Could you handle that?”

C. Victoria Gwynn

To Victoria Gwynn, growing up in the West End of Louisville, Kentucky, was like “living in a warzone.” In 2019, upon returning home from Christmas shopping, Victoria and her mom received news that her brother, Christian, was murdered in a drive-by shooting. Christian, an adventurer who dreamed of one day moving to Alaska, was just 19 years old. “I think about him every day. He was my best friend.”

A few months after Christian’s death, Victoria met and developed a close bond with DaJuan, who quickly became like a sibling to her. “He knew what I was going through with the loss of my brother, so he just wanted to be that friend who was always there.” On the evening of June 7, 2021, Victoria, then 19 years old herself, and DaJuan gathered with friends at Ballard Park, a popular spot for families in the community. Without warning, a hail of bullets rained down on them. “It was just rapid bullets. Everyone was screaming.”

Victoria initially froze in place, watching as her friends and others in the park scattered in every direction. Jolted back to reality, she too began running, but was cut down as a bullet tore through her right leg. She lay low on the grass, unable to find cover from the gunfire.

After about a minute, the shooting stopped, but not before 174 rounds were unloaded into the park. DaJuan, who had hidden in a nearby alley between two houses, rushed back to check on Victoria. Although at first he appeared to be unhurt, DaJuan explained that he was hit in the head and asked her to call the police.

Once paramedics arrived, Victoria called her parents to let them know she had been shot. “I knew they were going

to think the worst—that they were going to lose another child. I had to hold it together myself just to tell them.” Victoria remained on the phone with her mom throughout the ambulance ride and as doctors at the hospital cut away her clothes, ran blood tests, and stabilized her leg. Victoria learned how lucky she was: If the bullet had entered her leg an inch or two higher, it likely would have severed a major artery, and she could have bled to death where she lay in the park. The next morning, doctors inserted four screws into Victoria’s knee, a rod into her leg, and two more screws into her hip.

When Victoria exited surgery, she discovered that DaJuan’s wounds were fatal. He lost consciousness soon after the shooting and suffered a major stroke. Victoria visited his bedside before he was removed from life support. “I held his hand, and it felt like he tried to grab my hand back—like he wanted to make sure I was okay before he left.” Soon after, DaJuan, just 17, passed away. The losses of her brother and her best friend have devastated Victoria. “I feel like my heart has been ripped out twice.” She struggles to fall asleep at night and barely leaves her home, which already felt empty without Christian.

Now only months removed from the shooting, Victoria has turned her trauma into action. She joined Game Changers, a Louisville-based anti-violence group. Inspired by the memory of Christian and DaJuan, who she feels are watching over her, Victoria warns others that “you can see someone, talk to someone, and in a minute, they are not here anymore. You have to cherish every moment you have with the people you love.”

D. Selene San Felice

Selene San Felice found her calling when she joined the student newspaper as a freshman at the University of Tampa. “When I got my first byline, I knew what I wanted to do for the rest of my life.”

As a budding journalist—first as a student reporter, then as an intern for the Tampa Tribune, and eventually as a staff writer for the Capital Gazette in Annapolis, Maryland—Selene covered gun crime and mass shootings, including the tragedies at the Pulse nightclub in Orlando, Florida, and the Route 91 Harvest Music Festival in Las Vegas. But on June 28, 2018, as a 23-year-old staff writer for the Capital Gazette, Selene was forced to face the horrors of gun violence herself.

At around 2:30 p.m., Selene heard glass shattering in the newsroom, but thought little of it. Seconds later, gunfire began. Instinctively, Selene grabbed her purse and sprinted to the rear exit of the office with several of her colleagues. But the door would not open; Selene later learned that the gunman had barricaded the exit to prevent escape.

Looking frantically for a place to hide, Selene and a news intern, Anthony, dived under a newsroom desk as others scrambled for cover among filing cabinets. John, a beloved sports reporter, reached the rear of the newsroom and was attempting to crouch under a desk when the shooter confronted him. In horror, Selene watched as John was hit in his chest and stomach, just feet from where she and Anthony huddled. Selene dug her teeth into Anthony's back to muffle her panicked breathing. Certain the gunman would find them next, she said a prayer for herself and for John.

Anthony and Selene heard John force out his final breaths through another gunshot wound in his neck. They traded a cell phone back and forth to text their goodbyes to friends and family. "There's an active shooter in the newsroom. I love you."

The minutes before law enforcement arrived felt like an eternity. Police officers escorted survivors from the building. Though she was instructed not to survey the scene,

Selene recalls seeing the body of her colleague, Wendi. Wendi was shot and killed while charging the gunman with a trash can and recycling bin, delaying the shooter's progress and likely saving her colleagues' lives by giving them time to hide.

Selene suffered from PTSD following the shooting. She placed a note on her door asking visitors not to ring her doorbell—a recurring trigger for panic attacks. Even three years later, she still experiences nightmares and intense anxiety in public settings. And when the criminal trial for the Capital Gazette shooter began in June 2021, she suffered a nervous breakdown. “My doctor says I have the brain of a combat soldier. Everything is a red flag, and it's really hard to live like that.” Selene also finds it difficult to be a journalist when a safe, free press is not guaranteed. “I always thought that violence against journalists was something that happened in other countries, but it happened to me. It can happen at any time.”

E. DeAndra Dycus

Growing up in Indianapolis, DeAndre (“Dre”) Knox dreamed of playing college football at Indiana University. A promising athlete, Dre also was an honor roll student and a devoted son and older brother. His mother, DeAndra Dycus, remembers his kind, gentle nature and bright smile. “He was the kind of kid who warmed your heart to be around.”

On February 1, 2014, Dre, then 13 years old, asked DeAndra for permission to go to a friend's birthday party in their neighborhood. She said no. DeAndra was worried about letting Dre go out at night, particularly given the prevalence of gun violence in the city. But Dre pleaded his case, promising that he would stay safe, and DeAndra relented. “Mom, I love you,” Dre told her as he left for the party. That was the last time she heard his voice.

Later that evening, DeAndra received a phone call: “Get to the hospital. Dre’s been shot.” She ran out into the night, frantically screaming, “Get me to my son!” When she arrived at the hospital, DeAndra learned that someone had fired more than 20 bullets into the house where the party was held. Caught in the gunfire, Dre was shot in the back of the head.

At the hospital, emergency room doctors removed a portion of Dre’s skull to alleviate swelling in his brain. Following surgery, they informed DeAndra that Dre likely had only days to live and advised her to gather his extended family to say their final goodbyes.

Despite this prognosis, Dre survived, but his life was forever changed. Dre is a quadriplegic. He cannot speak or move, and he requires around-the-clock care. When Dre was discharged from the hospital after 37 days, DeAndra was his primary caretaker, feeding him, bathing him, changing his diapers and clothes, and adjusting his medical equipment. Today, Dre resides in an in-patient facility for individuals with similar severe disabilities. When DeAndra enters his room, Dre “dances” by bouncing in his wheelchair. “It’s his way of saying hello.”

During the weeks Dre spent in the hospital and on life support, DeAndra rarely left his bedside. She made him a promise: “If you just fight, Mommy will be your voice, your arms, your legs, and your eyes.” Holding herself to that vow, DeAndra has spoken out in support of gun violence survivors and pushed for stronger gun safety legislation. She founded a nonprofit organization, Purpose 4 My Pain, that provides resources like support groups, funeral assistance, and scholarships to those affected by gun violence.

DeAndra’s advocacy and activism provide an outlet for her pain, but the trauma lingers. “Nobody sleeps well after gun violence,” she says. Dre’s younger brother has had an especially difficult time coping with the shooting; he has

battled anxiety and paranoia, and struggles with socialization. “He’s become a shell of his former self.”

Dre turns 21 in September 2021—a bittersweet milestone. As his friends work toward college degrees and begin to think about marriage and children of their own, DeAndra is constantly reminded of the life that was stolen from her son by a stray bullet. She hopes parents understand that their children’s lives can be upended in an instant: “We live in a society where *anybody* can be impacted by gun violence. Consider what it’s like to have your child say ‘I love you’ in one moment, and then have his life snatched away in the next.”

F. Maggie Montoya

Maggie Montoya is a 26-year-old runner and aspiring doctor. After studying pre-med at Baylor University, Maggie moved to Boulder, Colorado, in 2018 to train for the U.S. Olympic Trials. To cover her living expenses and gain experience interacting with patients, Maggie took a job as a pharmacy technician at a King Soopers supermarket.

On March 22, 2021, Maggie went for a morning run with her dog and reported to work. As she was registering a family for their COVID-19 vaccinations around 2:30 p.m., Maggie was startled by a series of loud bangs. She did not immediately recognize the sound, but the store manager screamed a warning: “Active shooter!” Employees and customers scattered in all directions.

Confused and panicked, Maggie rushed with her boss into the patient consultation room in the back of the pharmacy. She hid under a desk and called her parents. “There’s an active shooter here,” she whispered. “I love you. I’ll text you when I can.” She hung up quickly to avoid making too much noise.

While Maggie and others huddled inside, the phone on the pharmacy counter just outside of the consultation room rang incessantly. With each ring, Maggie could feel

her heart beating faster. “We didn’t want to focus the shooter’s attention toward us. But we also were afraid that silencing the phones would prove we were there.” The pharmacy manager stood next to the door with a chair raised high. That piece of furniture was their only defense. As the gunfire continued, Maggie grew certain that she would not leave the store alive.

Over the loudspeaker, law enforcement personnel announced that the building was surrounded. Hearing the gunman’s voice clearly as he surrendered, Maggie realized just how close he was to her hiding place. After what seemed like hours, a SWAT team swept through the store and escorted Maggie and other survivors to safety. A gruesome scene awaited them: pools of blood dotted the aisles, and red footprints revealed the shooter’s movements during the rampage. Maggie walked by the dead body of a coworker. “I had never seen anybody killed before. Especially someone I knew. She was my age, and I think how easily it could have been me.”

The shooting claimed ten lives, including a local police officer responding to the scene, and left Maggie a changed person. Not a day passes that Maggie does not recall what she saw and heard; she often has flashbacks and nightmares. Even in lighter moments—like when hiking in and around Boulder—she thinks of her murdered colleagues and what they can no longer enjoy. Maggie experiences panic when she hears loud, unexpected noises, such as fireworks. And she is much more fearful in public spaces, wary of strangers and concerned about who might be carrying a gun. “When you don’t feel safe, you can’t focus on anything else in your life.”

G. Brandon Wolf

Brandon Wolf and his friends, Drew, Juan, and Eric, took an Uber to Pulse in Orlando late on Saturday, June 11, 2016. Pulse, a popular LGBTQ+ bar and nightclub, was a

special place for Brandon; it was one of the first places where he felt he “could be [his] authentic self.”

Arriving at Pulse that night, Brandon could not remember the club ever being so crowded. After ordering drinks, he and his friends congregated on Pulse’s outdoor patio. Drew, known for his impromptu “therapy sessions,” draped his long arms around his friends’ shoulders and, over the loud music, offered a short sermon on the importance of caring for one another. Drew’s parting thought before they returned to the dance floor: “We need to say ‘I love you’ more often.”

Shortly before 2 a.m., Brandon was ready to go home. He and Eric used the restroom as Drew and Juan shared a last dance. Brandon recalls countless minute details from the moment gunshots first rang out—the ice-cold water from the bathroom sink, a plastic cup abandoned next to the faucet, Eric behind him in line to wash his hands. For an instant, Brandon thought the loud bangs were part of the music. But after several seconds of eerie silence, roughly a dozen people rushed desperately into the bathroom amid a second, louder eruption of gunfire. The patrons who joined Brandon in the bathroom wore a look of terror he had never seen, and they frantically explained that a gunman was firing into the crowd. Brandon, Eric, and the others hiding in the bathroom huddled against a wall or crouched low to the floor as the smell of blood and gun-smoke wafted inside.

The shooting continued relentlessly, and the patrons in the bathroom debated their next move in panicked whispers. They decided to make a run for it. Brandon, Eric, and several others linked arms, ducked, and charged out of the bathroom toward the front of the club. Brandon avoided looking left toward the dance floor, worried that the sight would leave him paralyzed with fear. Certain he would be killed, Brandon was overtaken with a deep sense of regret

that he had not called his family to say goodbye. Finally, Brandon and Eric flung themselves through a fire exit and spilled out into Pulse parking lot.

They encountered total chaos outside—sirens and screams pierced the night, and blood was everywhere. As police arrived on the scene and tended to the wounded, Brandon attempted to reenter the building in search of Drew and Juan, but he was restrained by those around him. Brandon called Drew hundreds of times, rationalizing after each unanswered ring that his friend would answer the next one.

The morning brought no relief. “Please tell me Juan wasn’t there,” Juan’s sister begged Brandon after she awoke to news of the tragedy. Brandon will never forget Juan’s mother’s wailing scream in the background. They soon learned that Juan was pronounced dead at a local hospital. A day later, Brandon learned that Drew, too, was dead. He had been shot nine times.

The loss of his close friends broke Brandon’s heart: “There’s no other way to describe it. Heartbreak is not just an emotion you experience; it’s a physical pain so powerful that you think you may not survive it.” Even five years later, he thinks each day about his friends and the 47 other innocent people killed in the massacre.

Beyond causing immense grief and loss, the trauma changed Brandon in other ways. When socializing in crowded public spaces, he checks for accessible exits and sometimes excuses himself to wait outside. In 2019, Brandon became the first Pulse survivor to testify before Congress. Advocating for common sense gun reforms across the country, Brandon argues that safety is a human right. “We have an obligation as a society to make the world safer for one another. And we know what the data show: More guns don’t make us safer.”

H. Senator Dayna Polehanki

Before she became a Michigan State Senator in 2019, Dayna Polehanki spent nearly twenty years teaching high school English in the state's public schools. In the classroom, she worried about the safety of her students. As active shooter drills became routine, she pushed the school district to install larger windows that might allow students to escape in the event of an emergency.

On April 30, 2020, still in her first term in the state legislature, Senator Polehanki gathered with other Michigan lawmakers in Lansing to address the COVID-19 pandemic and debate whether to extend Governor Gretchen Whitmer's stay-at-home order. At first, she did not think much about the rally planned at the State Capitol to protest those restrictions. Protests at the Capitol were common. But heading to her office, Senator Polehanki passed angry protesters displaying swastikas, Confederate symbols, and nooses. Many protesters also carried firearms—everything from handguns to large assault rifles. This was no ordinary demonstration.

Members of the Michigan State Senate took their seats on the floor of the upper chamber as protesters streamed into the balconies overhead. Thunderous chants rained down: "DO YOUR JOB! DO YOUR JOB!" Senator Polehanki also could hear ominous, faraway banging as protesters demanded entry into the House chamber across the Capitol.

Looking up at the balcony before the legislative session began, Senator Polehanki noticed four men staring back at her. They were armed, one with a long gun slung over his shoulder. Senator Polehanki will readily admit that she was afraid.⁶ Protestors far outnumbered Capitol security,

⁶ And with good reason. Two of the men captured in a viral photo that Senator Polehanki took have since been criminally charged in connection with a plot to kidnap Governor Whitmer and take legislators

and at least one of her colleagues donned a bulletproof vest. Senator Polehanki considered escaping the building. She mapped out a route that required crawling to a nearby office and jumping from a high window. But to show solidarity with her colleagues and fulfill her duty to the democratic process, she did not flee.

Due to adjournments caused by the protesters, the legislative session scheduled to end by noon lasted until nearly 7 p.m. Leaving the Capitol, Senator Polehanki called her parents: “I could have died at work.”

Grateful that no one was killed or injured that day, Senator Polehanki is keenly aware that things easily could have ended in tragedy. Following the lockdown protests at the Capitol, she borrowed a bulletproof vest from local police and purchased a gas mask, helmet, and mace from a military supply store. She keeps these items with her on the Senate floor to this day, and several other lawmakers have taken similar precautions.

For Senator Polehanki, the fact that the protesters were armed made all the difference: “It could have been just another protest. The presence of firearms was a game changer.” While open carry in the Capitol was banned in January 2021, members of the public with a concealed-weapons permit still may bring firearms into the building. This “half measure” leaves legislators, staff, and visitors vulnerable to gun violence and intimidation.

As a teacher, Senator Polehanki used to bring her students to the Capitol on field trips. Now, however, she would tell parents that it is not safe to bring children into the building. And physical safety at the Capitol is not Senator Polehanki’s only concern. She is haunted by what it

hostage. See Vandana Rambaran, *Suspects in Whitmer Plot Photographed with Long Guns at Michigan Capitol*, Fox News (Oct. 9, 2020), <https://www.foxnews.com/politics/2-charged-in-whitmer-kidnap-plot-photographed-with-long-guns-at-state-capitol-in-april-ag-says>.

felt like to be “intimidated at gunpoint while trying to speak and vote on behalf of my constituents.” When armed protesters can use the threat of gun violence to disrupt the work of the legislature, lawmakers’ solemn responsibility to govern through the democratic process is jeopardized. Indeed, on the eve of a similar armed protest in May 2020, the legislature was forced to adjourn.

II. STATES HAVE A COMPELLING INTEREST IN PROTECTING CITIZENS AND SAFEGUARDING THEIR ABILITY TO EXERCISE FUNDAMENTAL FREEDOMS.

This Court has made clear that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. New York’s law governing licenses to carry concealed firearms in public falls well within the established contours of valid gun regulations.

Federal appellate courts nationwide have concluded that “good cause” concealed carry licensing schemes like the one at issue here are supported by a centuries-old tradition of state and local regulations restricting public carry of firearms.⁷ Indeed, this Court in *Heller* highlighted that that “the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” 554 U.S. at 626; *see id.* at 626–627 n.26 (including “prohibitions on carrying concealed weapons” in a discussion of “presumptively lawful regulatory measures”).

Even assuming that the Second Amendment right extends beyond the home, federal courts of appeals almost uniformly have evaluated state licensing regimes under intermediate—rather than strict—scrutiny because public

⁷ *See, e.g., Drake v. Filko*, 724 F.3d 426, 431–432 (3d Cir. 2013); *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012).

carry of firearms falls outside the core protections afforded by the Second Amendment. *See, e.g., Gould v. Morgan*, 907 F.3d 659, 671 (1st Cir. 2018) (reasoning that “the core Second Amendment right is limited to self-defense in the home,” and collecting cases). This approach takes seriously this Court’s repeated assurances that the Constitution leaves significant space for citizens to debate and legislate on these public safety issues. *See Heller*, 554 U.S. at 636; *McDonald*, 561 U.S. at 785.

Petitioners’ position, which would expand the core protections of the Second Amendment and apply strict scrutiny to gun regulations outside of the home, effectively bars governments from restricting public carry of firearms to protect public safety and safeguard fundamental freedoms, whatever the costs. But that view cannot be reconciled either with this Court’s promise to leave room for government regulation that tackles the problem of gun violence or with *Heller*’s reference to concealed carry regulations as “presumptively lawful regulatory measures.” 554 U.S. at 626–627 n.26. Instead, New York’s licensing regime passes constitutional muster because, as is painfully evident from the individual testimonials highlighted above, it serves important—indeed, compelling—government interests, and more than reasonably promotes those interests.

The state’s interests certainly include its most fundamental role: maintaining the safety and security of its citizens. *See Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (“Providing for the safety of citizens within their borders has long been state government’s most basic task.”) (Wilkinson, J., concurring), *cert. denied*, 138 S. Ct. 469 (2017). The personal accounts relayed above illustrate why gun violence is one of the most significant threats to the public health and safety. In recent years, both the American Medical Association and the American College of Physicians have formally declared gun violence to be “a public health

crisis.”⁸ New York, like other states, has enacted its concealed carry licensing regime as a tool to combat this crisis. Its decision is well-supported by available empirical evidence. Indeed, states with more permissive public carry laws experience significantly higher rates of crime and gun violence.⁹

But protecting citizens’ physical safety is not states’ only interest in regulating the carrying of firearms in public. On the contrary, the *threat* of gun violence in public spaces caused by the presence of firearms “can dramatically restrict exercise of a wide range of freedoms, many of them constitutionally guaranteed liberties,” including vital rights secured under the First Amendment. Reva B. Siegel & Joseph Blocher, *Why Regulate Guns?*, 48 J. of L. Med. & Ethics S2:11, 13 (2020). Even when not used to lethal effect, firearms instill fear and chip away at Americans’ sense of security in public places.

As the individual experiences recounted in Part I reveal, gun violence—or the threat of it—fundamentally restricts other freedoms enjoyed by Americans. It interferes with the right to peaceably assemble, protest, and voice opinions. Indeed, armed protests constitute “an attack on public order and public safety,” as those wielding weapons at a peaceful assembly “drown out the voices of others[] and [] elevate their claims over those of others.” Joseph Blocher & Reva B. Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under*

⁸ See, e.g., Press Release, Am. Med. Ass’n, *AMA Calls Gun Violence ‘A Public Health Crisis’* (June 14, 2016), <https://www.ama-assn.org/press-center/press-releases/ama-calls-gun-violence-public-health-crisis>; Renee Butkus et al., *Reducing Firearm Injuries and Deaths in the United States: A Position Paper From the American College of Physicians*, 169 *Annals of Internal Med.* 704, 704 (2018).

⁹ See Br. for Resp’ts at 44 & n.20.

Heller, 116 N.w. U. L. Rev. 139, 156 (2021).¹⁰ As a result, “[t]he government has a substantial interest in protecting the public from the fear, intimidation, and increased risk of violence that armed protests create.” Katlyn E. DeBoer, *Clash of the First and Second Amendments: Proposed Regulation of Armed Protests*, 45 Hastings Const. L.Q. 333, 369 (2018).

The individual accounts described above show how gun violence can cause fear and anxiety in bustling newsrooms and in schools, in supermarkets and in nightclubs, on public roads and in public parks. Gun violence can also disrupt the sanctity of houses of worship. As shootings regularly violate sacred spaces meant to be sanctuaries for spiritual connection and contemplation, American churches, synagogues, mosques, and temples struggle to enable congregants to practice their religion in peace.¹¹

The fear of gun violence can even undermine the democratic process by intimidating lawmakers and their staff. And the potential for firearms to intimidate public officials

¹⁰ See also Ian Ayres & Fredrick Vars, *Opinion: Peaceful Assembly Can’t Happen Without the Option of Gun-Free Events*, Wash. Post (Oct. 28, 2020), <https://www.washingtonpost.com/opinions/2020/10/28/peaceful-assembly-cant-happen-without-option-gun-free-events/> (“The presence of counterprotesters carrying deadly weapons has had a chilling effect on the rights of others to engage in expressive association.”); Diana Palmer, *Fired Up or Shut Down: The Chilling Effect at Armed Protests*, Ne. Univ. (Apr. 2021), <https://repository.library.northeastern.edu/files/neu:bz60rq30r> (mixed methods study revealing a chilling effect on participants’ First Amendment behaviors at protests with firearms present).

¹¹ See, e.g., Vanessa Romo, *After Synagogue Shooting, Religious Leaders Evaluate Security*, NPR (Oct. 31, 2018), <https://www.npr.org/2018/10/31/662635274/after-synagogue-shooting-religious-leaders-evaluate-security> (“On the one hand, faith leaders are charged with ensuring that religious institutions remain welcoming spaces, and on the other, with implementing vigilant security plans to keep out danger.”).

and obstruct the democratic process is not limited to Michigan. In Arizona, for example, following the 2020 election, State Representative Daniel Hernandez—a former intern for Congresswoman Gabriel Giffords who was present during the January 8, 2011 shooting in Tucson that wounded Giffords and 12 others and left six dead—avoided the state Capitol after seeing a crowd of armed protesters on January 6, 2021. He called his decision to drive home that day “disappointing because I’ve now had to change the way that I’m doing my job.”¹²

Sensible gun restrictions like N.Y. Penal Law § 400.00 “protect people’s freedom and confidence to participate in every domain of our shared life, from attending school to shopping, going to concerts, gathering for prayer, voting, assembling in peaceable debate, counting electoral votes, and participating in the inauguration of a President.” Blocher & Siegel, *supra* at 141. Regulating public carry of firearms limits the potential encroachment upon and infringement of these constitutionally protected rights and reinforces the foundations of our democratic system.

This Court in *Heller* established the core Second Amendment right to keep a gun in the home, but it did not have occasion to fully consider all of the government interests described here. Whatever public safety interest a state may have in regulating what individuals do in their own homes, the carrying of firearms outside the home into

¹² John D’Anna, *As Nation Braces for Armed Protests, Arizona Showcases How First and Second Amendments Intersect — or Collide*, Ariz. Republic (Jan. 16, 2021), <https://www.azcentral.com/story/news/politics/arizona/2021/01/16/armed-protests-arizona-first-and-second-amendments-intersect/4183132001/>. Following the 2020 election, Arizona Secretary of State Katie Hobbs also disclosed, “I’ve gotten death threats. I’ve had armed protestors outside my house. . . . It can be really traumatizing.” Jane Mayer, *The Big Money Behind the Big Lie*, New Yorker (Aug. 2, 2021), <https://www.newyorker.com/magazine/2021/08/09/the-big-money-behind-the-big-lie>.

public spaces implicates state interests that are substantially more compelling. This Court must consider the full range of interests underpinning New York’s licensing regime.

III. EXPANDING THE CORE PROTECTIONS OF THE SECOND AMENDMENT BEYOND THE HOME WOULD SMOTHER DEMOCRATIC DEBATE ON THIS IMPORTANT ISSUE.

The Court’s ruling should not deprive New York and other states of the ability to decide for themselves, through the democratic process, how best to address the problem of gun violence.¹³ If any area of constitutional law requires leaving room for political engagement to shape policy choices, it is this one: No other constitutional right involves such a stark tradeoff with the right of other Americans to stay alive, healthy, and in one piece. See Jonathan Lowy & Kelly Sampson, *The Right Not to Be Shot: Public Safety, Private Guns, and the Constellation of Constitutional Liberties*, 14 Geo. L.J. & Pub. Pol’y 187, 190 (2016) (describing the “right to live” and public safety interests as “paramount”).

In light of the substantial governmental interests at play—that is, protecting citizens’ physical safety, their right to travel freely in the community without fear, and their right to pursue other fundamental freedoms guaranteed under the Constitution—Americans have demanded and deserve a say in making these vital policy choices. But expanding the core protections of the Second Amendment

¹³ As this Court deliberates, the devastating toll of gun violence continues to mount. “More youths under 17 years old died by gunfire [in 2020] than ever recorded, and the data for 2021 looks much the same.” Dorothy R. Novick, *Opinion: 2020 Was the Worst Year Ever for Child Gun Deaths. We Need Prevention Strategies Now*, Wash. Post (June 21, 2021), <https://www.washingtonpost.com/opinions/2021/06/21/children-gun-prevention-strategies-needed/>.

beyond the home—and thereby prompting the application of strict scrutiny—would smother public debate on this crucial issue and limit the ability of Americans, acting through the political process, to make life-and-death firearm policy choices for themselves. *See Heller*, 554 U.S. at 636 (recognizing that “the enshrinement of constitutional rights necessarily takes certain policy choices off the table”); *see Kolbe*, 849 F.3d at 151 (explaining that judges “are not impaneled to add indefinitely to the growing list of subjects on which the states of our Union and the citizens of our country no longer have any meaningful say”) (Wilkinson, J., concurring). This Court should decline the invitation to claim for itself the authority to set nationwide firearms policy, and instead should leave these sensitive decisions to the political process.

MFOL volunteers, and young Americans generally, understand the value of public debate and action through the democratic process better than most. For MFOL to continue its political engagement supporting commonsense gun reform, there must be space for the political branches to make policy choices. The judiciary must be wary of being “even minutely responsible for some unspeakably tragic act of mayhem because in the peace of [its] judicial chambers [it] miscalculated as to Second Amendment rights. * * * If ever there was an occasion for restraint, this would seem to be it.” *United States v. Masciandaro*, 638 F.3d 458, 475–476 (4th Cir. 2011) (Wilkinson, J., concurring).

The last time this Court addressed the Second Amendment in detail, it assured Americans that “state and local experimentation with reasonable firearm regulations will continue under the Second Amendment.” *McDonald*, 561 U.S. at 785 (citation and brackets omitted). It should keep that promise.

CONCLUSION

The threat of gun violence looms over American life—including in public spaces. It lurks in every house of worship, movie theater, grocery store, concert venue, park, and baseball stadium. It is an unfortunate reality that Americans face, and one that state and local governments must confront. MFOL urges the Court to preserve states' latitude to enact measures that limit the carnage visited by gun violence, including by restricting the public carry of firearms.

Respectfully submitted,

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