No. 20-843

In the
Supreme Court of the United States

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

Petitioners,

v.

KEVIN P. BRUEN, in His Official Capacity as Superintendent of the New York State Police, RICHARD J. MCNALLY, JR., in His Official Capacity as Justice of the New York Supreme Court, Third Judicial District, and Licensing Officer for Rensselaer County,

Respondents.

On Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

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

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JURISDICTION

This case appears before the Court on writ of certiorari from the Second Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Second Amendment to the U.S. Constitution provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

FACTS OF THE CASE

In 2014 and 2008 respectively, petitioners Mr. Nash and Mr. Koch applied for a public handgun carry license from the Rensselaer County Licensing Officer, Defendant Mr. McNally. JA 122, 124. Both were granted licenses within six months that delineated and restricted their firearm carrying to "Hunting" and "Target" only. Thus, neither Mr. Nash nor Mr. Koch was granted the ability to carry a firearm in public for the purpose of self-defense. JA 122, 124-125. In 2016 and 2017 respectively, petitioners Mr. Nash and Mr. Koch both applied to the Licensing Officer of their County to remove the

"Hunting" and "Target" only demarcations, and instead grant licenses allowing for the carrying of a firearm outside the home for self-defense. JA 122-123, 125.

Both petitioners possess all prerequisite qualifications needed for a Handgun Carry License including but not limited to: no conviction of a felony, no substance or narcotic addiction, and no mental disability. N.Y. PENAL LAW §400.00(1)(b)-(i) Neither faces particular danger to their life. JA 122, 124

Given this, upon request for self-defense licenses from the Licensing Office, both were still denied and their "Hunting" and "Target" licenses were sustained. However, Mr. Nash had referenced the fact that there had been numerous robberies in his neighborhood. In addition, both petitioners Mr. Nash and Mr. Koch cited their substantial firearm training credentials to demonstrate their capabilities for license wielding. JA 123-125

Both were denied because of a supposed lack of "proper cause" needed to differentiate their circumstances from the broader New York public. In other words, a special or atypical need for firearms in public self-defense. N.Y. PENAL LAW §400.00(2)(f); JA 31-33, 123, 125.

Defendant McNally's refusal to grant self-defense licenses to the petitioners because of a lack of "proper cause" sustains the fact that neither

Mr. Nash nor Mr. Koch are able to carry firearms for self-defense today. JA 126.

Because of similarly afflicted member(s), the New York State Rifle and Pistol Association (NYSRPA) joins Mr. Nash and Mr. Koch in this case in the pursuit of securing their constitutionally guaranteed Second Amendment rights. JA 126-128.

SUMMARY OF ARGUMENT

The denial of petitioners' request for handgun carry licenses outside the home in the purpose of self-defense by New York is a flagrant violation of the Second Amendment. Through the careful wording of the text of the Second Amendment, the Founder's intentions that apply *District of Columbia v. Heller, 554 U.S. 570 (2008)* holdings outside the home, the understanding that petitioners do not represent an unrestricted right to the Second Amendment, and the application of strict scrutiny this conclusion is thoroughly supported.

Within the Second Amendment, the text enumerates the right to "keep and bear arms" for all Americans. This qualification of both maintaining arms within the home and an understanding that bearing arms implies an external carrying is crucial. In addition, the Prefatory clause in reference to "A well regulated militia" is not a limiting factor to the scope of the Second Amendment. It does not codify a strict collective right basis of the Second Amendment. Rather, it "announces a purpose" as established by *Heller*. *Id.* at 570, 577. The *Heller* decision upheld the constitutionality of keeping a firearm within the home, but should be expanded to protect the bearing of arms because of the plain language of the text. The Founder's careful wording intended the constitutional right to bear arms for self-defense apply outside the home.

Additionally, petitioners' arguments do not create an unqualified entitlement to carry arms outside the home. Rather, they remove unconstitutional restrictions to carry for self-defense.

Legislative initiatives still enforce restrictions to carry in numerous public safety driven manners. Overturning New York's "proper cause" provision does not create an ability to carry "any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 571, 626. Concurrently, because New York's law is not "narrowly framed" or closely tailored to protecting the public safety of its citizens by restricting handgun licenses, strict scrutiny is applicable and should rule in favor of petitioners. *Grutter v. Bollinger*, 539 U.S. 333 (2003). The vague and nebulous nature of "proper cause" contradicts the ability for New York to fully pursue a compelling state interest in tangency with its methods. An unlimited scope of the rights in the Second Amendment is not created in the absence of New York's law.

ARGUMENT

I. The Language Of The Second Amendment And Past Legal Rationale Support Petitioners' Argument.

It is plainly clear within the language of the text of the Second Amendment that the people have the right to not only "keep" arms but to "bear" them as well. The plain yet powerful language the Founders chose was the core driving force behind the Heller decision. This Court should apply the same rationale to a ruling on this case.

A. The Text Explicitly Enumerates Two Rights.

In this Court's *Heller* decision, it cited *United States v. Sprague*, 282 U.S. 716 (1931) in saying that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 576 (2008). Indeed, this truth embodied the Court's opinion fully. The establishment that the Founders understood two separate rights of not only keeping arms within the home and bearing them in public is plain in the language of the Second Amendment and understandable by every voter then and now. The plain text logic the Court used is present in this case, starting with how the Founders understood the term "bear."

At the time of the founding "bear" unequivocally meant carrying a weapon. The Founders understood "that to 'bear' arms means simply to carry them." Stephen P. Halbrook, *What The Framers Intended: A Linguistic Analysis Of The Right To "Bear Arms",* at 153 (1986). Indeed, "in a game bill drafted by Thomas Jefferson and proposed by James Madison, draftsman of the second amendment" they understood that "to 'bear' a gun meant to carry it about in one's hand or on one's person, as for instance a deer hunter would do." Halbrook, *supra*, at 153. This plain understanding that bearing an arm was to carry it could not have possibly referred to a context within the home. In the context of Jefferson and Madison's writings, it is nonsensical, as others have analogized, to suggest that the Founders would "bear arms" to shoot deer within the rooms of the home or at a target beside the fireplace. The Founders purposely included the word

"keep" in the text of the Second Amendment to account for usage of firearms within the home. Thus, the term "bear" exclusively enumerates the right to carry a firearm outside of the home in a historical and linguistic context of the word. Although this Court has found the term "carry" does not exclusively apply to an "on the person" meaning, it is undeniable that the term "bear" arms refers to a sense of carrying arms outside the home. *Muscarello v. United States,* 524 U.S. 125 (1998).

Enshrined in the earliest precedents of this Court, it is established that "it cannot be presumed that any clause in the constitution is intended to be without effect…" *Marbury v. Madison*, 5 U.S. 137 (1803). We can find no difference within Madison's Second Amendment. Both verbs in the text were intended with great effect and care. The Founders intentionally unearthed two specific rights for the people: to keep and to bear.

B. The Heller Rationale Applies the Founders' Intents Outside the Home.

In this Court's Heller decision, it opined that the Second Amendment was an individual right and that the prefatory clause was just that: a preface and not a controller in the scope of the people's right. This notion of an individual right was present at the Founding of our nation.

In early articles by Tench Coxe submitted and published to the Colonies just ten days after the Bill of Rights was proposed the writings "provide unmistakable evidence that eighteenth-century Americans … endorsed an individual 'right to own

and keep and use arms and consequently of self defense …'" Halbrook, *supra*, at 155. In early state constitutions, such as Pennsylvania's, this notion is similarly found in "That the people have the right to bear arms in defence *of themselves* and the state…" Penn. Const. art. I, § 21. (emphasis added). Throughout the late eighteenth century and early nineteenth century numerous states, including Connecticut and Kentucky, adopted the understanding held in the *Heller* decision. Namely, that an individual right to not only keep but to bear arms must be protected and that the inclusion of a militia does not preclude the average American from owning a firearm. In addition, through the extensive and thorough historical analysis set forth in the *Heller* decision, it is undoubtedly clear that an individual right to keep arms and now to bear arms was present at the time of our nation's Founding. The collective rights interpretation misinterprets the prefatory clause as preclusionary and not contextual.

It is precisely this rationale from Heller that the Second Amendment and what it protects are individual rights guaranteed "as a privilege of American citizenship." *McDonald v. Chicago*, 561 U.S. 746 (2010). The early firearm cases of the Tennessee Supreme Court also upheld the belief that gun rights are "a private individual right, guaranteed to the citizen, not the soldier." *Andrews v. State*, 50 Tenn. 165 (1871). Even in Chief Justice Taney's reviled Dred Scott decision, he implied that all American citizens have the constitutionally protected right "to keep and carry arms wherever they went." *Dred Scott v. Sandford*, 60 U.S. 393 (1856). It is again hard to interpret a "bearing" or carrying of arms

wherever one goes (within reason) to constrict one's right within the home, bearing arms whenever one chooses to move to a different room. Bearing arms is additionally nothing but an individual right. While *Heller* established that, for purposes of self-defense, "The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia," the rationale should be applied to bearing arms outside the home. *Heller*, 554 U.S. at 570, 577. In fact, it has been done so in the past. This Court has held that stun guns are protected under the meaning of the Second Amendment. Throughout this Court's opinion, it is notable to draw attention to the heavy use of Heller rationale. Many of the lower court's rationale was deemed "inconsistent with *Heller*…" *Caetano v. Massachusetts*, 577 U.S. 412 (2016). Given the original understanding that "bear" meant to carry a firearm, typically outside of the home, an individual right would almost certainly extend to bearing a firearm. The right to bear arms enumerated in the Second Amendment, incorporated to all by *McDonald*, and enshrined as an individual right in *Heller* is a constitutional right. If the Founders held carrying arms to be a unique and purposeful inclusion in framing the Second Amendment, and the Second Amendment is to be interpreted as an individual right, then there is complete and compelling overlap in this case with the historical and logical rationale in the *Heller* case. The couplet of verbs in the Second Amendment work hand in hand, brothers in the eyes of the Constitution, protecting the rights of all Americans to keep and bear arms. If this court has held that any law-abiding citizen within reason may keep arms, it cannot be

argued that bearing arms for law-abiding citizens in the name of self-defense is unconstitutional without the required special reason of New York's law. It is hard to argue that an individual rights interpretation of the Second Amendment, protected by precedent, applies to one portion but not another. If *Heller* deems a right to keep arms within the home constitutional, there is no logical basis for denying a right to bear arms within the context of the Second Amendment. This is exceedingly true given this Court has held that "It is settled that the Second Amendment protects an individual right to keep and bear arms that applies against both the Federal Government and the States." *See Id.* (citing *Heller*, 554 U.S. at 570; *McDonald*, 561 U.S. at 742). Clearly this Court stated the individual right of not only keeping arms but bearing arms. In the eye of the Court, keeping arms should not surmount the rights of citizens to bear arms when both have satisfied *Heller* criteria. Justice Thomas' dissent in this Court's denial of writ of certiorari in the case *Peruta v. California* summarizes petitioners' arguments thoroughly in that "the Framers made a clear choice: They reserved to all Americans the right to bear arms for self-defense." *Peruta v. California*, 137 S.Ct. 1995 (2017).

As it stands, the ability for citizens in New York to bear arms outside the home in the name of self-defense is regulated by the State's authority. This reality the petitioners experienced would be "inconceivable" to the Founders. They "would [not] have tolerated the suggestion that a free person has no right to bear arms without the permission of a state authority." Halbrook, *supra*, at 162. From the

earliest America, the notion that governments have tried "to confine this right [self-defense] within the narrowest possible limits" has influenced the protections we enjoy under the Second Amendment. St. George Tucker, *Blackstone's Commentaries* 1 App. 300. (1803).

Thus, the "practical effect" of New York's law makes it illegal and impossible for "typical law-abiding" and "ordinary" citizens such as petitioners from obtaining the constitutional right of bearing arms. (JA 28,29). A requirement of needing "proper cause" or an extraordinary reason that most New York residents do not possess bars a vast majority of people who are not in specific, immediate danger for their lives. This effectively bans the bearing of arms for self-defense in public in New York, despite the right adhering to *Heller* rationale and having been incorporated under this Court's precedents. *Heller*, 554 U.S. at 570 (2008); *McDonald*, 561 U.S. at 742 (2010). Similar to the trigger-lock requirement in *Heller* that made it "impossible for citizens to use arms for the core lawful purpose of self-defense," the "proper cause" licenses requirement intends to severely restrict the usage of handguns for self-defense in New york. *Heller*, 554 U.S. at 630 (2008). Thus it can be said, requiring a special cause, a cause even more extraordinary than the simple right of self-defense the Framers envisioned, completely excludes an overwhelming amount of New York residents from bearing a reasonable arm. This can, as stated before, be seen as no different than the District of Columbia's stringent and unreasonable regulations on handgun ownership within the home during the *Heller* case. The regulations and the

nonfunctional and trigger lock requirements rendered a supermajority of D.C. residents unable to keep firearms within the home and rendered their ability to exercise their rights nonexistent with the nonfunctional requirement. Given that the *Heller* rationale applies wholly to bearing arms in self-defense, such restrictions on an individual, incorporated right must be plainly unconstitutional.

In reality lower courts have already held that "proper cause" requirements for firearm licences violate the Constitution. Notably, the D.C. Circuit, using *Heller* as a large justifier, ruled that "the individual right to carry common firearms beyond the home for self defense—even in densely populated areas, even for those lacking special self-defense needs—falls within the core of the Second Amendment's protections." *Wrenn v. District of Columbia*, 864 F.3d 669 (D.C. Cir. 2017). They struck down the unconstitutional need of a special reason for exercising a right that not only satisfies the logic of *Heller* but also was framed carefully in our nation's Founding. In fact, even in the time of the Framer's, the notion that a government would try to create special reasons for the need to exercise the simple rights enumerated in the Second Amendment was forewarned. It was purely established just over a decade after the Bill of Rights was passed that, as mentioned earlier, "The right of self defence is the first law of nature" and that "in most governments" it has been habitual "to confine this right within the narrowest limits possible." Tucker, *supra*, 1 App. 300. (1803). Returning to the English Bill of Rights and its seventh enumerated right of subjects "having arms", that "the words suitable … have been interpreted to

authorise the prohibition of keeping a gun … So that not one man in five hundred can keep a gun in his house." 3 Eng. Stat. at Large 441; Tucker, *supra*, 1 App. 300. (1803). Tucker's views are confirmed by the Tennessee Supreme Court's description of the restrictions of ancient gun rights as "The evil that was produced by disarming the people." *Aymette v. State*, 21 Tenn. 154 (1840). Tucker's views are again confirmed as reflective of the early American time period given the Georgia Supreme Court's interpretation of the Second Amendment as "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, not such merely as are used by the militia…" *Nunn v. Georgia* 1 Ga. 243 (1846). We see that this historical precedent of using a "proper cause" or extraordinary reason for owning a gun was condemned by even the earliest American governmental commentators.

Under similar restrictions that were found unconstitutional in *Heller*, petitioners face a strikingly reminiscent requirement both criticized by the time of the Framers and, respectfully, by the rationale of this Court's decision not fifteen years earlier. The rationale in *Heller* that struck down the D.C. law can and should be applied to strike down New York's law.

II. Petitioners' Arguments Do Not Create An Unrestricted Right, They Regain Them.

A large concern and argument in opposition to ruling in favor of petitioners is the false notion that unrestricted and dangerous access for concealed-carry handguns would be created in the absence of a proper

cause requirement. This notion is unequivocally incorrect and misinterprets the reality of a ruling in favor of petitioners.

A. Unrestricted Arms Access Is Not Created.

In this Court's opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008), it wisely noted that the Second Amendment "is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. In New York this is exceedingly applicable. Citizens of New York like most other states are not allowed to bring firearms into "sensitive places." *Id.* at 626. For example the New York Penal code enunciates in its own section that citizens are not permitted to "knowingly" possess a firearm on "school grounds." N.Y. Penal Law §§265.01-a. This among countless other regulations that thoroughly detail and restrict the use of firearms and the subsequent degrees of charges for each respective violation make New York one of the most cautious states in respecting "sensitive areas." In fact, the only way for members of the general public such as petitioners to own, keep, or bear a firearm in public or at home is to have a license. To not possess a license is to break the law. N.Y. Penal Law Id. §400.00(1)(a)-(n). Licenses are not the constitutional issue, rather the restriction of licenses to a certain group of people violates the Constitution.

New York is only one of eight "proper" or "good" cause gun law states. All of the aforementioned common sense regulations serve to restrict the bearing of arms in reasonable places where there is a heightened viability of a public safety need. However,

restricting public carry to only individuals with an extreme and present danger to their lives is not one of these common sense regulations. Instead of implementing a common sense regulation of restricted spaces the New York gun law system has deemed that the average law-abiding citizen cannot be trusted to exercise their constitutional right to bear arms in non-sensitive public areas. If the "proper cause" requirement is struck down, sensitive areas will still be protected. Just as Justice Scalia noted how "The Court's opinion should not be taken to cast doubt on longstanding prohibitions" in the "carrying of firearms in sensitive places such as schools and government buildings," in *Heller*, a decision in favor of petitioners does not destroy the sanctity and protection of these sensitive spaces. *Heller*, 554 U.S. 626 (2008). It also does not contradict the text of this Court's earlier stated notion of carrying firearms of "any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. New York citizens still will *not* be able to conceal carry their handgun wherever they want for whatever purpose. Striking down the law has more to do with removing the restricting and vague "proper cause" requirement than with the ill-informed conviction of expanding gun rights to dangerous and irresponsible levels that would harm all New York and American citizens.

B. Petitioners Do Not Expand The Second Amendment.

Indeed, instead of creating a new access right, petitioners seek to restore taken rights. Striking down New York's "proper cause" rule creates no new dangerous access that would destroy the common

sense regulations of the crucially important protections on delicate public grounds. Rather, New York residents regain a constitutionally protected right to carry arms with license in public for their own self-defense discretion, something the Framers enshrined as necessary to a Free State. Without the "proper cause" requirement, ordinary law-abiding citizens have new access to constitutionally protected rights to not only keep but bear arms. The notion of a dangerous new destruction of longstanding and sensible regulations in public spaces with a ruling in favor of petitioners is inane, just as it is in 42 other States across the nation. petitioners seek to secure the right to bear arms as justified earlier, not expand the Second Amendment to widely deemed dangerous scales. Any interpretation otherwise should be disregarded.

III. Strict Scrutiny Applies Because Means-End fails for Respondents.

This Court should apply the strictest level of judicial review on the New York "proper cause" law. Strict scrutiny applies because although the New York State government has a valid and vested government interest, it lacks the ability to be narrowly tailored to this interest. It poses a fundamental constitutional challenge to the rights of the people in their Second Amendment rights. An entire class of New York residents without the ill-defined prerequisite of a "proper cause" are completely barred from exercising their rights. This crucial right must be upheld through the application of strict scrutiny.

A. The New York Law Is Not Narrowly Tailored.

It can be reasonably admitted that New York has a compelling governmental interest with a "general interest in preventing crime." *United States v. Salerno*, 481 U.S. 739 (1987). Within any large city, let alone the largest city in the United States, firearm related crimes and homicides are a need for concern. According to the New York Police Department, the overall index crime rate increased by 11.2% in the last year's time frame ending in October 2021, many of which were gun related. NYPD (2021, November, 3) *NYPD Citywide Crime Statistics For October 2021*. These statistics emphasize the ever present need for gun regulation and gun safety measures in the State of New York.

However, under no circumstance, can the nebulous and subjective nature of a "proper cause" regulation be taken as a tight fit to the ends of this present case in a valid purpose. The means of leaving such a core Amendment of the Bill of Rights, a fundamental constitutional tenet, to the discretion of an officer who must interpret whether or not an applicant for a license demonstrates a "proper cause" is hardly tight at all. According to the law, petitioners who cited a need for self-defense did not demonstrate a "proper cause" for a right that the Framers themselves believed was important: self-defense. The means have next to no correlation to the ends. JA 123-125. In fact, lower Court's have, in our opinion, erroneously decided that the right to self-defense was not a universal right and that other citizens of New York demonstrated a "failure to show any facts demonstrating a need for self-protection distinguishable from that of the general public." *Kachalsky v. Cnty. of Westchester, 701 F.3d 81 (2d Cir.*

2012). Such a founding constitutional right to self-defense should be accessible to all American citizens, not just those in a dire need. The connection between seeking to reduce gun related crimes in New York and leaving all concealed carry handgun licenses be distributed on the meager discretion of a Licensing Officer who must interpret and apply two vague words, "proper cause" is negligible. We find it the legislature's sole responsibility to justify this century-long infringement on an imperative founding right.

In order for the law to be narrowly tailored it would need to prove that the means are able to strictly follow the ends. In order to upend the means chosen by New York State, it would be necessary to prove that a "plausible, less restrictive alternative" would find itself "insufficient to secure" the objective of the ends or purpose. *United States v. Playboy Entertainment Group, Inc.,* 529 U.S. 803 (2000). In our case, efficient background check legislation, mental health care funding and proper alert systems, enforcing the stripping of firearms from the mentally unstable and domestic abusers, and requiring increased standards of firearm safety and handling training, are all plausible legislative measures that would address the purpose of reducing crime in New York. None of these measures fail to address a purpose of the "proper cause" law that the law itself does not account for. With the broad and vague nature of the "proper cause" law, many other gun reform measures have the ability to reduce crime and gun violence in similar ways. All of these alternatives are undeniably less restrictive than simply refusing licenses to those without proper causes in the eyes of

the State. The aforementioned alternatives address overall safety and increased gun security among citizens while being less restrictive than the de facto outright ban of the New York law. *McDonald* was entirely correct in addressing the fact that the Court's Second Amendment interpretation does not disqualify the legislature's "ability to devise solutions" to the "social problems" of firearms. *McDonald v. Chicago*, 561 U.S. 785 (2010). However, stripping the fundamental Second Amendment right to bear arms from citizens who do not demonstrate unique and ever present needs to firearms is not the solution *McDonald* alluded to. Numerous alternatives cover the same umbrella of attempting to reduce violent gun crimes in New York, each of which is arguably and notably less restrictive and more constitutional.

B. Heller Does Not Foreclose Strict Scrutiny And Intermediate Scrutiny Cannot Be Applied.

There arises the notion that the language of the *Heller* decision forecloses or excludes the ability for this Court to apply the highest standard of judicial review. The mention of "presumptively lawful" gun regulations in *Heller* that encompass the common sense prohibition of firearms in "sensitive places such as schools and government buildings" that was mentioned earlier *does not* eliminate the use of strict scrutiny. *Heller*, 554 U.S. 626-627 (2008). These presumptively lawful gun regulations line up with the earlier alternative measures that prove the "proper cause" law is not narrowly tailored to the ends. Enhanced background checks, bolstered mental health and local law enforcement communication,

and the banning of assault weapons, something New York has done, are examples of these "presumptively lawful" gun regulations. However, "proper cause" is not one of these lawful regulations alluded to in *Heller* because of its completely imprecise and subjective nature and its lack of relation to reducing protections for "sensitive places." As explained earlier, the laws *Heller* alludes to as sensible gun regulations deal with places of increased sensitivity. Discussed earlier, striking down the "proper cause" law infringes on none of these sensitive and common sense restrictions. Rather, the imprecise nature of the law is precisely why strict scrutiny should be applied. It does not fall within the set of lawful gun regulations set in the *Heller* decision.

Additionally, intermediate scrutiny cannot be applied to this case. When dealing with such an integral right of the people, explicitly enumerated in the Bill of Rights, strict scrutiny is appropriate. An entire class of citizens, those without extraordinary circumstances, are barred from participating in their full freedom in the Second Amendment. Allowing some fundamental liberties to be assessed using strict scrutiny but not others assumes the idea that some rights are inherently more valuable than others. In the need for requiring governments to prove their interest in restricting certain liberties, the basis by which this court scrutinizes these motives should be equal for fundamental and founding rights. In the preferred position doctrine, the Second Amendment should be included for its emphasis on the unbreakable right to self-defense.

Should this Court apply intermediate scrutiny, the law would still be struck down under this Court's

definition of the "elevated or 'intermediate' level scrutiny." *Craig v. Boren*, 429 U.S. 190 (1976). This Court has held that the law in question must not only be considerably related to the governmental purpose, but it must "demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761 (1993). To a similar point, the 9th Circuit has held that for a law to survive intermediate scrutiny, it must prove that it "will in fact alleviate these harms in a direct and material way." *US West, Inc. v. United States*, 48 F.3d 1092 (9th Cir. 1994). Overall, it cannot be said that the "proper cause" law finds itself directly or materially reducing these harms of the specific government interest. As stated earlier, the vague and loosely fitted requirements of the law cast a wide net over regulating citizens Second Amendment rights as opposed to directly dealing with the gun crisis in New York.

CONCLUSION

For the foregoing reasons, we humbly ask this Court to reverse the 2nd Circuit's decision. We pray this Court sides with petitioners in securing their Second Amendment rights.

Respectfully submitted,

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