

No. 20-843

In the Supreme Court of the United States

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

v.

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

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

**BRIEF OF THE PARTNERSHIP FOR NEW YORK CITY
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE

The Partnership for New York City (the “Partnership” or “Amici”)¹ is a nonprofit membership organization representing New York City’s business leadership and its largest private sector employers. The Partnership’s membership comprises a wide variety of industries, including accounting, advertising, arts and entertainment, consulting, hospitality and retail, education, energy, engineering, financial services, health care, insurance, law, manufacturing, media, real estate, technology, telecommunications, and transportation. Together, they employ more than one million New Yorkers.

The Partnership’s mission is to engage the business community, government, labor, and the nonprofit sector in efforts to advance New York City’s economy and maintain the City’s preeminent position as a center of global commerce, finance, culture, and innovation. The Partnership leverages its network of business and community leaders to formulate and advocate for policies that will advance its mission. The Partnership conducts research and advocates for policies at the city, state, and federal levels. The Partnership is thus well-positioned to inform the Court of the substantial, detrimental effects that fundamentally changing New York’s firearm licensing regime would have on the New York business community’s efforts to maintain the highest levels of competitiveness, to attract and retain talent, and to ensure the safety and security of employees, patrons, and residents.

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

SUMMARY OF ARGUMENT

Petitioners seek an unprecedented and unwarranted expansion of the Second Amendment right to bear arms at the expense of basic public safety. Such an expansion would have grave consequences, especially for highly populated areas like New York City. The unrestricted fire-arm-carry regime that Petitioners request will greatly increase the number of firearms in public circulation, inevitably leading to a commensurate surge in both firearm injuries and deaths, and concomitantly, a downturn in business growth, opportunities, and commercial and residential property values, at the very moment that urban areas like New York City are grappling with the social and economic upheaval wrought by the recent COVID-19 pandemic.

In demanding such a sweeping usurpation of states' rights to make these difficult public policy choices for themselves, Petitioners ask this Court to ignore not only strong countervailing public policy arguments, but also established judicial precedent dating back centuries. The right of state and local governments to enact reasonable firearm regulations tailored to local needs long predates the founding of the republic. From ancient Athens to 13th century England, governments have balanced the rights of their citizenry to be armed against the dangers such armaments pose to public safety, particularly in densely populated areas.

Since its founding, as America has expanded and industrialized and cities have evolved into dense hubs of commerce and activity, state and local governments have crafted firearm regulations to address the unique public safety concerns associated with such population growth. American courts have overwhelmingly upheld these regulations, as this Court acknowledged in *District of Columbia v. Heller*, 554 U.S. 570 (2008). As this Court noted, the

Second Amendment does not confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. However, that virtually unfettered right is precisely what Petitioners seek here. In doing so, they urge the Court to eschew longstanding precedent establishing the authority of local governments to take public safety considerations into account when passing firearm regulations tailored to community concerns.

Home to almost nine million people, New York City is not simply the largest city in the United States. It is also the most densely packed, with over 65,000 residents per square mile in its most populous neighborhoods. The city’s population on any given day is further inflated by vast numbers of tourists and commuters, all of whom intermingle with residents in close quarters along city streets, parks, public transport, office buildings and shops.

In dense city environments, individual actions naturally have outsized effects on others. Gun use—whether by criminals, in self-defense, or simply by mistake—exact deadly collateral damage, a fact borne out by recent news cycles. Even the discharge of firearms by well-meaning, trained professionals, such as the NYPD, can have grave consequences, including serious injury to innocent bystanders.

If Petitioners get their way, business owners and employees will face heightened risk of crime, injury, or death from the proliferation of guns on the streets, and their businesses are likely to suffer the negative economic consequences associated with such developments. Employees and customers may be fearful of coming into the city, particularly on crowded public transit systems. Rather than relying on elected officials to make difficult policy judgments about the appropriate balance between the

right to bear arms and the need to keep city streets safe, each private business will be forced to make these difficult decisions on their own. Worse, each private business will be forced to bear the costs associated with increased security measures. And businesses that do not take such steps may be at a competitive disadvantage in retaining employees and attracting customers who may be fearful for their safety.

This is a particularly delicate time in New York's history, given the human and economic toll taken by the COVID-19 pandemic. Amici have been working closely with community, government, labor, and non-profit leaders to revitalize the city. However, a tenuous recovery is currently being threatened by a resurgence in COVID-19 cases and a rise in crime. Invalidating New York's existing firearm licensing regime would severely hamper those fragile recovery efforts, contravene established precedent, and make New Yorkers less safe.

ARGUMENT

I. NEW YORK'S GUN LICENSING REGIME IS CONSISTENT WITH LONGSTANDING HISTORICAL LIMITATIONS ON THE RIGHT TO BEAR ARMS

This Court recognized in *Heller* the historic right of governments to enact reasonable and necessary firearm regulations in the interests of public safety. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (noting 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”). For centuries, American cities—including New York—have done just that by enacting and enforcing firearm regulations that take into consideration the unique public safety challenges presented by densely populated urban areas. Some jurisdictions imposed a

wholesale ban on *all* gun possession in urban areas, while other jurisdictions provided stringent limitations on the right to bear arms in specific circumstances.²

Such regulations are not unique to American cities. Statutes regulating who can carry weapons and where can be traced back to ancient Athens, where “every Athenian was finable who walked about this city in armour.”³ As early as the 13th and 14th centuries, English cities like London and Northampton enacted regulations of firearms tailored to make dense communities safer.⁴ Under English law, the general prohibition on travelling armed was most strictly enforced in “fairs, markets, and other populated areas.”⁵ In 13th century London, for example, all but certain individuals were forbidden from carrying firearms after curfew.⁶ Similar regulations and prohibitions continued throughout English history, including a 15th century prohibition on “any man of whatsoever estate or condition” from bringing weapons—or “go[ing] armed”—within the city and suburbs, with the exception

² Joseph Blocher, *Firearm Localism*, 123 Yale L. J. 82, 85 (2013).

³ Darrell A.H. Miller, *Institutions and the Second Amendment*, 66 Duke L. J. 69, 101 (2016).

⁴ Blocher, *supra* note 2, at 112–113.

⁵ Eric M. Ruben & Saul Cornell, *Firearm Regionalism & Public Carry: Placing S. Antebellum Case Law in Context*, 125 Yale L. J. Forum 121, 128 (2015).

⁶ See Statutes for the City of London 1285, 13 Edw. 1 (Eng.), reprinted in 1 Statutes of the Realm 102 (London 1810) (making it unlawful to go “about the Streets of the City, after Curfew tolled . . . with Sword or Buckler, or other Arms for doing Mischief . . . nor . . . in any other Manner, unless he be a great Man or other lawful Person of good repute”).

of certain enumerated individuals who were allowed a single sword.⁷

During the Founding era, American cities including New York City, Philadelphia, and Boston either entirely prohibited or highly regulated the firing of weapons and storage of gunpowder.⁸ Regulations tailored to address the particular risks of firearms in densely populated areas continued well into the 19th century, even outside of America's most populated urban centers. For example, in the 1880s, Arizona prohibited pistols and other enumerated weapons "within any settlement, town, village or city,"⁹ and the Idaho territorial government prohibited all weapons from being carried in the city except those carried by law enforcement or active "officers or employees of any express company."¹⁰

The ability of local governments to tailor firearm regulations to protect the specific needs of their communities does not render the Second Amendment a "second class right." Rather, it reflects hundreds of years of precedent, underscored by this Court in *Heller*, that the Second Amendment's guarantee of the right to keep and bear arms must be interpreted in a manner that makes sense for, and is consistent with, the specific public safety needs of the regulated community.

⁷ 3 Calendar of the Close Rolls, Henry IV, at 485 (Jan. 30, 1409, Westminster) (A.E. Stamp ed., 1931).

⁸ Miller, *supra* note 3, at 85.

⁹ An Act Defining and Punishing Certain Offenses Against the Public Peace, No. 13, § 1, 1889 Ariz. Sess. Laws 30, 30 (West).

¹⁰ An Act Regulating the Use and Carrying of Deadly Weapons in Idaho Territory, § 1, 1888 Idaho Sess. Laws 23, 23 (West).

II. THE PRESENCE OF FIREARMS IN DENSE URBAN AREAS PRESENTS UNIQUE CONCERNS

A. New York City's Population Density Makes The Regulation Of Firearms Uniquely Necessary

With a population of 8,804,190 people, New York City is by far the country's largest and most crowded metropolitan area.¹¹ The city's population growth shows no signs of abating, as the results of the 2020 census reveal that 629,057 people moved to New York in the last decade.¹² Even these numbers understate the true count of individuals in the city on any given day. The commuter population nearly doubles the population of Manhattan alone daily.¹³ In addition, New York City is the most visited tourist destination in the country, with 66.6 million visitors in 2019.¹⁴ Taken together, millions more individuals cycle through New York City, increasing its population on any given day.

New York City is unique not just in population, but also population density. The city's inhabitants are closely

¹¹ See *e.g.*, Bobby Caina Calvan, *A bigger apple: New York City population hits 8.8 million*, U.S. News (Aug. 12, 2021), <https://tinyurl.com/3ebd9sr9>; see also Dep't of New York City Planning, *Population Overview* (last visited Sept. 18, 2021), <https://tinyurl.com/v2h5y6af>.

¹² *Id.*

¹³ See Mitchell L. Moss & Carson Qing, NYU Wagner School of Public Service, *The Dynamic Population of Manhattan*, at 11 (Mar. 2012), <https://tinyurl.com/4my7hny4>; Matt Vasilogambros, *Manhattan's and Washington's Populations Nearly Double Every Day with Commuters*, *The Atlantic* (May 22, 2014), <https://tinyurl.com/3uhwm92e>.

¹⁴ Office of the New York State Comptroller, *The Tourism Industry in New York City* (Apr. 2021), <https://tinyurl.com/z7nz6857>.

clustered together, with a population density of 27,800 residents per square mile.¹⁵ This number rises to over 65,000 residents per square mile in the city's densest neighborhoods, which far exceeds the density of any other metropolitan area in the country.¹⁶

In every corner of the city, New Yorkers inhabit and interact in communal spaces in close proximity to one another. Residents, visitors, and commuters alike are packed together, visiting the same office buildings, stores, bars, restaurants, parks, and tourist attractions. Many, if not most, of these spaces have limited exits, creating pedestrian traffic jams. Public spaces frequently experience even greater crowds during the endless stream of festivals, protests, parties, parades, and myriad social events both planned and unplanned.¹⁷ New York City's unique population density is keenly felt on its crowded public transportation systems. Subways, buses, and ferries are frequented every day and at all hours by millions of people.¹⁸

¹⁵ NYU Furman Ctr., *State of New York City's Housing & Neighborhoods 2020* (2020), <https://tinyurl.com/32e7c9fj>.

¹⁶ *Ibid.*; Richard Florida, *America's Truly Densest Metros*, Bloomberg CityLab (2012), <https://tinyurl.com/p5zffyb3>.

¹⁷ See, e.g., Karma Allen, *About 5 million people attended WorldPride in NYC, mayor says*, ABC News (July 2, 2019), <https://tinyurl.com/3jz546by> (noting that approximately 5 million people attended celebrations and parades to LGBTQ rights); Benjamin Mueller & Ashley Southall, *25,000 March in New York to Protest Police Violence*, NY Times (Dec. 13, 2014), <https://tinyurl.com/buebt8ek> (noting that 25,000 people attended demonstrations against police violence in the aftermath of the deaths of individuals killed by police).

¹⁸ Robert Pozarycki, *Another record: NYC daily subway ridership sets new pandemic high*, AMNY (June 28, 2021), <https://tinyurl.com/4carrpek> (noting that approximately 2,585,965 commuters

The living spaces in New York are equally dense. Roughly 84% of city residences are in multi-unit buildings.¹⁹ In Manhattan, single-family homes account for less than 2% of dwellings.²⁰ More than one million homes, constituting approximately one third of all homes in New York City, are in buildings with fifty units or more.²¹

Unrestricted concealed carry—and the effect it will have in increasing the number of individuals who carry firearms—exacerbates the potential for gun violence in New York City.²² New York, like other large cities, already suffers from higher crimes than rural or suburban

rode the city subway and Staten Island Railway on June 25, 2021); see also Metro. Transp. Auth., *Day-by-day ridership numbers* (last visited Sept. 18, 2021), <https://tinyurl.com/5vtyy3zx> (indicating that roughly one million individuals rode city buses in August 2021 on a daily basis); see also *Routes and Schedules*, NYC Ferry (last visited Sept. 18, 2021), <https://tinyurl.com/hxkpmmyv> (noting that over half a million residents live within walking distance of a New York City ferry route).

¹⁹ NYU Furman Ctr., *State of New York City's Housing and Neighborhoods: 2017 Focus: Changes in New York City's Housing Stock*, at 5 (2017), <https://tinyurl.com/3awfr6sx>.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Rouslan I. Karimov, *The Relationship Between Firearm Prevalence and Violent Crime* (RAND Corp. Mar. 2, 2018), <https://tinyurl.com/5wwxneps> (finding that four out of six studies to examine the topic found the prevalence of firearms to be significantly and positively associated with homicide rates); Philip J. Cook & Jens Ludwig, *The Social Costs of Gun Ownership*, 90 J. Pub. Econ 379, 387 (2006) (same); Michael Siegel et al., *The relationship between gun ownership and firearm homicide rates in the United States, 1981–2010*, 103 Am. J. Publ. Health 2098, 2103 (2013) (finding a robust correlation between higher levels of gun ownership and higher firearm homicide rates); Matthew Miller et al., *Firearm Availability and Suicide*,

areas.²³ This pattern carries over into rates of gun crime as well. Multiple studies have concluded that urban areas experience gun homicides more frequently.²⁴ The same is true for nonfatal firearm injuries.²⁵ Any rise in the num-

Homicide, and Unintentional Firearm Deaths Among Women, 79 J. Urban Health 26, 36 (2002) (noting that “[m]ost geographically limited US studies have found a positive relationship between gun density measures and overall homicide and suicide rates”).

²³ See, e.g., FBI, *Crime in the United States, By Community, 2019*, FBI UCR, at table 2 (last visited Sept. 18, 2021), <https://tinyurl.com/ztsx47vt>; Alexia Cooper & Erica L. Smith, U.S. Dep’t of Just., *Homicide Trends in the United States, 1980–2008*, at 29 (2011), <https://tinyurl.com/yjhund9m>; Carl Bogus, *Gun Control and America’s Cities: Public Policy and Politics*, 1 Al. Gov’t L. Rev. 440, 444 (2008).

²⁴ Elinore J. Kaufman et al., *Epidemiologic Trends in Fatal and Nonfatal Firearm Injuries in the US, 2009–2017*, 181 JAMA Internal Med. 237, 239 (2021) (finding rates of rate of fatal assault injuries to be higher in urban than in rural areas); Charles C. Branas et al., *Urban–Rural Shifts in Intentional Firearm Death: Different Causes, Same Results*, 94 Am. J. Public Health 1750, 1752 (2004) (finding that the most urban counties experienced 1.9 times the adjusted firearm homicide rate of the most rural counties).

²⁵ Michael Planty & Jennifer L. Truman, U.S. Dep’t of Jus., *Firearm Violence, 1993–2011*, at 7 (May 2013), <https://tinyurl.com/u3rmcyau> (noting that, in 2011, the rate of nonfatal firearm violence for residents in urban areas was 2.5 per 1,000). Although there are many potential explanations for this variation, one explanation may lie in the fundamental nature of urban life. Compared to their rural or suburban counterparts, dense metropolitan areas have greater numbers of people interacting and residing in close proximity with one another. This unavoidable characteristic of metropolitan life increases gun-related risks as urban areas “have different experiences with gun-related death, injury, and crime than do less densely

ber of individuals carrying firearms will be tied to an inevitable and commensurate rise in the number of gun crimes and result in tragic collateral damage.²⁶

Petitioners do not, after all, envision that they will leave their guns at home when permitted to carry under a new gun licensing regime. On the contrary, Petitioners seek to have their firearms at the ready at all times given the “prospects for confrontations outside the home.” *Petrs. Br. 27*. Yet when that expected violence does break out, the city’s unique density stands to tragically amplify its effects, resulting in far greater numbers of bystanders being maimed or killed by a single gun encounter. Quite simply, “[s]tray bullets are more likely to hit a bystander where there are more bystanders to hit.”²⁷

This outcome is inevitable even in petitioner’s “best-case” scenario where firearms are discharged only by law-abiding citizens against their attackers. Even well-trained shooters struggle to hit their targets when firing during armed confrontations. For example, between 1998 and 2006, the average hit rate for NYPD officers during

populated rural areas.” Blocher, *supra* note 2, at 121 (quoting Justice Breyer’s dissent in *District of Columbia v. Heller*, 554 U.S. at 698-99 (Breyer, J., dissenting)).

²⁶ We would refer the Court to the brief filed by social scientists and public health researchers in support of Respondents, which adeptly identifies and describes the recent modern empirical data that show stricter licensing regimes like the regime in New York are associated with lower rates of violent crime while more lax licensing laws increase violent crime, including homicides, robberies, and aggravated assaults.

²⁷ Blocher, *supra* note 2, at 123.

gunfights was only 18%.²⁸ In cases where there was no return fire, officers still hit their targets only 30% of the time.²⁹ In a confrontation with a gunman at the Empire State Building in 2012, NYPD officers shot nine bystanders, despite firing at the gunman for a total of ten seconds.³⁰

The majority of individuals who will carry and use weapons in an unrestricted carry regime likely will not be trained NYPD officers, and it stands to reason that their firing accuracy will be even worse. In any situation involving a discharged firearm in New York City's crowded spaces, stray bullets are dangerously likely to hit bystanders. In May 2021, for example, three bystanders, including a four-year-old girl, were struck in Times Square by errant bullets.³¹ One month later, another bystander was shot near the same spot.³² In August 2021, two members of a local gang in Queens fired 37 times against rival gang members and struck seven bystanders in the span of mere

²⁸ See Bernard D. Rostker et al., *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* 14 (RAND Corp. 2008), <https://tinyurl.com/wzstz7vs>.

²⁹ *Ibid.*

³⁰ Korva Coleman, *In Killing New York Gunman, Police Also Shot Bystanders*, NPR (Aug. 25, 2012), <https://tinyurl.com/yy5yk8x4>.

³¹ Troy Closson & Michael Levenson, *3 Shot, Including a 4-Year-Old, in Times Square, Police Say*, NY Times (May 8, 2021), <https://tinyurl.com/353tpyww>.

³² Ali Watkins & Ashley Wong, *Police Officers Will 'Flood' Times Square After Another Bystander Is Shot*, NY Times (Jun. 28, 2021), <https://tinyurl.com/yppy5dht>.

seconds.³³ The next day, three bystanders were shot in a separate armed confrontation in another corner of the city.³⁴

These examples are a limited set drawn from previous armed confrontations under the current arms regulation regime. They do not encompass the many more shootings that are likely to occur if these rules were to change and the numbers of guns on the streets of the city were to multiply exponentially. Every day, New Yorkers navigating daily life lose their tempers and engage in arguments or road rage.³⁵ Unrestricted concealed carry has the potential to transform these already tense interactions into deadly mass casualty events if firearms are discharged. And the injury or death count will only rise higher if the shootings occur in one of the city's many captive spaces. Firearms discharged on subways, buses, crowded streets, or in small bodegas, have the potential to increase collateral damage, as innocent bystanders have limited mobility to escape their surroundings.

³³ Ashley Southall & Dana Rubenstein, *Mass Shooting in Queens Leaves 10 Wounded*, NY Times (Aug. 1, 2021), <https://tinyurl.com/tjr8433k>.

³⁴ *3 innocent bystanders shot outside bodega in Washington Heights, Manhattan*, ABC News (Aug. 2, 2021), <https://tinyurl.com/48hw4jvc>.

³⁵ See, e.g., Marc Santia, *Suspect Arrested in NYC Road Rage Attack on Dad, Son*, Channel 4 New York (May 12, 2021), <https://tinyurl.com/ys7hupzx>; Natalie Duddridge, *Worker Hurt In Wild Brawl At Brooklyn Pizza Shop; 'Like A Looney Tunes Cartoon,' Witness Says*, CBS New York (Jul. 27, 2021), <https://tinyurl.com/4373s7pj>; David Meyer, *Maskless subway 'jerk' tangles with female NYC straphanger in vid*, NY Post (Aug. 16, 2021), <https://tinyurl.com/4uv2ch2b>.

These dangers exist even if gun owners take every precaution, carry their firearms responsibly, and decline to engage their weapons in the face of provocation. The reality is that carrying firearms outside the home naturally increases the chance that weapons will be accidentally discharged, stolen,³⁶ including through theft from cars,³⁷ pickpocketing, or gun owners simply losing or dropping their weapons.³⁸ These guns are likely to then fall into hands of the illegal gun market or to be used in other illegal activities.³⁹ The reality is that gun crimes in large cities, such as New York, are often committed with stolen guns, and the majority of such guns are stolen from lawful gun owners.⁴⁰

³⁶ Gun owners who carried were more than three times more likely to have a gun stolen compared to owners who did not carry. See David Hemenway et al., *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4 *Inj. Epidemiology* 1, 3 (2017).

³⁷ See, e.g., Martin Kaste, *More Guns in Cars Mean More Guns Stolen from Cars*, NPR (May 9, 2019), <https://tinyurl.com/v8j7bp89>; Brian Freskos, *Up to 600,000 guns are stolen every year in the US – that's one every minute*, *The Guardian* (Sept. 21, 2016), <https://tinyurl.com/yrs65jp> (noting that the 25 largest cities in the nation reported approximately 4,800 guns stolen from vehicles in 2015).

³⁸ See, e.g., Tom Dinki, *New York State Police's AR-Style Rifle Still Missing from Olean*, *Olean Times Herald* (Nov. 6, 2018), <https://tinyurl.com/2zapf2v4>.

³⁹ See, e.g., Rich Shapiro, Rocco Parascandola & Larry McShane, *NYPD cop Brian Moore was killed with weapon stolen from Georgia pawnshop*, *NY Daily News* (May 6, 2015), <https://tinyurl.com/5eh3jsw>.

⁴⁰ Brian Freskos and Marsha McLeod, *Law Enforcement's Lost and Stolen Gun Problem*, *The Trace* (Nov. 26, 2018), <https://tinyurl.com/4d8jb6ez>; Anthony Fabio et al., *Gaps Continue in Firearm Surveillance: Evidence from a Large U.S. City Bureau of Police*, 10 *Soc. Med.* 13, at 17, 20 (2016).

The recent uptick in violent crimes, especially violent incidents on public transportation, has increased concern among the Partnership’s membership.⁴¹ These concerns are shared with other New Yorkers. In a recent survey, 36% of New Yorkers who relied on the subway before the pandemic reported that they are not using public transit given fears of crime.⁴² Indeed, the Partnership has already expressed concern about the transition back to work for employees, including safety concerns on public transportation.⁴³ Adding liberal concealed carry licensing to this fragile situation will only exacerbate the concerns.

B. An Unrestricted Carry Right Would Be Harmful To Businesses In New York City And Other Populated Areas

In addition to its tragic effects on human life, gun violence in metropolitan areas exacts a pernicious toll on the

⁴¹ Katie Glueck & Jeffrey C. Mays, *Shootings and Subway Attacks Put Crime at Center of N.Y.C. Mayor’s Race*, NY Times (June 26, 2021), <https://tinyurl.com/2tbfnnrp>; Paul Berger & Ben Chapman, *New York City Subway Killings Prompt Push for More Police*, WSJ (Feb. 17, 2021), <https://tinyurl.com/j6smnmwp>; Stephanie Pagones, *New York City violence: 27 people shot as city grapples with subway crime, anti-Semitism: officials*, Fox (May 24, 2021), <https://tinyurl.com/2z2b4pxn>.

⁴² Clayton Guse, *MTA survey says fear of crime keeps New Yorkers from returning to subway*, NY Daily News (Apr. 12, 2021), <https://tinyurl.com/jy45f8j8>; Paul Berger, *New Yorkers Skip the Subway Over Crime Fears*, Wall Street Journal (Apr. 19, 2021), <https://tinyurl.com/dsewsb6h>.

⁴³ *Letter to Mayor Bill de Blasio from NYC Business Leaders*, Partnership for New York City (Sept. 10, 2020), <https://tinyurl.com/v4u9p6j8>; see also Kathryn Wylde, *Getting workers back in the office*, NY Daily News (Apr. 23, 2021), <https://tinyurl.com/ft6eas5p>.

economic health of cities. These effects may include direct costs, such as the costs of hospitalizations from firearms injuries.⁴⁴ There are also indirect costs associated with such violence, such as lost worker productivity.⁴⁵

New York City will not be immune from these economic shocks if the current concealed carry licensing regime is invalidated. The city harbors a diverse community of businesses that range from multinational corporations to small businesses with just a few employees. Although members of the Partnership represent some of the largest businesses in the country, New York City thrives on its smaller “mom and pop” businesses, as well.⁴⁶ These approximately 240,000 businesses are distributed over 302.6 square miles,⁴⁷ with over 100,000 businesses located on Manhattan—the geographically smallest and yet most densely populated of New York City’s five boroughs.

The economy of New York City depends on flourishing businesses of all sizes. It also depends on tourists, residents, and employees feeling safe to travel and work together in such close proximity. The longstanding reasonable restrictions on the right to carry firearms in this densely-packed community play an integral role in keeping businesses safe and economically viable.

A decision by this Court to undermine the longstanding concealed carry licensing regime would upend this

⁴⁴ See, e.g., Faiz Gani et al., *Emergency Department Visits For Firearm-Related Injuries In The United States, 2006-14*, 36 Health Affairs 1729 (2017).

⁴⁵ Jarone Lee et al., *The economic cost of firearm-related injuries in the United States from 2006 to 2010*, 155 Surgery 5, 894-898 (2014).

⁴⁶ U.S. Census, *County Business Patterns: 2019* (last visited Sept. 18, 2021), <https://tinyurl.com/fn9u2e5h>.

⁴⁷ *Ibid.*

balance and almost certainly introduce more firearms and the potential for more gun violence inside or in close proximity to these businesses.⁴⁸ Any such increase in gun violence will have further devastating economic effects on the already fragile New York City economy.

Surges in gun violence can and will significantly reduce the growth of new businesses, as both large and small companies decline to open new storefronts and existing businesses decide to downsize.⁴⁹ Businesses in the service industry, which are built around customer interaction, are particularly sensitive to the effects of gun violence and may see their revenues drop faster than other types of businesses.⁵⁰ Indeed, higher levels of gun violence are correlated with fewer retail and service establishments, as well as fewer new job opportunities.⁵¹ Furthermore, both residential and commercial property values will decrease as levels of gun violence rise.⁵²

⁴⁸ See note 22, *supra*.

⁴⁹ Yasemin Irvin-Erickson et al., *A Neighborhood-Level Analysis of the Economic Impact of Gun Violence*, The Urban Institute, at 8 (Jun. 2017), <https://tinyurl.com/573kytpw>; see also Yasemin Irvin-Erickson et al., *The Effect of Gun Violence on Local Economies*, The Urban Institute (Nov. 2016), <https://tinyurl.com/4jjr64wd>; Robert T. Greenbaum and George E. Tita, *The Impact of Violence Surges on Neighborhood Business Activity*, 41 *Urban Studies* 2495 (2004).

⁵⁰ *Id.*

⁵¹ *A Neighborhood-Level Analysis of the Economic Impact of Gun Violence*, *supra* note 49, at 6.

⁵² Clare Sherman, *The Impact of Mass and Active Shooting Incidents on Residential Real Estate Values*, University of Mississippi (2018), <https://tinyurl.com/ywe5vtpb> (finding a 15-20% decline in residential real estate prices in areas where mass shooting incidents took place); John R. Hipp, George E. Tita & Robert T. Greenbaum, *Drive-Bys and Trade-Ups: Examining the Directionality of the Crime and*

Anecdotal evidence strongly suggests that individuals seek to avoid urban areas plagued with gun crimes, while existing residents in those neighborhoods opt to relocate to safer neighborhoods.⁵³ Businesses often limit their operating hours in response to heightened crime and may also have issues hiring employees willing to travel to and work in affected areas.⁵⁴

Of course, businesses may desire to take steps to protect themselves from losses of revenues, employees, and customers by enforcing their right to restrict the carry of firearms on their premises. *See, e.g., GeorgiaCarry.org v. Georgia*, 687 F.3d 1244, 1261 (11th Cir. 2012) (holding that the Second Amendment right to bear arms did not trump the “fundamental right” of business owners to exclude guns on private property). Courts have consistently recognized that *Heller* did not “abrogate[] the well-established property law, tort law, and criminal law” interests that encompasses a private property owner’s “right to be king of his own castle.” *Id.* at 1264. Similar holdings in the context of employment law have upheld the right

Residential Instability Relationship, 87 *Social Forces* 1778-1812 (2009); Davis S. Kirk & John H. Laub, *Neighborhood Change and Crime in the Modern Metropolis*, 39 *Crime and Justice* 441-502 (2010); Robert J. Shapiro & Kevin A. Hassett, *The Economic Benefits of Reducing Violent Crime: A Case Study of 8 American Cities*, Center for American Progress (2012); George E. Tita et al., *Crime and Residential Choice: A Neighborhood Level Analysis of the Impact of Crime on Housing Prices*, 22 *Quantitative Criminology* 299-317 (2006).

⁵³ *A Neighborhood-Level Analysis of the Economic Impact of Gun Violence*, *supra* note 49, at 6–8.

⁵⁴ *Ibid.*

against employees possessing firearms in buildings.⁵⁵ Should businesses conclude, as is their right, that they are uncomfortable allowing firearms on their premises, a lax concealed carry regime will put owners and employees in precarious situations by requiring them to confront armed customers in order to enforce the businesses' fundamental property rights. Frontline employees will be required to bear the brunt of confrontations over enforcement of a business's policy to restrict firearms on its premises, as with mask and vaccination mandates.⁵⁶ Employees and patrons would be put at a heightened risk of death should any confrontation result in discharge of the firearm.

Even if the confrontation does not lead to death or injury, employees face the threat of liability for the results of such confrontations. In *Ray v. Wal-Mart Stores, Inc.*, the Supreme Court of Utah held that an at-will employee terminated for engaging in self-defense against an armed customer stated a valid cause of action for wrongful termination because he was unable to retreat from the threat of danger. 359 P.3d 614 (2015). The store policy required that “[i]f the Suspect is believed to possess a weapon, the Suspect must not be approached.” However, the facts of the case showed, and the district court agreed, that the

⁵⁵ For example, the Supreme Court of Utah, in *Hansen v. America Online, Inc.*, held that “despite its muscular claim to be one of our state’s clear and substantial public policies, the right of an employee to keep and bear arms cannot supplant the right of an employer to regulate the possession of firearms by employees within the workplace environment.” 96 P.3d 950, 953 (Utah 2004).

⁵⁶ See, e.g., Robert Towey, *Flight Attendants Fear Being ‘Punched In the Face’ Over Mask Enforcement, Union President Says*,” CNBC (Sept. 13, 2021), <https://tinyurl.com/hxnututb>; Jonah E. Bromwich, *Fighting Over Masks in Public Is the New American Pastime*, NY Times (July 21, 2020), <https://tinyurl.com/fm96u6kd>.

employees could not safely disengage from an altercation with a shoplifting customer with a visible gun. *Ray v. Wal-Mart Stores* reflects the unsafe implications of permissive concealed carry laws, which place employees in inescapable situations, especially in businesses where there are already high levels of theft and other petty crimes.

In addition, the lack of clear boundaries between public and private property in New York City as well as the public's unique reliance on mass transportation, make it especially difficult to manage a proliferation of gun rights on the city's streets. For example, New York's Open Streets and Open Storefronts programs transform city streets into public spaces and allow businesses to engage in commercial activity on the sidewalks and streets in front of their stores.⁵⁷ In these circumstances, the line between public and private space becomes blurred and the ability to restrict the carrying of firearms into or near businesses is particularly limited.

Furthermore, in jurisdictions without such concerns, courts have, for example, protected the right of employees to store guns in their cars while parked in a businesses' parking lot. *See Ramsey Winch, Inc. v. Henry*, 555 F.3d 1199, 1209 (10th Cir. 2009) (holding that business owners required to permit employees to store guns in their locked cars in the business's parking lots have "not suffered an unconstitutional infringement of their property rights, but rather are required by the [state law] to recognize a state-protected right of their employees"). Yet employees, tourists, and patrons in New York City and other urban centers typically rely on public transportation, taxis,

⁵⁷ *Open Streets*, NYC Dep't. of Transportation (last visited Sept. 18, 2021), <https://tinyurl.com/ke5py34j>; *Open Storefronts*, NYC Dep't. of Transportation (last visited Sept. 18, 2021), <https://tinyurl.com/37zsvd7m>.

and limousine services, or walking to reach their destination. There is, thus, no equivalent to storage in the car for their firearms. This presents an untenable dilemma for business owners who decide not to allow employees or patrons to bring weapons into their establishments. Such businesses would have to either turn the patrons or employees away entirely or take on the responsibility and potential liability of providing secure weapon-lockers for such visitors or employees.

New York City's business owners have long been able to worry less about enforcing these rights because the state's firearm regulations—including the concealed carry licensing regime at issue here—have provided an important baseline that limits the number of individuals that are carrying firearms while traveling, working, or living within New York City.

An invalidation of the existing concealed carry licensing regime would require New York City's businesses to assume significant burdens as they re-evaluate how to restrict firearms on their property, including increasing costs for security and insurance premiums. New York City-based businesses and tourist attractions have already had to take costly measures to stop individuals from unlawfully bringing firearms onto their premises. For example, one member corporation of the Partnership estimated that its current security system—which was compared to “TSA-like measures” of armed security, metal detectors, and body scans—cost millions of dollars to implement and maintain.

Even with these measures and clear signage stating that firearms are not permitted on the premises, individuals nevertheless attempt to bring concealed weapons onto business premises, including on the premise of the member corporation identified above. This is not because the individuals are mistaken about their ability to bring

the weapons onto the premise—instead, the firearms are typically found after individuals bundle them in clothing, hide them in bags, or use other means to attempt to avoid detection. When these firearms are detected, the member corporation’s security staff notifies the New York City Police Department to remove the individual and the firearm from their premises. While it is possible that not every business in New York City would require such an extensive security infrastructure, most businesses lack the resources, spaces, or personnel to implement these expensive security systems even if they wanted to. Businesses should not need to spend millions of dollars to protect their fundamental property right to limit firearms on their premises.

* * * * *

Local governments have long been able to tailor gun regulations to the needs of their local communities, particularly in densely populated areas. New York’s firearm licensing regime fits squarely within the history and tradition of longstanding urban gun regulation, which help support a thriving business community and tourist destination. For the foregoing reasons, and those stated by the respondents, this Court should affirm the Second Circuit’s ruling.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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