

No. 20-843

In The
Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, et al.,
Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as
Superintendent of New York State Police, et al.,
Respondents.

**On Writ Of Certiorari To The United States
Court Of Appeals For The Second Circuit**

**BRIEF OF *AMICI CURIAE* PRESIDING BISHOP
AND PRESIDENT OF THE HOUSE OF DEPUTIES
OF THE EPISCOPAL CHURCH; THE EVANGELICAL
LUTHERAN CHURCH IN AMERICA; GENERAL
SYNOD OF THE UNITED CHURCH OF CHRIST;
CENTRAL CONFERENCE OF AMERICAN RABBIS;
UNION OF REFORM JUDAISM; WOMEN OF
REFORM JUDAISM; MEN OF REFORM JUDAISM;
THE CHURCH OF THE BRETHREN OFFICE
OF PEACEBUILDING AND POLICY;
RECONSTRUCTIONIST RABBINICAL
ASSOCIATION; RECONSTRUCTING JUDAISM;
AND MORE THAN 400 INDIVIDUAL CLERGY AND
FAITH LEADERS FROM UNITED METHODIST,
PRESBYTERIAN, EPISCOPAL, EVANGELICAL
LUTHERAN (ELCA), UNITED CHURCH OF CHRIST,
MENNONITE, DISCIPLES OF CHRIST, AFRICAN
METHODIST EPISCOPAL (AME), CHURCH OF GOD
IN CHRIST, UNITARIAN UNIVERSALIST, AMERICAN
BAPTIST, COOPERATIVE BAPTIST, JEWISH,
CATHOLIC, AND MULTI-DENOMINATIONAL
TRADITIONS IN SUPPORT OF RESPONDENTS**

JEFFREY S. TRACHTMAN
Counsel of Record
SUSAN JACQUEMOT
JASON MOFF
RACHEL GOOT
MARTIN ASCHER

KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
jtrachtman@kramerlevin.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTERESTS OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	4
ARGUMENT	11
NEW YORK’S “PROPER CAUSE” REQUIREMENT PROTECTS RELIGIOUS COMMUNITIES FROM A HOST OF RISKS AND BURDENS FLOWING FROM THE UNRESTRICTED PUBLIC CARRY OF FIREARMS	11
I. This Court Has Recognized the Importance of Protecting “Sensitive Places” from the Intrusion of Guns	12
II. Invalidating the Law Would Lead to an Array of Potentially Dire Consequences for Religious Institutions and their Congregations.....	15
A. Unrestricted Public Carry Would Increase the Risk of Gun Violence Aimed at Religious Communities.....	15
B. Unrestricted Public Carry Would Strain the Financial Resources of Religious Institutions	22
C. Unrestricted Public Carry Would Chill the Free Exercise of Religious Belief	28
CONCLUSION.....	33
APPENDIX A: LIST OF INDIVIDUAL <i>AMICI CURIAE</i>	App. 1

TABLE OF AUTHORITIES

	Page
CASES	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	12, 13, 18
<i>GeorgiaCarry.Org. Inc. v. Georgia</i> , 764 F. Supp. 2d 1306 (M.D. Ga. 2011), <i>aff'd</i> , 687 F.3d 1244 (11th Cir. 2012)	13
<i>Hill v. State</i> , 53 Ga. 472 (1874)	14
<i>Kachalsky v. Cnty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012)	5
<i>McDonald v. Chicago</i> , 561 U.S. 742 (2010)	12
<i>Moore v. Madigan</i> , 708 F.3d 901 (7th Cir. 2013)	13
<i>Peruta v. County of San Diego</i> , 824 F.3d 919 (9th Cir. 2016) (en banc)	18
<i>Piazza v. Kellim</i> , 377 P.3d 492 (Or. 2016)	26
<i>Rocky Mountain Planned Parenthood, Inc. v.</i> <i>Wagner</i> , 467 P.3d 287 (Colo. 2020)	26
<i>Roman Cath. Diocese of Brooklyn v. Cuomo</i> , 141 S. Ct. 63 (2020)	28
<i>United States v. Class</i> , 930 F.3d 460 (D.C. Cir. 2019)	13
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	28

TABLE OF AUTHORITIES – Continued

	Page
STATUTES	
26 Hen. 8, c. 6, § 4	14
1889 Ariz. Sess. Laws 16	14
N.Y. Penal Law § 400.00(2)(f)	5
1890 Okla. Laws 495	14
1870 Tex. Gen. Laws 63	14
OTHER AUTHORITIES	
Al Jazeera, <i>Demand for ‘active shooter insurance’ on the rise as US reopens</i> (May 13, 2021), https://www.aljazeera.com/economy/2021/5/13/demand-for-active-shooter-insurance-on-the-rise-as-us-reopens	28
Alexis de Tocqueville, <i>Democracy in America</i> (Harvey C. Mansfield and Delba Winthrop eds. and trans., University of Chicago Press 2000)	4
Alfred Ng, <i>Gunman fatally shoots Pennsylvania churchgoer after fight over seat at Sunday service</i> , N.Y. Daily News (Apr. 28, 2016), https://www.nydailynews.com/news/crime/churchgoer-killed-fight-seat-sunday-service-article-1.2618098	21
Ben Sales, <i>Here’s what it costs to put your synagogue under armed guard</i> , Jewish Telegraphic Agency (Nov. 13, 2018), https://www.jta.org/2018/11/13/united-states/heres-costs-put-synagogue-armed-guard	24, 25

TABLE OF AUTHORITIES – Continued

	Page
Christina Maxouris, <i>Fortified synagogues and guards ‘everybody knows.’ How life changed a year after the Tree of Life Massacre</i> , CNN (Oct. 27, 2019), https://www.cnn.com/2019/10/27/us/synagogue-security-pittsburgh-shooting-a-year-later/index.html	24
Council for Health & Human Service Ministries, <i>UCC General Synod overwhelmingly passes CHHSM-sponsored resolution on gun violence</i> (July 4, 2017), https://www.chhsm.org/news/ucc-general-synod-overwhelmingly-passes-chhsm-sponsored-resolution-gun-violence/	8
Dan Pietrafesa, <i>Carrying on St. Teresa’s Mission in New York</i> , Catholic New York (Aug. 21, 2016), https://www.cny.org/stories/carrying-on-st-teresas-mission-in-new-york	19
Dana Loomis et al., <i>Employer Policies Toward Guns and the Risk of Homicide in the Workplace</i> , 95 Am. J. Public Health (May 2005), https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2003.033535	21
Dana Massing, <i>Congregations mull how to keep sacred spaces safe</i> , AP News (Mar. 2, 2019), https://apnews.com/article/8ad0dac8b4ea4fb5a3101ce59f7c74e2	29
Darrell A.H. Miller, <i>Constitutional Conflict and Sensitive Places</i> , 28 WM & MARY BILL RTS. 459 (2019)	13

TABLE OF AUTHORITIES – Continued

	Page
Evangelical Lutheran Church in America, <i>A 60-Day Journey Toward Justice in a Culture of Gun Violence</i> , Appendix, 1993 social policy resolution, <i>Community Violence – Gun Control</i> (CA93.6.10), https://download.elca.org/ELCA%20Resource%20Repository/60DaysGunViolence_Appendix.pdf?_ga=2.184619689.1259359608.1631636449-1393533568.16316364497	7
Gabriella Patti, <i>Catholic-run soup kitchens serve carryout meals amid coronavirus</i> , Crux (May 22, 2020), https://cruxnow.com/church-in-the-usa/2020/03/catholic-run-soup-kitchens-serve-carryout-meals-amid-coronavirus/19	19
General Convention, Journal of the General Convention of the Episcopal Church, Minneapolis 1976 (New York: General Convention, 1977), p. C-107, https://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1976-C0526, 7	6, 7
General Convention, Journal of the General Convention of the Episcopal Church, Salt Lake City, 2015 (New York; General Convention, 2015).....7	7
James A. Shepperd et al., <i>The Anticipated Consequences of Legalizing Guns on College Campuses</i> (Journal of Threat Assessment and Management 2018, Vol. 5, 21-34), https://doi.apa.org/doiLanding?doi=10.1037%2Ftam000009730	30

TABLE OF AUTHORITIES – Continued

	Page
Jack Frederick, <i>North Carolina churches wrestle with security, guns and worship</i> , Media Hub (Dec. 8, 2018), http://mediahub.unc.edu/north-carolina-churches-wrestle-security-guns-worship/	24
Jeff Mordock, <i>Religious leaders weigh sanctuary, security after attacks</i> , Wash. Times (Dec. 31, 2019) https://www.washingtontimes.com/news/2019/dec/31/religious-leaders-weigh-sanctuary-security-after-a/	15
John J. Donohue et al., <i>Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis</i> , J. of Empirical Legal Stud. (May 15, 2019), https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12219	17, 18
Jorge L. Ortiz, <i>How to keep schools safe? We're focusing our time, energy and money on 'all the wrong things,' experts say</i> , USA Today (Nov. 21, 2019), https://www.usatoday.com/story/news/nation/2019/11/21/school-shootings-metal-detectors-solution-experts/4255318002/	21
Joseph Blocher & Reva Siegel, <i>Guns Are a Threat to the Body Politic</i> , The Atlantic (Mar. 8, 2021), https://www.theatlantic.com/ideas/archive/2021/03/guns-are-threat-body-politic/618158	30
Joseph Blocher & Reva Siegel, <i>When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation under Heller</i> , NW. U. L. REV. 139 (2021)	30

TABLE OF AUTHORITIES – Continued

	Page
Katie Young & Contessa Brewer, <i>Rise in mass shootings leads to “rapid growth” in active shooter insurance</i> , CNBC (Jan. 10, 2020), https://www.cnbc.com/2020/01/10/rise-in-mass-shootings-boosts-active-shooter-insurance.html	27
Laurie Goodstein, <i>Charleston Shooting Adds to Security Fears in Places of Worship</i> , N.Y. Times (June 24, 2015), https://www.nytimes.com/2015/06/25/us/charleston-attack-security-churches.html	23, 32
Letter to Senate Judiciary Committee from Faiths United to Prevent Gun Violence (May 17, 2021), https://www.judiciary.senate.gov/imo/media/doc/5.18.21%20-%20Faiths%20United%20to%20Prevent%20Gun%20Violence%20and%2015%20Orgs%20Support%20for%20Chipman.pdf	8, 22
Marika Cabral et al., <i>Trauma at School: The Impacts of Shootings on Students’ Human Capital and Economic Outcomes</i> (Jan. 3, 2021), https://web.stanford.edu/~mrossin/TX_Shootings_Jan2021.pdf	17
Matthew Miller et al., <i>State-Level homicide victimization rates in the US in relation to survey measures of household firearm ownership, 2001-2003</i> (Social Science & Medicine, Feb. 2007), https://www.sciencedirect.com/science/article/abs/pii/S0277953606004898	21

TABLE OF AUTHORITIES – Continued

	Page
Matthew Stucker & C. E. Shoichet, <i>3 killed in shootings at Kansas City-area Jewish center</i> , CNN (Apr. 14, 2004), https://www.cnn.com/2014/04/13/us/kansas-jewish-center-shooting/index.html	20
Maya Rossin-Slater et al., <i>Local exposure to school shootings and youth antidepressant use</i> (Proceedings of the National Academy of Sciences, Sept. 22, 2020), https://www.pnas.org/content/117/38/23484	17
Medieval Sourcebook: Edward Grim: The Murder of Thomas Becket, https://sourcebooks.fordham.edu/source/grim-becket.asp	31, 32
Mennonite Mutual, <i>Guns in Churches, Addressing Church Security Needs</i> (Nov. 2017), https://www.mennonitemutual.com/upload/documents/guns_in_churches.pdf	25
Michael Steinlage, <i>Liability for Mass Shootings: Are We at a Turning Point?</i> , ABA (Feb. 7, 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/winter/liability-mass-shootings-are-we-a-turning-point/	26
Michelle Boorstein, <i>Church donations have plunged because of the coronavirus. Some churches won't survive.</i> , Wash. Post (Apr. 24, 2020), https://www.washingtonpost.com/religion/2020/04/24/church-budgets-coronavirus-debt/	23

TABLE OF AUTHORITIES – Continued

	Page
Michelle Conlin, <i>Empty pews, empty collection baskets: coronavirus hits U.S. church finances</i> , Reuters (Apr. 11, 2020), https://www.reuters.com/article/us-health-coronavirus-usa-church-finance/empty-pews-empty-collection-baskets-coronavirus-hits-u-s-church-finances-idUSKCN21T0EH	23
Mitchell L. Doucette et al., <i>Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992-2017)</i> , National Library of Med. (Oct. 17, 2019), https://pubmed.ncbi.nlm.nih.gov/31622144/	21
Nathan J. Diament, <i>Protect America’s houses of worship in year-end appropriations package</i> , The Hill (Nov. 28, 2020), https://thehill.com/blogs/congress-blog/homeland-security/527819-protect-americas-houses-of-worship-in-year-end	25
Noor Z. Hussain & Carolyn Cohn, <i>Mass shooting insurance in high demand as U.S. emerges from lockdown</i> , Reuters (May 13, 2021), https://www.reuters.com/article/us-usa-shooting-insurance-focus-idCAKBN2CU1NO	27
Pax Christi USA, <i>Statement: On the mass shooting in Atlanta</i> (Mar. 17, 2021), https://paxchristiusa.org/2021/03/17/statement-on-the-mass-shooting-in-atlanta/	9

TABLE OF AUTHORITIES – Continued

	Page
Payne Horning, <i>Armed at Church: Church: Why This Congregation Is ‘Not A Gun-Free Zone’</i> , NPR (Apr. 8, 2018), https://www.npr.org/2018/04/08/599772810/armed-at-church-why-this-congregation-is-not-a-gun-free-zone	20
Pew Research Center, <i>In U.S., Decline of Christianity Continues at a Rapid Pace</i> (Oct. 17, 2019), https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace	31
Phillip Levine and Robin McKnight, <i>Exposure to a School Shooting and Subsequent Well-Being</i> (Nat’l Bureau of Econ. Research) (Working Paper No. 28307) https://www.nber.org/system/files/working_papers/w28307/w28307.pdf	17
Reis Thebault, <i>Too small to hire guards, too worried to go gun-free, community churches are now arming themselves</i> , Wash. Post (Feb. 14, 2020), https://www.washingtonpost.com/national/too-small-to-hire-guards-too-worried-to-go-gun-free-churches-are-now-arming-themselves/2020/02/14/8eabb574-3ee9-11ea-baca-eb7ace0a3455_story.html	20, 22, 23
Report of the 219th General Assembly of the Presbyterian Church (U.S.A.) (Fall 2010), <i>Gun Violence, Gospel Values: Mobilizing in Response to God’s Call</i> , https://www.pcusa.org/site-media/media/uploads/acswp/pdf/gun-violence-policy.pdf	6

TABLE OF AUTHORITIES – Continued

	Page
Richard R. Johnson, Ph.D., Dolan Consulting Group, <i>Serious Violence at Places of Worship in the U.S. – Looking at the Numbers</i> (Sept. 2019), https://www.dolanconsultinggroup.com/wp-content/uploads/2019/09/Serious-Violence-at-Places-of-Worship-in-the-US-Looking-at-the-Numbers.pdf	16
Samantha Schmidt et al., <i>After Pittsburgh massacre, synagogues weigh adding more security</i> , Wash. Post (Oct. 28, 2018), https://www.washingtonpost.com/local/social-issues/after-pittsburgh-massacre-synagogues-weigh-adding-more-security/2018/10/28/ecab37de-dafa-11e8-b3f0-62607289efee_story.html	23, 24, 25
Sarah R. Lowe & Sandra Galea, <i>The Mental Health Consequences of Mass Shootings</i> , 18 <i>Trauma, Violence & Abuse</i> 62 (2017), https://www.cmhnetwork.org/wp-content/uploads/2018/09/The-Mental-Health-Consequences-of-Mass-Shootings.pdf	17
Scott Neuman, <i>Fewer than Half of US Adults Belong to a Religious Affiliation</i> , NPR (Mar. 30, 2021), https://www.npr.org/2021/03/30/982671783/fewer-than-half-of-u-s-adults-belong-to-a-religious-congregation-new-poll-shows	31
Suzanne Barlyn, <i>U.S. religious centers buy more insurance after raft of shootings</i> , Reuters (May 1, 2019), https://www.reuters.com/article/us-usa-shooting-insurance/u-s-religious-centers-buy-more-insurance-after-raft-of-shootings-idUSKCN1S7437	27

TABLE OF AUTHORITIES – Continued

	Page
Tammy Warren, <i>Why are people hungry and poor?</i> , Presbyterian News Service (Sept. 21, 2020), https://www.presbyterianmission.org/story/why-are-people-hungry-and-poor/	19
Teri Figueroa, <i>Father of girl injured in Chabad of Poway shooting sues over security measures</i> , San Diego Union-Tribune (Apr. 8, 2021), https://www.sandiegouniontribune.com/news/courts/story/2021-04-08/father-of-girl-injured-in-chabad-of-poway-shooting-sues-over-security-measures	26
Testimony of the United States Conference of Catholic Bishops before Senate Committee on the Judiciary, February 12, 2013: <i>Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment</i> , https://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/upload/USCCB-Senate-Testimony-Proposals-to-Reduce-Gun-Violence-2013.pdf	6
<i>The Giving Environment: Understanding Pre-Pandemic Trends in Charitable Giving</i> , Indiana University Lilly Family School of Philanthropy (July 2021), https://scholarworks.iupui.edu/bitstream/handle/1805/26290/giving-environment210727.pdf	22

TABLE OF AUTHORITIES – Continued

	Page
Tom Verde, <i>Allowing guns in church flies in the face of tradition and Scripture</i> , RNS (Dec. 19, 2017), https://religionnews.com/2017/12/19/allowing-guns-in-church-flies-in-the-face-of-tradition-and-scripture/	22
U.S. Department of Homeland Security, <i>Mitigating Attacks on Houses of Worship – Security Guide</i> (December 2020), https://www.cisa.gov/sites/default/files/publications/Mitigating%20Attacks%20on%20Houses%20of%20Worship%20Security%20Guide_508_0_0.pdf	16, 24, 29
United Church of Christ, <i>On Recognizing and Studying Gun Violence as a Public Health Emergency</i> , http://synod.uccpages.org/res10.html	8
United States Conference of Catholic Bishops, <i>A Mercy and Peacebuilding Approach to Gun Violence</i> (2020), https://www.usccb.org/resources/background-er-gun-violence	5
Vault, <i>Roman Catholic Priests: The Job</i> , https://www.vault.com/industries-professions/professions/r/roman-catholic-priests/the-job	19
Voice of America Special Report: <i>House of Worship Shootings</i> , https://projects.voanews.com/mass-shootings/english/locations/worship.html	15
Wire Reports, <i>Policy position; Mormon leaders explicitly ban guns from churches</i> , Christianaction.org (Aug. 28, 2019), https://christianaction.org/top-stories-of-the-day/mormon-church-leaders-ban-weapons-from-houses-of-worship	29

INTERESTS OF *AMICI CURIAE*¹

Amici curiae (“*Amici*”) comprise a broad range of religious stakeholders (including more than 400 individual clergy and faith leaders) who affirm their commitment to peace and human dignity.² *Amici* come from faiths that differ in their views regarding a variety of social issues. But *Amici* are united in their belief that reasonable gun regulation is essential to protect the safety and serenity of places of worship and the ability of religious institutions to carry out their missions and activities, all of which are threatened by the alarming escalation of gun violence in their communities.

The Most Rev. Michael Bruce Curry is the 27th Presiding Bishop of The Episcopal Church, a hierarchical religious denomination in the United States and 17 other countries. Under the Church’s polity, he is the Chief Pastor and Primate of the Church and is charged with responsibility for “speak[ing] God’s words to the Church and to the world, as the representative of [the] Church. . . .” Bishop Curry serves as the Chair of the Episcopal Church’s Executive Council, which oversees the program and policies adopted by the General Convention between its triennial meetings.

¹ All parties have consented to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no person or entity besides undersigned *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

² Appendix A lists all individual *Amici*.

The Rev. Gay Clark Jennings is the President of the House of Deputies of The Episcopal Church. In that capacity, President Jennings presides over a legislative chamber consisting of more than 800 elected clergy and lay leaders representing all dioceses of The Episcopal Church as part of its bicameral governing body, the General Convention.

The Evangelical Lutheran Church in America (“ELCA”) is one of the largest Christian denominations in the United States, with nearly 3.3 million members in more than 8,900 worshiping communities across the 50 states and in the Caribbean region.

The General Synod of the United Church of Christ is the representative body of this Protestant denomination of more than 900,000 members and more than 5,000 churches.

The Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis; the Union for Reform Judaism, whose 900 congregations across North America include 1.5 million Reform Jews; the Women of Reform Judaism; and the Men of Reform Judaism share a deep commitment to Jewish tradition that emphasizes the sanctity and eternal value of human life.

The Church of the Brethren Office of Peacebuilding and Policy educates on issues of policy and peace theology and represents the denomination in Washington, D.C. and to ecumenical and interfaith partner organizations. The Church of the Brethren traces its

roots back over 300 years to 1708 and today has about 1,000 congregations in the United States.

The Reconstructionist Rabbinical Association (“RRA”), established in 1974, is the professional association of Reconstructionist rabbis. Comprised of over 300 rabbis, the RRA represents the rabbinic voice within the Reconstructionist movement.

Reconstructing Judaism represents the affiliated Reconstructionist Jewish congregations in the United States and abroad. Reconstructing Judaism cultivates and supports Jewish living, learning, and leadership in a changing world. It strives to realize the following core values in every initiative and interaction: sacred study, holiness, diverse and inclusive community, hope and healing, justice and sustainability, and evolving Judaism.

Amici curiae clergy and faith leaders, listed in Appendix A, come from various United States religious communities, including Episcopal, United Methodist, Presbyterian, ELCA, United Church of Christ, Mennonite, Disciples of Christ, African Methodist Episcopal (AME), Church of God in Christ, Unitarian Universalist, American Baptist, Cooperative Baptist, Jewish, Catholic, and multi-denominational traditions.



INTRODUCTION AND SUMMARY OF ARGUMENT

Gathering peacefully for prayer and community is central to the American experience. More than 180 years ago, Alexis de Tocqueville wrote that “Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile . . . if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate.”³ For many millions of Americans, this tendency to join together is expressed by peacefully gathering for religious observance, a central aspect of the exercise of their religious faith. Their worship communities are an essential part of this country’s social fabric and a particular source of its cultural and moral strength.

And yet, in recent years, the peace and tranquility of religious gatherings – precisely the qualities that make churches, synagogues, and mosques safe places for people to connect, share their faith, and forge community – have too often been shattered by violent attacks, most often carried out with firearms. Particularly in parts of the country where public carry of guns is more widely permitted, guns often find their way into the hands of individuals seeking to harm faith-based communities. New York’s “proper cause”

³ Alexis de Tocqueville, *Democracy in America*, at 489 (Harvey C. Mansfield and Delba Winthrop eds. and trans., University of Chicago Press 2000).

provision, N.Y. Penal Law § 400.00(2)(f), requiring an applicant to demonstrate an “actual and articulable” need for self-defense in order to obtain a concealed carry license, *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 98 (2d Cir. 2012), provides a measure of protection against the ever-present threat of gun violence by limiting the carrying of weapons into the public arena by individuals who have not shown any need for their possession and use. The law thus reduces the opportunities for guns to intrude upon the sanctuary and refuge of the worship space.

A wide range of organized religions and other religious stakeholders have spoken out against gun violence and endorsed reasonable regulations like the New York “proper cause” provision aimed at controlling the proliferation of guns in American society:

- The United States Conference of Catholic Bishops (“USCCB”), in its *Backgrounder on Gun Violence*, declares: “The Church has been a consistent voice for the promotion of peace at home and around the world, and a strong advocate for the reasonable regulation of firearms.”⁴ Its written Congressional testimony similarly affirms: “We support measures that control the sale and use of firearms and make

⁴ USCCB, *A Mercy and Peacebuilding Approach to Gun Violence* (2020), <https://www.usccb.org/resources/backgrounder-gun-violence>.

them safer . . . , and we reiterate our call for sensible regulation of handguns.”⁵

- The General Assembly of the Presbyterian Church (U.S.A.) declares in a report on gun violence: “The Presbyterian Church (U.S.A.) has been concerned about this frightening phenomenon, and has consistently spoken out about it for three decades, as have our sisters and brothers in virtually every other faith tradition. . . . We believe there is much common ground within society for both responsible gun ownership and real reduction of gun violence.”⁶
- A resolution of the General Convention of the Episcopal Church “urge[s] all citizens to support federal, state, and local legislation aimed at controlling the sale and use of hand guns.”⁷

⁵ Testimony of the USCCB before Senate Committee on the Judiciary, February 12, 2013: *Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment* (quoting the 2000 pastoral statement, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*), <https://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/upload/USCCB-Senate-Testimony-Proposals-to-Reduce-Gun-Violence-2013.pdf>.

⁶ Report of the 219th General Assembly of the Presbyterian Church (U.S.A.) (Fall 2010), *Gun Violence, Gospel Values: Mobilizing in Response to God’s Call*, at 4, https://www.pcusa.org/site_media/media/uploads/acswp/pdf/gun-violence-policy.pdf.

⁷ General Convention, *Journal of the General Convention of the Episcopal Church*, Minneapolis 1976 (New York: General

- The ELCA’s social policy resolution on gun violence calls upon congregations, synods, and agencies to work for the passage of legislation controlling the “manufacture, importation, exportation, sale, purchase, transfer, receipt, possession or transportation of handguns, assault weapons, and assault-like weapons and their parts, excluding rifles and shotguns used for hunting and sporting purposes, for use other than law enforcement and military purposes.”⁸
- A resolution of the General Synod of the United Church of Christ “urges the recognition of gun violence as a public health emergency,” “encourages [Congress] to reinstate federal funding for scientific research of gun violence . . . and to openly debate methods to improve gun safety, training and storage to reduce gun deaths,” and “urges members and other settings of the United Church of Christ to actively speak out against restrictive

Convention, 1977), p. C-107, https://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1976-C052. See also General Convention, *Journal of the General Convention of the Episcopal Church*, Salt Lake City, 2015 (New York; General Convention, 2015), p. 328 (resolution urging legislators to pass laws requiring permits to carry concealed weapons).

⁸ Evangelical Lutheran Church in America, *A 60-Day Journey Toward Justice in a Culture of Gun Violence*, Appendix at 1, 1993 social policy resolution, *Community Violence – Gun Control* (CA93.6.10), https://download.elca.org/ELCA%20Resource%20Repository/60DaysGunViolence_Appendix.pdf?_ga=2.184619689.1259359608.1631636449-1393533568.1631636449.

legislation that seeks to silence or stifle the scientific and medical community from providing sound methods to save and improve the lives of all of God’s people.”⁹

- Faiths United to Prevent Gun Violence, a coalition of more than 50 denominations and faith-based organizations “united by the call of [their] faiths to confront America’s gun violence epidemic,” <http://faiths-united.org/>, affirms in a letter to the Senate Judiciary Committee: “Religious communities in the United States understand that gun violence in our country is an attack on human dignity. . . . Our faiths call us to create a safer world where we can participate in everyday activities like going to school, attending a concert, or praying in our houses of worship without the fear of violent death.”¹⁰
- PaxChristi USA, a community of tens of thousands of lay women and men, priests,

⁹ United Church of Christ, *On Recognizing and Studying Gun Violence as a Public Health Emergency*, <http://synod.uccpages.org/res10.html>; Council for Health & Human Service Ministries, *UCC General Synod overwhelmingly passes CHHSM-sponsored resolution on gun violence* (July 4, 2017), <https://www.chhsm.org/news/ucc-general-synod-overwhelmingly-passes-chhsm-sponsored-resolution-gun-violence/>.

¹⁰ Letter to Senate Judiciary Committee from Faiths United to Prevent Gun Violence (May 17, 2021), <https://www.judiciary.senate.gov/imo/media/doc/5.18.21%20-%20Faiths%20United%20to%20Prevent%20Gun%20Violence%20and%2015%20Orgs%20Support%20for%20Chipman.pdf>.

deacons, brothers, bishops, Catholics, and persons affiliated with other faith traditions who strive for peace, <https://paxchristiusa.org/about/>, declares: “It should be a basic article of faith that we demand our respect for human life and dignity result in common-sense, reasonable restrictions on guns in our country.”¹¹

The challenged law is a constitutional exercise of New York’s authority to protect its citizens – including religious stakeholders – from a range of harms. *Amici* recognize that this Court has held the Second Amendment encompasses an individual right to bear arms for self-defense. But the Court has also observed that this right is not unlimited and may be subject to reasonable regulation, including to protect “sensitive places.” Houses of worship are quintessentially “sensitive places,” and reducing threats to Americans gathered for religious observance – as well as those participating in religious ministry within the community – is an important state interest that justifies reasonable firearm regulation. However, regulating firearms within houses of worship alone is not enough. New York’s law further helps address these threats by reducing the casual public carrying of concealed weapons, and thus the likelihood of gun violence in public places – including houses of worship – where people with common

¹¹ Pax Christi USA, *Statement: On the mass shooting in Atlanta* (Mar. 17, 2021), <https://paxchristiusa.org/2021/03/17/statement-on-the-mass-shooting-in-atlanta/>.

identities gather and may be vulnerable to hate crimes and other incidents of gun violence.

Under an unrestricted public carry regime, religious congregations would face a heightened risk of gun violence. Deadly attacks on houses of worship, usually involving firearms, have been steadily on the rise for years, causing a tragic loss of life and also long-lasting psychological trauma for survivors and the broader religious community that may interfere with participation in religious life. This has led some to suggest arming congregants for self-defense, but *Amici* view this approach as antithetical to the peaceful nature of religious gatherings and ultimately counterproductive, since the proliferation of firearms – regardless of motivation – makes gun violence more, not less, likely. A more appropriate response is to *limit* public carrying of concealed weapons other than by persons with an articulated, nonspeculative need for self-defense – the focus of the New York law at issue here.

Striking down such laws would also likely inflict tangible financial burdens on religious institutions, including the onerous costs associated with measures designed to mitigate the threat of violent attacks, potential liability stemming from such incidents, and increased insurance costs. Just as important, the presence of concealed weapons in and around houses of worship – as well as the security measures needed to prohibit their entry – would disturb the serenity of the worship space, turning sanctuaries into virtual fortresses. The resulting environment of fear and unease – already a reality in many locales in the wake of mass

shootings targeting particular religious and social groups – has the potential to chill congregants’ First Amendment right of free exercise.

New York and other states are entitled to attempt to protect faith-based communities and other vulnerable places and groups from these potentially dire consequences by enacting sensible regulations to control the public proliferation of guns in their communities. *Amici* therefore respectfully urge the Court to affirm the Court of Appeals’ decision and the right of the State to place reasonable limitations on the public carry of concealed weapons.

◆

ARGUMENT

NEW YORK’S “PROPER CAUSE” REQUIRE- MENT PROTECTS RELIGIOUS COMMUNITIES FROM A HOST OF RISKS AND BURDENS FLOWING FROM THE UNRESTRICTED PUB- LIC CARRY OF FIREARMS

New York’s law restricting public carry of concealed weapons reduces threats to religious institutions and gatherings, which in turn serves the recognized goal of protecting “sensitive places” from gun violence. In reducing the risk of violence, the law also helps protect religious organizations from a range of financial consequences of coping with that risk.

I. This Court Has Recognized the Importance of Protecting “Sensitive Places” from the Intrusion of Guns

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court emphasized that the Second Amendment right to bear arms “is not unlimited” and “is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626; *see also McDonald v. Chicago*, 561 U.S. 742, 786 (2010) (reiterating that “important” caveat). To the contrary, the Court expressly signaled its approval of reasonable restrictions on gun possession and ownership, stressing in *McDonald* that “incorporation [of the Second Amendment right] does not imperil every law regulating firearms.” 561 U.S. at 786. Among the types of gun regulations the Court acknowledged as “presumptively lawful” were “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in *sensitive places* such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Heller*, 554 U.S. at 626-27 (emphasis added); *see also McDonald*, 561 U.S. at 786 (noting that *Heller* “did not cast doubt on such longstanding regulatory measures”).¹²

Although the Court did not specifically mention them in *Heller*, religious institutions have been recognized as “sensitive places” worthy of protection

¹² The Court explained in *Heller* that the types of regulations it identified were intended “only as examples; our list does not purport to be exhaustive.” 554 U.S. at 627 n.26.

through reasonable gun regulations. See Darrell A.H. Miller, *Constitutional Conflict and Sensitive Places*, 28 WM & MARY BILL RTS. 459, 466 (2019) (“Religious institutions are one kind of sensitive place, although *Heller* does not identify them as such.”); see also *Moore v. Madigan*, 708 F.3d 901, 904 (7th Cir. 2013) (“*Heller* itself endorsed restrictions in “sensitive” places, such as schools and government buildings. It should not be difficult to make reasonable arguments to support extending that reasoning to areas around . . . , churches and other places of worship.”) (Hamilton, J., dissenting) (citations omitted); *GeorgiaCarry.Org. Inc. v. Georgia*, 764 F. Supp. 2d 1306, 1319 (M.D. Ga. 2011) (“A reasonable argument can be made that places of worship are also sensitive places because of the activities that occur there.”), *aff’d*, 687 F.3d 1244 (11th Cir. 2012).¹³

The reason is obvious: religious institutions serve as places of refuge where congregants exercise their fundamental rights of religious expression and peaceable assembly under the protection of the First Amendment. See *Constitutional Conflict and Sensitive Places*, *supra*, at 467 (“The First Amendment guarantees freedom of religious expression, and in many traditions religious expression happens in groups. Religious organizations and institutions enhance – even make possible – the kind of religious expression a person’s faith

¹³ Cf. *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019) (schools and government buildings, “the paradigmatic ‘sensitive places’ identified in *Heller I*, . . . are ‘sensitive’ for purposes of the Second Amendment because of ‘the people found there’ or the ‘activities that take place there’”) (citations omitted).

tradition may demand.”). As the Georgia Supreme Court aptly observed almost one hundred fifty years ago, in holding constitutional the State’s ban on carrying weapons in certain locations including “places of public worship”:

The practice of carrying arms at courts, elections and places of worship, etc., is a thing so improper in itself, so shocking to all sense of propriety, so wholly useless and full of evil, that it would be strange if the framers of the constitution have used words broad enough to give it a constitutional guarantee.

Hill v. State, 53 Ga. 472, 475 (1874). Indeed, Anglo-American jurisdictions for centuries employed restrictions on the public carry of firearms to maintain safety in areas where people gather to worship and conduct business. *See, e.g.*, 26 Hen. 8, c. 6, § 4 (1534 English law prohibiting carrying weapons to any “Town, Church, Fair, Market or other Congregation” in Wales); 1870 Tex. Gen. Laws 63 (prohibiting carrying arms into “a church or religious assembly”); 1889 Ariz. Sess. Laws 16 (same); 1890 Okla. Laws 495, art. 47 (same).

Allowing houses of worship to prohibit guns – as the laws of New York and other states do – is critical to protecting these “sensitive places.” But that alone is not nearly enough. As discussed below, New York’s licensing regime, by imposing a reasonable limitation on the public carry of firearms, secures the essential need of religious communities, both inside and outside the doors of their houses of worship, to exercise their faith

with a reduced threat of gun violence and its associated burdens.

II. Invalidating the Law Would Lead to an Array of Potentially Dire Consequences for Religious Institutions and their Congregations

A. Unrestricted Public Carry Would Increase the Risk of Gun Violence Aimed at Religious Communities

Religious communities increasingly are targets of deadly violence. As reported by Voice of America, the percentage of mass shootings motivated by religious hate escalated from 1% during the period 1966-2000, to 9% during the period 2000-2014, to 18% during the period 2018-February 2020.¹⁴ Similarly, the Washington Times reports a 2,500% increase in deadly attacks at houses of worship between 1999 and 2017.¹⁵ A 2019 study examining the FBI's National Incident-Based

¹⁴ Voice of America Special Report: *House of Worship Shootings*, <https://projects.voanews.com/mass-shootings/english/locations/worship.html>. VOA reports that the increasingly frequent “mass shootings in churches, temples, synagogues and mosques have . . . been committed by perpetrators with a history of racism, anti-Semitism, anti-Christianity and Islamophobia, with ties to white supremacist and neo-Nazi groups.” *Id.*

¹⁵ Jeff Mordock, *Religious leaders weigh sanctuary, security after attacks*, Wash. Times (Dec. 31, 2019) <https://www.washingtontimes.com/news/2019/dec/31/religious-leaders-weigh-sanctuary-security-after-a/>. In 2017 alone, U.S. houses of worship experienced 262 deadly force incidents. *Id.* According to one security consultant, “Houses of worship are the new soft target.” *Id.*

Reporting System (NIBRS) data from 2000 through 2016 found that 1,652 incidents of serious violence occurred at places of worship – including aggravated assaults, shootings, stabbings, and bombings – with 57% of those incidents involving the use of a firearm.¹⁶ And while mass shootings are frequently associated with assault-style weapons, in reality, many such attacks in and around houses of worship have been carried out with ordinary handguns.¹⁷ Mass shooting incidents not only cause the tragic loss of life, but they

¹⁶ Richard R. Johnson, Ph.D., Dolan Consulting Group (“DCG”), *Serious Violence at Places of Worship in the U.S. – Looking at the Numbers* (Sept. 2019), <https://www.dolanconsultinggroup.com/wp-content/uploads/2019/09/Serious-Violence-at-Places-of-Worship-in-the-US-Looking-at-the-Numbers.pdf>. Extrapolating from the NIBRS data, which covers about 20% of the nation’s population, DCG estimates that “there are actually about 480 incidents of serious violence at places of worship in the U.S. each year,” producing “about 46 deaths and 218 serious injuries annually.” *Id.* at 1.

¹⁷ A publication by the U.S. Department of Homeland Security identifies a number of such incidents, including the October 2018 massacre at the Tree of Life Synagogue in Pittsburgh, Pennsylvania by a man armed with a rifle and 3 handguns (11 killed, 6 injured); a June 2015 shooting at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina by a man armed with a handgun (9 killed); an April 2014 shooting at the Jewish Community Center of Greater Kansas City in Overland Park, Kansas by a man armed with 2 handguns and a shotgun (3 killed); and an August 2012 shooting at the Sikh Temple of Wisconsin in Oak Creek, Wisconsin by a man armed with a handgun (6 killed, 4 injured). U.S. Department of Homeland Security, *Mitigating Attacks on Houses of Worship – Security Guide* (December 2020) (hereinafter “DHS Security Guide”), at 20-21, https://www.cisa.gov/sites/default/files/publications/Mitigating%20Attacks%20on%20Houses%20of%20Worship%20Security%20Guide_508_0_0.pdf.

also inflict severe and long-lasting psychological trauma on both direct survivors and the surrounding community.¹⁸

New York's reasonable limitation on public carry is an appropriate attempt to reduce such incidents – and their aftereffects – by slowing the proliferation of casually carried handguns and the inevitable resulting increase in violence.¹⁹ As New York has observed,

¹⁸ Studies examining the effect of school shootings on surviving youth reveal an increased use of antidepressants, an increase in chronic absenteeism and poor academic performance, and a heightened risk of suicide and accidental deaths. See Maya Rossin-Slater et al., *Local exposure to school shootings and youth antidepressant use* (Proceedings of the National Academy of Sciences, Sept. 22, 2020), <https://www.pnas.org/content/117/38/23484>; Marika Cabral et al., *Trauma at School: The Impacts of Shootings on Students' Human Capital and Economic Outcomes* (Jan. 3, 2021), https://web.stanford.edu/~mrossin/TX_Shootings_Jan2021.pdf; Phillip Levine and Robin McKnight, *Exposure to a School Shooting and Subsequent Well-Being* (Nat'l Bureau of Econ. Research) (Working Paper No. 28307), https://www.nber.org/system/files/working_papers/w28307/w28307.pdf. Even those outside the immediate community can experience an increased fear of crime or victimization and uncertainty about their safety when gathering in public or private spaces. See Sarah R. Lowe & Sandra Galea, *The Mental Health Consequences of Mass Shootings*, 18 *Trauma, Violence & Abuse* 62, 78 (2017), <https://www.cmhnetwork.org/wp-content/uploads/2018/09/The-Mental-Health-Consequences-of-Mass-Shootings.pdf>.

¹⁹ John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 *J. Empirical Legal Stud.* 198 (2019), <https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12219> (showing that right-to-carry laws were associated with 13-15 percent higher aggregate violent crime rates 10 years after adoption).

jurisdictions that impose reasonable limitations on the public carry of firearms show markedly lower rates of gun-related deaths.²⁰ New York’s requirement that an individual show “proper cause” to obtain an unrestricted concealed carry license serves to limit the number of firearms that casually enter the public arena, thus reducing the risk of gun-related violence and deaths, while permitting public carry where there is a demonstrated need for self-defense.

In seeking to overturn the law, Petitioners effectively ask the Court to declare that the Second Amendment confers upon them the unfettered right to carry concealed firearms in most public places. Not only is that position inconsistent with *Heller*, but if it is adopted, the ready availability of unrestricted licenses would heighten the risks for places of worship and other vulnerable and sensitive public places. Normalizing the carrying of concealed weapons in New York would make it easier to bring weapons into churches and other public places without causing alarm or arousing suspicion – empowering those who would inflict harm and increasing the likelihood of gun violence.

²⁰ See *id.*; see also *Peruta v. County of San Diego*, 824 F.3d 919, 943-44 (9th Cir. 2016) (en banc) (Graber, J., concurring) (noting that “heightened restrictions on concealed carry permits in many jurisdictions” have caused “statistically reduced violence by permit holders”); Respondents’ Brief in Opposition, at 44 & n.20 (citing studies).

This would be true even if guns were specifically prohibited in houses of worship. Such prohibitions may be disregarded by those accustomed to widespread casual carrying of concealed weapons. Moreover, religious institutions conduct many of their ministries outside the walls of the worship space, in the form of social services and aid to the sick and needy.²¹ The widespread presence of concealed weapons within the community at large would pose a risk to all participants in those activities. Moreover, prohibiting concealed weapons inside houses of worship would do nothing to address the

²¹ See, e.g., Tammy Warren, *Why are people hungry and poor?*, Presbyterian News Service (Sept. 21, 2020), <https://www.presbyterianmission.org/story/why-are-people-hungry-and-poor/> (church’s “Tree of Life” project, mixed-use residential development to be built on site of parking lot next to church in Jamaica, Queens, will provide various social services, including programs for feeding, literacy, and job training, as well as on-site health center); Gabriella Patti, *Catholic-run soup kitchens serve carryout meals amid coronavirus*, Crux (May 22, 2020) (soup kitchens run by Catholic churches moved their operations outdoors during coronavirus pandemic), <https://cruxnow.com/church-in-the-usa/2020/03/catholic-run-soup-kitchens-serve-carryout-meals-amid-coronavirus/>; Dan Pietrafesa, *Carrying on St. Teresa’s Mission in New York*, Catholic New York (Aug. 21, 2016), <https://www.cny.org/stories/carrying-on-st-teresas-mission-in-new-york> (sisters of convent visit shut-ins and are present in AIDS hospice, women’s shelter, and “contemplative house” in New York City). See generally Vault, *Roman Catholic Priests: The Job*, <https://www.vault.com/industries-professions/professions/r/roman-catholic-priests/the-job> (priests not only work in parishes but also teach in parochial schools, perform missionary work, and administer to parishioners in medical facilities and residential homes).

risk of gun violence in immediately surrounding areas, such as parking lots and public sidewalks.²²

It is no answer to urge, as some have in the wake of high profile attacks, that congregation members should arm themselves in self-defense.²³ *Amici* strongly disagree that arming parishioners, however well-intentioned, is an effective deterrent to the threat of gun violence. To the contrary, the presence of more guns within faith communities – no matter what the carrier’s motive – will only increase the likelihood of violence. As one mass shooting expert explains, “[a]ll of

²² By way of example, an April 2014 shooting at the Jewish Community Center of Greater Kansas City, which resulted in 3 deaths, began in the parking lot. See Matthew Stucker & C. E. Shoichet, *3 killed in shootings at Kansas City-area Jewish center*, CNN (Apr. 14, 2004), <https://www.cnn.com/2014/04/13/us/kansas-jewish-center-shooting/index.html>.

²³ See, e.g., Payne Horning, *Armed at Church: Why This Congregation Is ‘Not A Gun-Free Zone’*, NPR (Apr. 8, 2018), <https://www.npr.org/2018/04/08/599772810/armed-at-church-why-this-congregation-is-not-a-gun-free-zone> (“When the parishioners at the Lighthouse Mexico Church of God gather for worship each Sunday, many of them are armed . . . Pastor Ron Russell began to encourage church members to carry concealed weapons after Dylann Roof killed nine people at the Emanuel African Methodist Episcopal Church in Charleston, S.C. in 2015.”); Reis Thebault, *Too small to hire guards, too worried to go gun-free, community churches are now arming themselves*, Wash. Post (Feb. 14, 2020), https://www.washingtonpost.com/national/too-small-to-hire-guards-too-worried-to-go-gun-free-churches-are-now-arming-themselves/2020/02/14/8eabb574-3ee9-11ea-baca-eb7ace0a3455_story.html (hereinafter “*Churches Arming Themselves*”) (“[M]ore places of worship are turning to surveillance equipment and armed guards, especially volunteers from the congregation, who blend in and save the parish money.”).

the research in terms of gun violence says that the more guns there are in any situation, the more likely someone's going to get shot." Jorge L. Ortiz, *How to keep schools safe? We're focusing our time, energy and money on 'all the wrong things,' experts say*, USA Today (Nov. 21, 2019), <https://www.usatoday.com/story/news/nation/2019/11/21/school-shootings-metal-detectors-solution-experts/4255318002/>.²⁴ For example, in the workplace setting, studies have shown that where employees are permitted to carry guns, the likelihood of workplace homicide increases significantly.²⁵ A proliferation of publicly carried concealed weapons in places of worship would give rise to similar risks.²⁶

²⁴ See also Matthew Miller et al., *State-Level homicide victimization rates in the US in relation to survey measures of household firearm ownership, 2001-2003* (Social Science & Medicine, Feb. 2007), <https://www.sciencedirect.com/science/article/abs/pii/S0277953606004898> (showing that states with higher rates of household firearm ownership had significantly higher homicide rates for men, women, and children).

²⁵ See Dana Loomis et al., *Employer Policies Toward Guns and the Risk of Homicide in the Workplace*, 95 Am. J. Public Health (May 2005), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2003.033535> (finding workplace homicides 5-7 times more likely where firearms are permitted); Mitchell L. Doucette et al., *Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992-2017)* National Library of Med. (Oct. 17, 2019), <https://pubmed.ncbi.nlm.nih.gov/31622144/> (finding that states with weak or no regulations on concealed carry had 29% higher rates of workplace homicides committed with firearms between 1992 and 2017).

²⁶ See Alfred Ng, *Gunman fatally shoots Pennsylvania churchgoer after fight over seat at Sunday service*, N.Y. Daily News (Apr. 28, 2016), <https://www.nydailynews.com/news/crime/churchgoer-killed-fight-seat-sunday-service-article-1.2618098>

B. Unrestricted Public Carry Would Strain the Financial Resources of Religious Institutions

Many religious institutions are already struggling financially. The percentage of American households that donate to religious causes fell from 46.5% in 2000 to only 29% in 2018.²⁷ Even before public health guidance regarding the coronavirus pandemic suspended in-person worship for most U.S. churches, only half of Americans reported belonging to a church, synagogue, or mosque in 2018, down from 70% two decades earlier. And in the current environment, those who belong attend services less frequently, “leaving fewer people to

(churchgoer with concealed weapons permit shot and killed fellow parishioner who took seat reserved for other parishioners); *Churches Arming Themselves*, *supra* n.23. (“Whenever firearms are present, there’s always room for error. . . . Arming parishioners so they can make the kind of split-second decisions that police get wrong worries me a little bit.”) (quoting James Densley, criminal justice professor); Letter to Senate Judiciary Committee from Faiths United to Prevent Gun Violence, May 17, 2021 (“[W]e have expressed dismay at how easily conflicts turn deadly due to easy access to guns.”); Tom Verde, *Allowing guns in church flies in the face of tradition and Scripture*, RNS (Dec. 19, 2017), <https://religionnews.com/2017/12/19/allowing-guns-in-church-flies-in-the-face-of-tradition-and-scripture/> (“The church was to be a place above and beyond the mundane world. It should not be a place of violence, and an armed congregation is one where arguments are likely to get out of hand.”) (quoting D. Gerrard, “The Church at War: The Military Activities of Bishops, Abbots and Other Clergy in England, c.900-1200”).

²⁷ *The Giving Environment: Understanding Pre-Pandemic Trends in Charitable Giving*, Indiana University Lilly Family School of Philanthropy (July 2021), <https://scholarworks.iupui.edu/bitstream/handle/1805/26290/giving-environment210727.pdf>, at 17.

fill collection baskets.”²⁸ According to a 2018-2019 National Congregations Study, approximately one-third of all congregations have no savings at all.²⁹

Under an unrestricted public carry regime, already challenged religious institutions are likely to face additional costs in several areas to mitigate the heightened risk of gun violence in their communities:

- **The Cost of Increased Security.** Religious institutions are already under pressure to secure their physical premises against the threat of violent attacks.³⁰

²⁸ Michelle Conlin, *Empty pews, empty collection baskets: coronavirus hits U.S. church finances*, Reuters (Apr. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-church-finance/empty-pews-empty-collection-baskets-coronavirus-hits-u-s-church-finances-idUSKCN21T0EH>.

²⁹ Michelle Boorstein, *Church donations have plunged because of the coronavirus. Some churches won't survive.*, Wash. Post (Apr. 24, 2020), <https://www.washingtonpost.com/religion/2020/04/24/church-budgets-coronavirus-debt/>.

³⁰ See *Churches Arming Themselves*, *supra* n.23 (noting that “more places of worship are turning to surveillance equipment and armed guards” and that security consultants “are getting more inquiries from nervous congregations”); Laurie Goodstein, *Charleston Shooting Adds to Security Fears in Places of Worship*, N.Y. Times (June 24, 2015), <https://www.nytimes.com/2015/06/25/us/charleston-attack-security-churches.html> (noting that churches are “fielding more questions about security” and that “[religious leaders] are just beginning to think about whether they need to increase security at their churches”); Samantha Schmidt et al., *After Pittsburgh massacre, synagogues weigh adding more security*, Wash. Post (Oct. 28, 2018) (hereinafter “*Synagogues Adding Security*”) (“[I]n 2004, only two of the 147 Jewish Federations found in most U.S. metropolitan areas with a large Jewish population had a full-time security director. Now that

Indeed, the 107-page DHS Security Guide advises religious institutions on a range of security strategies “to help mitigate the threat of targeted violence and prepare for potential incidents.” DHS Security Guide, *supra* n.17, at 1. If unrestricted public carry becomes the law of the land, religious institutions concerned with the safety of their communities will be pressured to adopt even more elaborate security measures to guard against the elevated threat of attacks. The cost of such measures – which can include security guards, surveillance systems, metal detectors, force-resistant doors, and protective fencing, among other things – can run into tens if not hundreds of thousands of dollars and is beyond the wherewithal of many religious communities.³¹

number is at 30 and [this number is expected] to grow.”), https://www.washingtonpost.com/local/social-issues/after-pittsburgh-massacre-synagogues-weigh-adding-more-security/2018/10/28/ecab37de-dafa-11e8-b3f0-62607289efee_story.html.

³¹ See Christina Maxouris, *Fortified synagogues and guards ‘everybody knows.’ How life changed a year after the Tree of Life Massacre*, CNN (Oct. 27, 2019) (following Pittsburgh attack, city’s Jewish federation spent about \$120,000 hiring armed guards for every Jewish institution in area and allotted more than \$600,000 for buzzer systems and panic buttons), <https://www.cnn.com/2019/10/27/us/synagogue-security-pittsburgh-shooting-a-year-later/index.html>; Jack Frederick, *North Carolina churches wrestle with security, guns and worship*, Media Hub (Dec. 8, 2018) (one church with 30-plus cameras and security team hoped to upgrade soon to new \$90,000 camera system with motion detectors), <http://mediahub.unc.edu/north-carolina-churches-wrestle-security-guns-worship/>; Ben Sales, *Here’s what it costs to put your synagogue*

- **The Prospect of Liability.** Separate and apart from the cost of security, religious institutions may face the prospect of liability if shootings occur in houses of worship where security is perceived to be inadequate. A complaint recently filed by the father of a girl injured in a 2019 synagogue shooting in San Diego, California, asserts negligence and other claims against Chabad of California and related defendants based on allegations that the synagogue failed to hire security guards

under armed guard, Jewish Telegraphic Agency (Nov. 13, 2018) (consortium of 30 Chabad congregations in Long Island, New York hoped to raise \$1 million to provide armed guards once a week for three year period at estimated cost of \$50 an hour), <https://www.jta.org/2018/11/13/united-states/heres-costs-put-synagogue-armed-guard>; *Synagogues Adding Security*, *supra* n.30 (“For smaller synagogues with tighter budgets, paying for security measures such as armed guards might be financially impossible. ‘To add a security guard could be prohibitive, and it could really cause people to choose between the kind of security that they have come to believe they need and the ability to gather in the first place’”); Mennonite Mutual, *Guns in Churches, Addressing Church Security Needs* (Nov. 2017) (“For some churches, [the cost of security personnel] is just not possible due to limited finances.”), https://www.mennonitemutual.com/upload/documents/guns_in_churches.pdf; Nathan J. Diament, *Protect America’s houses of worship in year-end appropriations package*, The Hill (Nov. 28, 2020) (“The United States is home to almost 400,000 churches, synagogues and mosques, many of them already struggling to afford basic expenditures such as clergy and utilities. Paying for large-ticket items such as shatterproof windows, force-resistant doors, surveillance systems and protective fencing – items that can each easily run into tens of thousands of dollars – isn’t typically a realistic option.”), <https://thehill.com/blogs/congress-blog/homeland-security/527819-protect-americas-houses-of-worship-in-year-end>.

or install enough fences and gates and instead left its doors propped open, resulting in “lax security.”³² And in other settings, courts have signaled a willingness to hold private property owners liable for failing to take reasonable precautions against mass shooting attacks. *See, e.g., Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 467 P.3d 287, 293 (Colo. 2020) (reversing summary judgment for defendant based on evidence that defendant knew of risk of violence aimed at its facilities and “did not take adequate precautions”); *Piazza v. Kellim*, 377 P.3d 492, 507 (Or. 2016) (plaintiff’s allegations sufficient, if proved, to show that nightclub owner reasonably should have foreseen risk of violent assault on public sidewalk where patrons queued up to enter). Even settlements short of judgment may impose immense costs for such claims. *See generally* Michael Steinlage, *Liability for Mass Shootings: Are We at a Turning Point?*, ABA (Feb. 7, 2020), https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/winter/liability-mass-shootings-are-we-a-turning-point/ (noting \$752 million settlement in litigation arising from 2017 MGM Las Vegas shooting,

³² Teri Figueroa, *Father of girl injured in Chabad of Poway shooting sues over security measures*, San Diego Union-Tribune (Apr. 8, 2021), <https://www.sandiegouniontribune.com/news/courts/story/2021-04-08/father-of-girl-injured-in-chabad-of-poway-shooting-sues-over-security-measures>.

based in part on allegations of failure to implement adequate security measures).

- **Higher Insurance Costs.** In an environment permeated by a heightened risk of gun violence, houses of worship may be compelled to obtain specialized insurance to mitigate the financial risks associated with an armed attack. In recent years, insurance companies have begun to offer “active shooter” or “active assailant” coverage for schools, businesses, and houses of worship.³³ Coverage for schools and churches ranges from \$1 million to \$75 million and typically covers victim lawsuits, building repairs, legal fees, medical expenses, and trauma counselling. The cost of such coverage can exceed \$1,000 for each \$1 million in coverage per year – over and above the cost of regular insurance coverage – and has risen by as much

³³ See Noor Z. Hussain & Carolyn Cohn, *Mass shooting insurance in high demand as U.S. emerges from lockdown*, Reuters (May 13, 2021), <https://www.reuters.com/article/us-usa-shooting-insurance-focus-idCAKBN2CU1NO>; Katie Young & Contessa Brewer, *Rise in mass shootings leads to “rapid growth” in active shooter insurance*, CNBC (Jan. 10, 2020), <https://www.cnbc.com/2020/01/10/rise-in-mass-shootings-boosts-active-shooter-insurance.html>; see also Suzanne Barlyn, *U.S. religious centers buy more insurance after raft of shootings*, Reuters (May 1, 2019) (reporting that Archdiocese of Indianapolis purchased active assailant coverage for 141 parishes and 75 schools), <https://www.reuters.com/article/us-usa-shooting-insurance/u-s-religious-centers-buy-more-insurance-after-raft-of-shootings-idUSKCN1S7437>.

as 50 percent in certain sectors over the past year.³⁴

In short, the additional costs potentially associated with an unrestricted public carry regime could easily impose material financial burdens on already strapped religious communities. Government acts reasonably to regulate the proliferation of publicly carried firearms, reduce the risk of gun violence, and thus minimize imposing needless costs on private parties (including religious institutions) associated with that violence.

C. Unrestricted Public Carry Would Chill the Free Exercise of Religious Belief

The free exercise of religion is one of the fundamental liberties enshrined in and protected by the First Amendment. *See Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (“The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.”); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

³⁴ Al Jazeera, *Demand for ‘active shooter insurance’ on the rise as US reopens* (May 13, 2021), <https://www.aljazeera.com/economy/2021/5/13/demand-for-active-shooter-insurance-on-the-rise-as-us-reopens>.

Inherent in the right of free exercise is the ability to worship in peace and without fear. Houses of worship are intended to provide serene and welcoming spaces in which members of religious communities gather together to practice their faith. They provide “a place of emotional and spiritual refuge,” Dana Massing, *Congregations mull how to keep sacred spaces safe*, AP News (Mar. 2, 2019), <https://apnews.com/article/8ad0dac8b4ea4fb5a3101ce59f7c74e2>, acting as “havens from the cares and concerns of the world,” Wire Reports, *Policy position; Mormon leaders explicitly ban guns from churches*, Christianaction.org (Aug. 28, 2019), <https://christianaction.org/top-stories-of-the-day/mormon-church-leaders-ban-weapons-from-houses-of-worship/>. See also DHS Security Guide, *supra* n.17, at 4 (“Churches, mosques, synagogues, temples, and other sites of religious practice are places of refuge and welcome, with few restrictions on access or admission.”).

The presence of concealed weapons in and around houses of worship necessarily interferes with the serenity of the worship space, creating an environment of fear and unease and chilling congregants’ right of free exercise. As noted by Professors Joseph Blocher and Reva Siegel:

[G]uns inflict more than physical injuries – they transform the public sphere on which a constitutional democracy depends. America must regulate guns not only to protect life, but to protect its citizens’ equal freedoms to speak, assemble, worship, and vote without

fear. If legislators and judges do not focus on the freedoms that gun regulation protects, guns will threaten those freedoms.

Joseph Blocher & Reva Siegel, *Guns Are a Threat to the Body Politic*, *The Atlantic* (Mar. 8, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/guns-are-threat-body-politic/618158/>.³⁵

New York’s “proper cause” provision is an appropriate step towards reducing the proliferation of guns in the public sphere and the chilling effect on free exercise caused by such proliferation. Allowing unrestricted public carry would facilitate the flow of weapons into houses of worship, disturbing the refuge and sanctuary of sacred spaces and threatening the ability of congregants to pray without fear. For individuals weighing whether to join a congregation, or resume in-person participation following the COVID-19 pandemic, the prospect of concealed weapons in the worship space may well deter them altogether –

³⁵ See also Joseph Blocher & Reva Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation under Heller* (NW. U. L. REV. 139, (2021)). This chilling effect has been observed in the university setting, where one study examining the effects of laws allowing the concealed carrying of guns on campus showed that “on average, all members of the campus community – even members who own guns for protection reasons and support allowing guns on their campus – believe that allowing concealed carry on campus will harm the academic atmosphere and diminish feelings of safety in contentious situations.” James A. Shepperd et al., *The Anticipated Consequences of Legalizing Guns on College Campuses* (*Journal of Threat Assessment and Management* 2018, Vol. 5, 21-34), <https://doi.apa.org/doiLanding?doi=10.1037%2Ftam0000097>.

thereby exacerbating recent declines in membership and attendance levels.³⁶

It is unfair and unrealistic to shift to religious institutions the costs and burdens of trying to bar the carrying of concealed weapons onto their physical premises. Leaving aside the costs involved, the screening and security measures needed to police such restrictions themselves damage the peaceful and open atmosphere that is central to such gathering places and contribute to the chilling effect on free exercise. In the words of St. Thomas Becket, Archbishop of Canterbury during the reign of King Henry II, “It is not proper that a house of prayer . . . be made a fortress.”³⁷ *Amici*

³⁶ According to a recent Gallup poll, “fewer than half of U.S. adults say they belong to a church, synagogue or mosque,” highlighting “a dramatic trend away from religious affiliation in recent years among all age groups.” Scott Neuman, *Fewer than Half of US Adults Belong to a Religious Affiliation*, NPR (Mar. 30, 2021), <https://www.npr.org/2021/03/30/982671783/fewer-than-half-of-u-s-adults-belong-to-a-religious-congregation-new-poll-shows>. Similarly, the percentage of Americans who attend religious services at least one or twice a month has dropped by 7 points over the last decade; more Americans now say they attend services a few times a year or less (54%) than say they attend at least monthly (45%). See Pew Research Center, *In U.S., Decline of Christianity Continues at a Rapid Pace* (Oct. 17, 2019), <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

³⁷ As reported by Becket’s biographer, when knights in the service of the king approached the cathedral looking for Becket on December 29, 1170, monks “hastened to close the doors of the church in order to bar the enemies from slaughtering the bishop,” whereupon Becket ordered that the doors be opened, uttering the words quoted above. Medieval Sourcebook: Edward Grim: The Murder of Thomas Becket, <https://sourcebooks.fordham.edu/>

respectfully urge the Court not to adopt a rule of law that prevents states from taking reasonable steps to reduce these burdens and impacts on religious communities and preserve houses of worship as places of comfort and sanctuary where Americans may come together in peace and shared faith.



source/grim-becket.asp (quoting Grim's *Vita S. Thomae, Cantuariensis Archiepiscopi et Martyris*, ed. in James Robertson, *Materials for the Life of Thomas Becket* (London: Rolls Series, 1875-1885), Vol. II).

Echoing the sentiment in more contemporary terms, Bishop Vashti Murphy McKenzie, presiding prelate in the Texas region of the African Methodist Episcopal Church, commented in the wake of the June 2015 mass murder at an affiliated church in Charleston, South Carolina: "My prayer is that we don't get to the point where there's going to be somebody searching your bag coming in and you have to go through metal detectors, because church has always been a sacred place, a safe place, a sanctuary where you could come in freely." Laurie Goodstein, *Charleston Shooting Adds to Security Fears in Places of Worship*, *N.Y. Times* (June 24, 2015), <https://www.nytimes.com/2015/06/25/us/charleston-attack-security-churches.html>.

CONCLUSION

For the foregoing reasons, *Amici* respectfully submit that the Court should affirm the judgment of the Second Circuit Court of Appeals.

Respectfully submitted,

JEFFREY S. TRACHTMAN

Counsel of Record

SUSAN JACQUEMOT

JASON M. MOFF

RACHEL GOOT

MARTIN ASCHER

KRAMER LEVIN NAFTALIS &

FRANKEL LLP

1177 Avenue of the Americas

New York, New York 10036

jtrachtman@kramerlevin.com

Counsel for Amici Curiae

September 21, 2021