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

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BRIEF FOR PETITIONERS/RESPONDENTS

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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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FACTS OF THE CASE

In September of 2014, Petitioners Robert Nash and Brandon Koch, respectively, applied for unrestricted concealed carry licenses as residents in the state of New York. Both men had no criminal history. Mr. Nash had recently participated in a firearm training course and cited recent robberies in his neighborhood as his motive to apply for a concealed carry permit. Mr. Koch also cited his prior experience with firearms and self-defense as his motives. Licensing officers in the state of New York found that neither man established proper cause for unlimited carry licenses, but both men were granted the ability to use their handguns for outdoor activities, target shooting, and hunting away from densely populated places. Mr. Koch, in addition, was authorized to carry his firearm "to and from work." J.A. 114. Petitioners sued Kevin P. Bruen, Superintendent of New York State Policy, and Justice Richard McNally in the U.S. District Court for the Northern District of New York, on the basis that New York's proper-cause requirement violates the Second Amendment to the United States Constitution. Petitioner New York State Rifle and Pistol Association, an organization advocating for gun rights in the state of New York, joined the lawsuit.

The district court dismissed the case, explaining that the proper-cause requirement was not met by the petitioners because they did not at the time "'face any special or unique danger to [their] life,'" App. 6, and that the court was bound by *Kachalsky*, wherein the Second Circuit ruled proper cause exists if there is "an actual and articulable—rather than merely speculative or specious—need for self-defense." *Kachalsky v. County of Westchester*, 701 F.3d at 98, 569 U.S. 918 (2013). The Second Circuit in *Kachalsky* found that government

regulation of citizens' ability to carry firearms in public is subject to intermediate scrutiny, and held that New York's proper-cause requirement satisfies intermediate scrutiny by being substantially related to the state government's interest of "public safety and crime prevention." *Kachalsky*, 701 F.3d at 97. The Second Circuit summarily affirmed the district court's dismissal of Mr. Nash and Mr. Koch's case.

SUMMARY OF ARGUMENT

The proper-cause requirement in New York's law is constitutional. American and English law have for centuries limited carrying firearms in public in the interest of public safety. In 1328, the Statute of Northampton provided "no Man…[be] armed…in Fairs, Markets,…[or] elsewhere." 2 Edw. III, c. 3 (1328). Since the founding, state legislatures have determined the extent of firearm regulation. Since the early nineteenth century, states have differently approached regulating carrying firearms in public. Since the twentieth century, various states have included a good cause requirement for publicly carrying concealed handguns. From the founding to the present, twenty separate states have prohibited carrying arms in public greater than or to the extent of New York's law, which itself has existed over a century, placing it well within Second Amendment history and tradition. By not limiting carrying concealed firearms in public entirely, it satisfies the individual right recognized in *District of Columbia v. Heller* 554 U.S. 570 (2008) to bear arms "for the core lawful purpose of self-defense." By deciding in *Heller*, "[p]utting all…textual elements together…confirmed by the historical background of the Second Amendment," this Court instructs text, history, and tradition alone can be used to judge New York's law. Id. Where it is necessary to account for modern firearm conditions, the test of intermediate scrutiny should be used. Because New York's law is substantially related to ensuring public safety, and is consistent with the text, history, and tradition of the Second Amendment, this Court should affirm.

ARGUMENT

I. The Right to Bear Arms Outside the Home Has Been Deeply Regulated From English Common Law to the Present

A. Common law reflects that the carrying of arms in public places has always been regulated

Due to the fact that the Second Amendment "codified a preexisting right" to keep and bear arms, *District of Columbia v. Heller*, 554 U.S. 570 (2008), we look to English common law cases first to determine "the historical understanding of the scope of the right." Id.

What we find is that "English law restricted firearm possession as early as the thirteenth century." *Young v. Hawaii*, 992 F.3d 765 (2021). Early English common law establishes the tradition of prohibiting the carrying of firearms in densely populated or crowded areas. A 1215 statute of Parliament in London mandated that "none be so hardy to be found going or wandering about the Streets of the City, after Curfew … with Sword or Buckler, or other Arms for doing Mischief, … unless he be a great Man or other lawful Person of good repute," in the interest of protecting against crimes of "Murders, Robberies, and Manslaughters." Statutes for the City of London, 13 Edw. 1. Similarly, the 1313 Coming Armed to Parliament Act, 7 Edw. 2, prohibited any person from entering into the building of Parliament bearing arms. In 1326, regulations in London were strengthened when an order was issued that no person at all was to enter the city armed. *Young v. Hawaii*, 992 F.3d 765 (2021). The Statute of Northampton in 1328 established "no Man great nor small" could "go nor ride armed by night nor by day, in

Fairs, Markets, … nor in no part elsewhere." 2 Edw. III, c. 3 (1328). Lastly, in 1402, at the time of Henry IV, a statute prohibited the carrying of arms in churches. 4 Hen. 4, c. 29 (1402). Each of these, in establishing regulations on arms carried in public, reflects that historically, legislatures have regulated bearing arms in public to a greater degree than a citizen's right to keep arms in their home.

Moreover, the English Parliament also historically based the authorization to carry arms on individualized factors of a citizen's position and qualifications to do so. At the end of the thirteenth century to the beginning of the fourteenth century, a series of royal decrees were issued which "prohibited 'going armed' without the king's permission." *Young*, 992 F.3d at 786-787. By extension of this, Parliament in the fourteenth century prohibited the carrying of specified weapons without "the King's special license." 7 Rich. 2, c. 13 (1383). Furthermore, in the seventeenth century, Parliament authorized any citizen to be disarmed if judged to be "dangerous to the Peace of the Kingdom." City of London Militia Act 1662, 14 Car. 2, c. 3, § 13. Common law therefore also provides for distinctions in the standards for the persons who do and do not qualify to bear arms in public spaces, in the interest of "Peace" and public safety.

Specifically in regard to the carrying of concealed weapons in public, pertaining to the type of firearms license sought by the petitioners in the case at hand, common law provides an even stricter set of regulations. As early as 1541 under King Henry VIII, Parliament prohibited the carrying of "little short handguns … [having caused] diverse detestable and shameful murders, robberies, felonies, riot and rout … to the great peril and continual fear and danger of the Kings most loving subjects." 33 Hen. 8, c. 6 (1541). Queen Elizabeth I declared in 1600 the carrying of "Pistols … [and] other

short pieces" unlawful for the dangers they posed to society. Queen Elizabeth I, *A Proclamation Prohibiting the Use and Cariage of Dagges, Birding Pieces, and Other Gunnes, Contrary to Law* 1 (1600). In 1613, King James I proclaimed, "the bearing of Weapons covertly … hath ever beene … straitly forbidden as carrying with it inevitable danger in the hands of desperate persons." King James I, *A Proclamation Against the Use of Pocket Dags* 1 (1613). These authorities make clear: English common law by the seventeenth century prohibited the ability for regular citizens to carry concealed weapons in public and significantly populated places.

Because of common law's role in determining "the historical understanding of the scope of the right" protected by the Second Amendment, *Heller* at 625, these sources in totality reflect that significant arms regulations have always been understood to be fully consistent with the constitutional right to keep and bear arms ensured by the Second Amendment. The U.S. Constitution articulates this right based on the right provided in the English Bill of Rights in 1689 that "the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law." 1 W. & M., c. 2, 7, in 3 Eng. Stat. at Large 441 (1689). *Heller* refers to the right provided in the English Bill of Rights as, "the predecessor to our Second Amendment." *District of Columbia v. Heller*, 554 U.S. 593 (2008). Blackstone in 1865 reiterates that important phrase in the English Bill of Rights: citizens have the right to "arms for their defence, suitable to their condition and degree, and such *as are allowed by law*." 1 William Blackstone, *Commentaries on the Laws of England* 139 (1765) (emphasis added). Blackstone articulates further, the right is in its nature "a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the

violence of oppression." Ibid. Blackstone clearly articulates that while the rights of "resistance and self-preservation" are natural rights, they exist in every condition only to the extent "allowed by law," and "under due restrictions." The Second Amendment has historically balanced these same interests.

B. The language of the Second Amendment does not confer an unlimited right to carry concealed firearms in any public place

The Second Amendment reads: "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." U.S. Const. Amend. II. To best understand the meaning of the Second Amendment as intended by the framers, it is useful to examine the history of each clause individually, before drawing conclusions.

This Court in *United States v. Miller*, the reigning precedent from this Court on the Second Amendment for almost seventy years, provided, "[the] Second Amendment guarantees no right to keep and bear a firearm that does not have 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'" *United States v. Miller*, et al., 307 U.S. 174 (1939). (quoted in *Lewis v. United States*, 45 U.S. 55, 65 n.8 (1980)). Following the founding of our nation, Joseph Story wrote of "the importance of a well regulated militia" in spite of "among the American people … a growing indifference to any system of militia discipline." *Commentaries on the Constitution of the United States*. 3 vols. Boston, 1833, §§ 1890–91. The protections to keep and bear arms the Second Amendment provides has always been coupled with the understanding these rights must be "well regulated." Without such regulation, "There is certainly no small danger, that indifference may lead to disgust, and

disgust to contempt; and thus gradually undermine all the protection intended by this clause of our national bill of rights." Id.

The Second Amendment is also unique in the Bill of Rights in its inclusion of a prefatory clause indicating its purpose: to ensure "the security of a free State." U.S. Const. Amend. II. The D.C. Circuit case *Parker v. District of Columbia* provided, "The Amendment was drafted in response to the perceived threat to the 'free[dom]' of the 'State[s]' posed by a national standing army controlled by the federal government." *Parker v. District of Columbia*, 478 F.3d 370, 406 (D.C. Cir. 2007) (Henderson, J., dissenting). The understanding of the Second Amendment in its practice was that individual states could determine gun regulations. The Massachusetts Constitution of 1780 provided that, "The people have a right to keep and to bear arms for the common defence. And as in times of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature." *A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts* (1780). A similar sentiment was later echoed by the Kansas Territory Wyandotte Constitution of 1859: "The people have the right to bear arms for their defense and security, but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power." Kansas Territory Wyandotte Constitution (1859). In the interpretation of "State" as meaning the protection of individual states' sovereignty, the meaning of "Militia" is also derived to mean state militias.

However, "free State," in its meaning as it was understood by the founders, is indicated by Blackstone's Commentaries (an influential source at the time of the drafting of the Constitution): "In a land of liberty it is

extremely dangerous to make a distinct order of the profession of arms. In absolute monarchies this is necessary for the safety of the prince, and arises from the main principle: of their constitution, which is that of governing by fear; but in *free states* the profession of a soldier, taken singly and merely as a profession, is justly an object of jealousy." William Blackstone, *Commentaries*, 408 (emphases added); *see* Eugene Volokh, *Necessary to the Security of a Free State*, 83 Notre Dame L. Rev. 1 (2007). John Adams also referred to "free state" in his *A Defence of the Constitutions of Government of the United States of America*, writing, "there can be no constitutional liberty, no free state, no right constitution of a commonwealth, where the people are excluded from the government." John Adams, *A Defence of the Constitutions of Government of the United States of America* (1797). The context in which "free states" was used suggests "states" to mean countries, and "free" to simply mean free from despotism. In fact, in Madison's first draft of the Second Amendment, it was written that a well-regulated militia is "the best security of a free *country*." *Parker*, 478 F.3d at 405 (Henderson, J., dissenting) (emphasis added). This meaning supports the individual right as recognized in *Heller* "to keep and bear arms … for the core lawful purpose of self-defense," *District of Columbia v. Heller*, 554 U.S. 595 (2008), even if it is a right that is partly justified by public interests (for "the security of a free State"). The meaning of "the right of the people" can therefore be understood in a similar way as to the First and Fourth Amendments, and applies to all Americans. As *Parker* concluded, "free State" does mean "a free country," not "an actual political unit of the United States, such as New York." *Parker*, 478 F.3d at 396.

Even with the understanding that the Second Amendment protects an individual right to self-defense through the means of "arms," however, the tradition of the

Second Amendment in this country has always regulated that right. Over a century ago, in the case *Robertson v. Baldwin*, this Court wrote that the Second Amendment "is not infringed by laws prohibiting the carrying of concealed weapons." *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897). *Heller*, too, provides the "example" of Second Amendment "prohibitions on carrying concealed weapons" upheld by "the majority of the nineteenth-century courts to consider the question." *District of Columbia v. Heller*, 554 U.S. 626 (2008). Thus, despite that this Court in *Heller* struck down a law banning the "keep[ing]" of functional armed and fully assembled handguns in the home, it differentiates this from regulation on the "bear[ing]" of concealed guns in public places, which logically are more restrictive based on the governmental interest of public safety in public spaces. *Heller* explained that the right to "keep and bear arms" includes the right to "carry arms for a particular purpose—confrontation." *District of Columbia v. Heller*, 554 U.S. 583-84 (2008). However, the Court also emphasized that this right, "[l]ike most rights … [is] not unlimited." Id. A person does not have the right to carry "any weapon whatsoever in any manner whatsoever and for whatever purpose," or "for any sort of confrontation." Id.

Lastly, relevant here is the actual meaning of "arms" itself under the Second Amendment. We can look to the context in which "arms" was used in writing at the time of the founding. James Madison in Federalist No. 46 writes, "It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against *the British arms*, will be most inclined to deny the possibility of it." James Madison, Federalist 46, The Federalist Papers (emphasis added). In this case,

"arms" is used generally in referring to the British invasion on the whole suggesting that "arms" included all forms of weaponry used by the British for the purpose of war. Madison in the next line, however, goes on to describe "the advantage of being armed, which the Americans possess over the people of almost every other nation." Id. Here, it can be inferred Madison is referring to the specific right of Americans to own guns, the only weapon an American has a right to be armed with that would put them at an "advantage" over other countries without the same protected right. From Madison's writings, therefore, it can be concluded that "arms" meant at the time of the founding all forms of weaponry that would be utilized by an organized in conflict, with a particular emphasis on the rights of Americans to keep and bear firearms.

Blackstone's Commentaries, however, can be used to further qualify what is meant by specific weapons that fall under the understanding of arms at the time of the American Revolution. From a close analysis of the text itself, Blackstone seems to have treated the terms "gun," "pistol," "weapon" and "arms" to mean different things. We see first that "gun" appears only in passages about hunting, as in the following example: "The 1 Jac. I. c. 27, which seems intended for the encouragement of hawking [a form of hunting] … begins with a general prohibition to all persons whatever to kill game with guns, bows, setting-dogs, and nets." William Blackstone, *Commentaries on the Laws of England*, vol. 4 (1769). "Pistol" only appears in passages referencing crimes such as murder, manslaughter, and disturbing the peace. Blackstone writes, "And if a person be indicted for one species of killing, as by poisoning, he cannot be convicted by evidence of a totally different species of death, *as by shooting with a pistol*, or starving." Ibid (emphasis added). Further, he writes discussing burglaries that "As for the

entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient; as, to step over the threshold, to put a hand or a hook in at a window to draw out goods, *or a pistol to demand one's money*, are all of them burglarious entries." Ibid (emphasis added). Significantly, Blackstone also compares the discharge of a pistol in public to riding "an unruly horse" in a crowd as both things that endanger public safety and can have the law applied to it. He writes, "As if a man rides an unruly horse among a crowd of people, (1 East, P. C. 231;) or throws a stone or shoots an arrow over a wall into a public and frequented street, (1 Hale P. C. 475;) or discharges his pistols in a public street upon alighting from his carriage, (1 Stra. 481;) … in any of these cases, though the party may be perfectly innocent of any mischievous intent, still, if death ensues, he is guilty of manslaughter." Ibid. Specifically in the context of Blackstone's own use of "arm" however, he, too, recognizes the just regulation of them in public spaces, writing of a law that "provides for the dissolution of any public meeting by proclamation of a chief civil officer of the place, and persons refusing to depart, are liable to seven years' transportation. Persons attending such meetings with *arms*, bludgeons, flags, banners, &c., are subject to fine and imprisonment for any term not exceeding two years." Ibid (emphasis added). This demonstrates that the right of any citizens to carry, or bear, arms in public spaces, just as in public civil meetings, could be regulated by the law in England at the time of the American Revolution.

C. Nineteenth and twentieth century case law extends this history and tradition of restricting the carrying of firearms in public places

This Court itself has emphasized in *Heller* that "The Court's opinion should not be taken to cast doubt on

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," all of which were described as "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570 (2008). The case of *McDonald v. City of Chicago* "repeat[ed] those assurances." *McDonald v. City of Chicago*, 561 U.S. 742 (2010). These prohibitions referred to by Justice Scalia in his opinion in Heller only date back to around the 1920s, with some as late as the Gun Control Act of 1968. This means that "longstanding prohibitions" and "longstanding" history of the Second Amendment is not limited to regulations in place at the time of the founding, but encompasses the entire tradition of Second Amendment case law as it has evolved through the twentieth century. This means that, overall, we can observe a longstanding tradition of "may issue" regimes, such as New York's, and similar prohibitions in several states throughout this country's history which have permissibly limited the carrying of concealed firearms to include a "good cause" requirement under the Second Amendment.

Legislatures have, since the year the United States declared independence, restricted the carrying of arms in sensitive places. In 1776, Delaware banned arms from being carried at election precincts. *See* Del. Const. of 1776. The states Tennessee, Texas, and Oklahoma followed with further bans on firearms in places such as fairs, race courses, circuses, churches, schools, lectures, ballrooms, social gatherings, exhibitions, conventions, and public assemblies from 1869 to 1890. *See* 1869 Tenn. Pub. Acts 23; 1870 Tex. Gen. Laws 63; 1890 Okla. Sess. Laws 496. The states Wyoming in 1876 and Idaho in 1888 prohibited

the carrying of firearms in villages, towns, and cities. *See* 1876 Wyo. Laws 352; 1888 Idaho Laws 23. Kansas in 1881 also prohibited the carrying of firearms in cities with a population of greater than 15,000. *See* 1881 Kan. Sess. Laws 92. Throughout the entire history of our nation, the carrying of firearms has been regulated in public spaces in the interest of public safety.

In the early 1800s, states began to take different approaches to regulating the carrying of firearms in public. In 1836, Massachusetts enacted a statute limiting public carry to those with "reasonable cause" to fear for their safety. Mass. Rev. Stat. ch. 134, § 16 (1836). Between 1838 and 1871, Maine, Michigan, Minnesota, Oregon, Pennsylvania, Texas, Virginia, West Virginia, and Wisconsin also adopted reasonable-cause laws. While these reasonable-cause laws were less restrictive than the "special need" system New York has implemented, they clearly show that bearing arms in public for self-defense has been a commonly regulated right.

Prohibitions of the public carrying of firearms in general also date back two hundred years, and show that states have for two centuries enacted prohibitions greater than or to the extent of New York's current law. In 1821, Tennessee banned "publicly or privately" the carrying of any "belt or pocket pistol." 1821 Tenn. Pub. Acts 15. In 1860, New Mexico made it illegal to carry "any class of pistols whatever … concealed or otherwise." 1860 N.M. Laws 94. Moreover, in settled areas in 1869, New Mexico Territory banned the carrying of pistols except in cases where a man, his property, or his family was "then and there threatened with danger." 1869 N.M. Laws 72. The state of Texas in 1871 prohibited the carrying of a pistol without a fear of an attack that was "immediate and pressing" and "of such a nature as to alarm a person of ordinary courage," on "reasonable grounds." 1871 Tex.

Gen. Laws 25. In 1875, in Arkansas, it was made illegal to "wear or carry any pistol of any kind whatever." 1875 Ark. Acts 156. Further, the state's Supreme Court upheld this ban because it was an "exercise of the police power of the State *without any infringement of the constitutional right of the citizens*." *Fife v. State*, 31 Ark. 455 (1876) (emphasis added). Drawing even more comparability to New York's current law, the state of West Virginia in 1887 banned the carrying of either a revolver or pistol in public, but permitted a defense for anyone with a "good cause" to fear "death or great bodily harm" in a situation. W. Va. Code, ch. 148, § 7 (1887). In 1889, Arizona banned the carrying of pistols in densely populated areas. 1889 Ariz. Sess. Laws 30.Oklahoma in 1890 banned the carrying of "any pistol" or "revolver" as well. 1890 Okla. Sess. Laws 495. Lastly, Hawaii in 1913 banned the carrying of a pistol in public without show of "good cause." 1913 Haw. Acts 25. Each of these restrictions on the public carrying of firearms can draw a direct comparison to New York's law, and all these laws were upheld under the Second Amendment. In total, from the founding of this country through the twentieth century, twenty separate states have at some point in their history prohibited either the total carrying of handguns in densely populated areas, or have limited the carrying of such a weapon strictly to people who can demonstrate good cause. Given especially that New York's own law has existed since 1913, over one hundred years ago, New York's law itself can be considered "longstanding." Based on this and the fact that so many of other states' laws have paralleled the gun regime system of the state of New York, this shows that New York's law fits well within the history and tradition of the regulation of public carrying firearms.

This Court has also reinforced the constitutionality of restricting concealed carrying of firearms in public. In

1897, in the case of *Robertson v. Baldwin*, this Court found "the right of the people to keep and bear arms … is not infringed by laws prohibiting the carrying of concealed weapons." *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897). Even in *Heller*, Justice Scalia wrote that the Court talked about "prohibitions on carrying concealed weapons" and used this as an explanation as to how "the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 626 (2008). This suggests that limits are an inherent part of exercising the right to "bear" arms in public. Today, states that require a showing of proper cause in order to concealed-carry firearms, like New York, include California, Maryland, New Jersey, Hawaii, and Massachuesettes, many of which have the most densely populated cities in the country. Given that historically, "may issue" regimes and total prohibitions on the concealed carrying of firearms have existed for two centuries, and several states today still implement similar regimes, New York's law is consistent with a longstanding tradition in this country under the Second Amendment to regulate the carrying of firearms in public, especially in densely populated places.

D. New York's proper-cause requirement falls within the history and tradition of firearm regulation

From the extensive history of firearm regulation in public and densely populated areas in the country, we can see that New York's law falls well within the this tradition. It has been established through history and tradition that state governments are permitted to regulate the carrying of firearms in public to a greater extent than the right to the private keeping of arms. It's also clear through laws implemented across states related to pistols and other concealable weapons in the nineteenth century that a state legislature can specifically regulate

concealable arms like handguns when there are risk to public safety. The precedents set by laws in Texas in 1871, West Virginia in 1887, and Hawaii in 1913, all show that states may limit the carrying of arms in public spaces to individuals who can prove a unique need for self-defense. The states Tennessee, New Mexico, Arkansas, Arizona, and Oklahoma have also all had laws restricting the carrying of concealed firearms in public to a *greater* extent than New York's law permissibly under the Second Amendment.

It's also true that New York is not alone in its current "may issue" system. The state of Massachusetts only grants a permit for individuals with "good reason to fear injury" or "other reason." Mass. Ann. Laws ch. 140, § 131(c). The state of Rhode Island requires a "reason to fear an injury to his person or property" or "other proper reason." R.I. Gen. Laws § 11-47-11(a) (2002). California requires "[g]ood cause." Cal. Penal Code § 26150(a)(2) (2021). Maryland requires "good and substantial reason." Md. Code Ann., Pub. Safety § 5-306(a)(6)(i) (2018). New Jersey requires a "justifiable need to carry a handgun." N.J. Stat. Ann. § 2C:58-4 (2021). Lastly, Hawaii requires a "reason to fear injury." Haw. Rev. Stat. Ann. § 134-9(a) (2021). New York's proper-cause requirement therefore clearly falls within the "longstanding" tradition of the Second Amendment as referred to in *Heller*. Moreover, New York's law is less restrictive than laws in our nation's history that have banned carrying arms in densely populated places, and those that banned carrying handguns in public altogether. By allowing for citizens to receive a concealed carry license, New York's law meets the right to self-defense under the Second Amendment as provided by *Heller*, but limits it simply to when a individual can prove a need for self-defense, in the interest of public safety.

II. A State May Reasonably Regulate the Carrying of Firearms in Public Places in the Interest of Public Safety

A. *Heller* and *McDonald* establish that the scope of the right to carry arms for lawful purposes is determined by history and tradition

In *District of Columbia v. Heller*, 554 U.S. (2008), this Court determined that the Second Amendment protects an individual right to self-defense. In *McDonald v. City of Chicago*, 561 U.S. (2010), the Court held that the Fourteenth Amendment makes that right binding on the States. *Heller* instructs that the scope of the right is determined first with the text of the Second Amendment, then the history of the right to keep and bear arms, and lastly the tradition of arms regulation in the United States.

In *Heller*, the Court made an important distinction between the terms keep and bear: "As we have seen throughout history, the "natural meaning [of bearing arms] was unambiguously used to refer to the carrying of weapons outside of an organized militia. The most prominent examples are those most relevant to the Second Amendment: Nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to "bear arms in defense of themselves and the state" or "bear arms in defense of himself and the state."" *Heller*. Justice Scalia also stated that "Johnson defined "keep" as, most relevantly, "[t]o retain; not to lose," and "[t]o have in custody." Johnson 1095. Webster defined it as "[t]o hold; to retain in one's power or possession." Thus, the most natural reading of "keep Arms" in the Second Amendment is to "have weapons." Justice Scalia then used English common law to prove that 'keep' refers to having

ownership of a gun in the home, stating that "Catholics convicted of not attending service in the Church of England suffered certain penalties, one of which was that they were not permitted to "keep arms in their houses." *Commentaries on the Laws of England* 55 (1769). The question of this case does not relate to the keeping of arms, instead we must look to the meaning of bear arms. Adding on to Justice Scalia's interpretation of the meaning, it is important to note that varying definitions of 'bear' requires that the Court inquire as to the original meaning of the phrase, not just the word. In Blackstone, 'bear' meant: to speak in court, as in bear witness, to carry a burden, to carry or contain legal relevance relative to a law or person, to carry goods, and to carry a large, potentially dangerous mammal. Carrying arms was inherited as a privilege under feudalism in the service of a monarch. Stated by Blackstone in his commentaries on the law of England, "The custom of the ancient Germans was to give their young men a shield and a lance in the great council: this was equivalent to the toga virilis of the Romans: before this they were not permitted to bear arms…" *Commentaries on the Laws of England* 55 (1769). He also explained that "in order to qualify their young men to bear arms, presented them in a full assembly with a shield and lance; which ceremony, as formerly hinted, is supposed to have been the original of the feodal knighthood." These quotes suggest that bearing arms meant the carrying of a weapon.

As we saw in *Kachalsky v. Cnty. of Westchester* F.3d 81. the interest in self-defense carries less weight in public than in the home. Because public possession of firearms poses unique risks, history has shown the need for substantial regulation on the bearing of arms. Furthermore, the government has more jurisdiction when protecting public safety outside the home; the home of a

citizen is private, whereas the streets of a state are not. There have always been more restrictions on when, where and how one can 'bear' a weapon than their keeping of said weapon. As we saw in *Heller*, regulations affecting the keeping of guns are rarely upheld if they encroach on the citizens ability to use their firearm in self-defense within the home. A 19th century commentator quoted in *Heller* explained that: "The Constitution secures the right to keep and bear arms… no doubt, a person whose residence or duties involve peculiar peril may keep a pistol for prudent self-defense." *District of Columbia v. Heller*, 554 U.S. 570 (2008). This statement suggests that a person who lacks a need for self-defense also lacks a right to carry arms for that purpose.

When it comes to bearing arms outside the home, this Court has upheld much stricter regimes because of the state and public interest in safety. Every state has a range of regulations on the bearing of arms. *Heller* identified that it is a fundamental right for a person to be able to protect themselves with a handgun inside the home, after analyzing the text of the Second Amendment, English common law, and America's history and tradition. An analysis of history and tradition gave way to a core right of ownership, but a non-core right to bear due to the longstanding tradition of bearing regulations and the effect bearing arms has on public safety. Because the holding in *Heller* protected the individual right to bear arms in one's home, it does not decide this case.

Heller and *McDonald* confirmed the unconstitutionality of laws that "went far beyond the traditional line of gun regulation," but they confirmed that "traditional and common gun laws in the United States remain constitutionally permissible." *District of Columbia v. Heller*, 554 U.S. 570 (2008). In doing so they were able to maintain "the balance historically and constitutionally

struck in the United States between public safety and the individual right to keep and bear arms." Id. Most importantly, *Heller* proved that one has a greater right to self protection when their actions have a lesser chance of harming public safety. As stated by Justice Scalia in *Heller*, "we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*" Id. Although, "text and history and precedent urge that the Second Amendment requires governments to leave responsible citizens ample means for self-defense at home and outside. So a regulation's validity may turn partly on whether surrounding laws leave ample options for keeping and carrying." *Wrenn v. District of Columbia*, No. 16-7025 (DC Cir. 2017). While the right to keep and bear arms isn't unlimited, the American Constitution enshrines the right of lawful citizens to have ample opportunity to protect themselves through the means of deadly force using a pistol. Applying this regime to New York's Sullivan law, we see that petitioner Mr. Koch can bring a gun to work, while hunting, other specific times, and that both petitioners can carry a concealed weapon on their persons as long as they provide ample evidence of an imminent threat to their personal safety. They must do this because their bearing of a pistol on the streets of New York negatively affects the public safety of the state. With the dangers firearms pose to public safety, the petitioners must prove that they have an unique reason to subject the population to the harms of carrying a concealed weapon. In *Young v. Hawaii*, No. 12-17808 (9th Cir. 2018), the court ruled that disallowing weapons from being brought in the public square was constitutional, because bringing a gun into the public square endangered public safety, and the 'scheme of ordered liberty', more than it protected the

individual.

B. This Court has a longstanding tradition of giving deference to state legislatures to regulate firearms

From English common law to modern precedent, different methods of protecting public safety pertaining to restrictions on the Second Amendment right to bear arms have coexisted with each other. Many states use a "shall issue" system, meaning that as long as a person passes the basic requirements set out by state law, the issuing authority *shall issue* them a permit. In "may issue" regimes, such as New York's, if a person passes these basic requirements the issuing authority *may issue* them a permit, provided they demonstrate a special, or specific, need, such as for the purpose of self-defense. "May issue" regimes, including New York's, have coexisted with "shall issue" regimes for over a century of this country's history, reflecting that it has been tradition for states to determine their own gun measures within the bounds of the Second Amendment.

If we look to federal law, we see the types of regulations that legislatures may constitutionally adopt. Congress has disarmed felons and others who may be dangerous or irresponsible. It has forbidden the carrying of arms in sensitive places, such as courthouses and school zones, and it has extensively regulated commerce in arms. All of these regulations have been consistent with the constitution. In *State v. Reid*, 194 N.J. 386, 954 A.2d 503 (N.J. 2008), the court explained that the legislature may "adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals." In *Aymette v. State*, 21 Tenn. 154, 1840 WL 1554 (1840), the court stated that the legislature can regulate arms to protect "the peace and safety of the citizens."

Lastly, this Court in *Carroll v. United States* : 267 U.S. 132 (1925), explained that the legislative body could make "such police regulations as may be necessary for the good of society," and that "these regulations must be left to the wisdom of the legislature, so long as their discretion is kept within reasonable bounds." These cases clearly show that gun regulations must be left up to the scrutiny of the state legislative body.

Under New York's law, "[n]o license shall be issued or renewed" unless the applicant has good moral character, lacks criminal or mental-illness record, and "no good cause exists for the denial of the license." An applicant can receive a premises license, which allows the holder to possess a handgun within the home or place of business. If the applicant wants to receive a license to carry "without regard to employment or place of possession," the applicant must provide proper cause. New York sets the standard to receive a license based on a 'special need' for self protection "distinguishable from that of the general community or of persons engaged in the same profession." A licensing officer's denial of an application is subject to judicial review. Because the licensing official is determining if the person has a good reason to use deadly force, and because a citizen has ample opportunity to bear arms if they demonstrate a specific need, the amended Sullivan Law is constitutional.

C. First Amendment time, place, and manner restrictions provide a comparable standard for regulating Second Amendment rights

While it is important to recognize that the Second Amendment has a distinct history of its own that does not allow perfect analogies to be drawn between it and other rights, the example of First Amendment limitations on the time, place, and manner with which a person can exercise

their protected freedoms can offer some guidance on restriction of firearms addressing rights under the Second Amendment. A person cannot yell bomb or fire inside a building unless they are almost positive they see one, because it is detrimental to the public safety and ordered liberty of our country. Because holding large assemblies or protests can disturb ordered liberty and public safety, one must obtain permission in the form of a license to ensure they won't cause damage with their speech or assembly, and so they can be held responsible if they do so. Freedom of speech and freedom of press are fundamental rights, yet publishers cannot publish documents or articles revealing certain government actions due to the harm said action would have on the security and safety of the people and country. Moreover, time, and manner restrictions of the First Amendment are weighed by intermediate, not strict, scrutiny. Because the Court recognizes that the dangers of false political speech are not as deadly as the dangers of false commercial speech, commercial speech is much more regulated. As we saw in *Wood v. Moss*, moving anti-Bush supporters to have Bush fans closer to him was not viewpoint discrimination because the focus was on personal security. Bush's protection detail decided that having anti-Bush supporters close in proximity to President Bush was an inherent danger, so they organized a safer placement of people. The Court found in *Wood* that the actions of the Secret Service agents were responding directly to the security risk a group of people posed, due to their location, so the moving of those people, even as a restriction on where they could assemble to exercise speech, was determined by this Court not to be a violation of the First Amendment. The same can hold true with restrictions of firearms in public; this, when it is substantially related to the interest of public safety, does not violate the Second Amendment.

Words can hurt, but firearms can kill. In populated areas with high gun violence, a person should not be able to carry a gun on the street unless they have good reason to believe they are in danger. This is what New York's system allows for. We can also draw an analogy to licensing regimes for driver's licenses. Inherent in common law back to before the founding was the right to travel. At the time of the founding, this was done with a horse drawn carriage, or by riding a horse. There were laws that regulated these vehicles, but nothing remotely as restrictive as speed limits, stop signs, the duty to stop for safety and sobriety checks, and even the recently created duty to stop for warrantless blood draws. The common law right at the time of our founding to transportation became a privilege because of the danger it imposes. Sure a horse can trampel someone, but a car can go through a building. When technology evolved, the danger inherent with the right increased, and new restrictions began to arise. We saw the same happen with handguns in the 1920s. Similarly to cars, the danger someone with a flintlock pistol imposes is much less than one with a Magnum .45. Reload speed, accuracy, stopping power, and durability have all greatly increased. A flintlock versus any modern pistol is comparable to the difference between a horse drawn buggy and a freightliner. This Court should therefore rule that given the empirical dangers of concealed-carry firearms, regulations should be left up to the discretion of the state, and that only being allowed to exercise this right if one has special need to do so is constitutional because of the dangers the right imposes. While it is imperative that most American citizens are able to operate a motor vehicle, there is a highly regulated licensing regime because allowing anyone to hop in a car and drive would impose huge public safety risks and disturb ordered liberty.

Even if we look at the restrictions on the right to bear arms itself, we have seen that many different types of licensing regimes and time and place restrictions have passed constitutional muster. In the state of New York, for the last century, the citizens have still had the option to protect themselves using a pistol, but first they need to show an 'actual and articulable' reason for needing to do so because of the harms carrying a pistol imposes on public safety. Different states have different restrictions. In Florida, teachers can carry arms within a school, but in Connecticut only a school resource officer has that right.

III. New York's Proper-Cause Requirement Satisfies Means-End Scrutiny

A. Intermediate scrutiny is the modern standard of review most consistent with the history and tradition of Second Amendment rulings

In Palko v. Connecticut, 302 U.S. 319 . 1937, Justice Cardoze writing for an 8-1 majority stated that "[S]pecific pledges of particular amendments have been found to be implicit in the concept of ordered liberty . . . The line of division may seem to be wavering and broken [but] . . . There emerges the perception of a rationalizing principle which gives to discrete instances a proper order and coherence . . . [T]hey are of the very essence of a scheme of ordered liberty . . . "principle[s] of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Palko v. Connecticut*, 302 U.S. 319 (1937) (quoting *Snyder v. Massachusetts* (1934)). The Sullivan laws directly attribute to protection of ordered liberty in New York. Limiting the number of concealed carry licenses given out to only those who can show a need establishes a safer state. The right to keep arms has been protected as a fundamental right since the founding of our country. Joseph Story in *A Familiar Exposition of the*

Constitution of the United States written in 1834 explained that the right to a militia can only be guaranteed if the individual right to bear arms is protected. "One of the ordinary modes, by which tyrants accomplish their purposes… is, by disarming the people, and making it an offense to keep arms." Using the fundamentality test established by this Court in *Palko*, if the law makes it impossible to exercise said right, in this case the "lawful purpose of self-defense" it is therefore unconstitutional as long as this right is "implicit to the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319. 1937. Yet, New York's law still enables the population to carry a pistol for the purpose of self-defense, as long as they provide substantial evidence for the need to do so that is unique from their fellow citizens. Because the law does not make it impossible to exercise the right, we must look to other balancing tests. *Marbury v. Madison,* 5 U.S. 137 (1803), established judicial review when the Court declared an act of congress unconstitutional. Over time, three different balancing tests were created: rational-basis review, intermediate scrutiny, and strict scrutiny. Rational basis review is the least restrictive of the three tests. It is invoked when no fundamental rights or suspect classifications are at issue. To pass the rational-basis test, originating from McCulloch v. Maryland, 17 U.S. 316 (1819), the law must have a 'legitimate state interest' and there must be a 'rational connection between the law's means and ends'. Intermediate scrutiny, which was created in *Craig v. Boren*, 429 U.S. 190 (1976), is invoked when a state or federal government passes a law which negatively affects certain classes or rights. To pass intermediate scrutiny, the law must further an 'important government interest' and must do so 'by means that are substantially related' to that interest. In the case of *Carolene Products Co., 304 U.S. 144 (1938)*, the Court created a new balancing test (strict scrutiny) in footnote

four. This footnote explains that certain legislative acts may give rise to a higher level of scrutiny. It states that, if a law appears on its face to violate a provision of the U.S. Constitution, especially in the Bill of Rights. Or if a law restricts the political process that could repeal an undesirable law. And lastly, if it discriminates against discrete and insular minorities. In this case, we believe the modern standard of review that corresponds most closely to the traditional approach and the text, is intermediate scrutiny. Because the right to bear arms outside the home is not the core right identified in *Heller*, and has not been found to be a fundamental right after examining the history and tradition of our country, intermediate scrutiny should be used. Moreover, if we look at what balancing test is traditionally used to decide Second Amendment questions, we see that it is intermediate scrutiny.

B. New York's proper-cause requirement satisfies intermediate scrutiny

The right to bear arms within the home and for self-defense have been seen as necessary to the concept of ordered liberty and the security of a free state for American citizens, and under New York's licensing regime, they have both options. New York created a licensing system that makes it illegal to 'bear arms' outside the home unless the citizen can provide an atypical need to exercise the right that distinguishes them from the general community. A citizen can keep a gun inside their home, and have easy access to it if they are in danger. But, if a citizen feels the need to carry a pistol in public settings in hopes of protecting themselves, they provide evidence that is 'actual and articulable.'

New York's licensing regime does not create a total ban like the one identified in *Heller*. Explained concisely

by Chelsea Tisosky in *The Constitutionality of "special need" Laws*, "a policy that gives certain people X while withholding X from others cannot, by definition, be characterized as a total ban on X." Chelsea Tisosky, *The Constitutionality of "special need" Laws*. Under New York's law, many citizens can have guns inside the home, many can carry to work, for target practice, hunting, and some even for self-defense. In most counties, including Rensselaer County, where petitioners live, licensing officers are state court judges. In New York City they are local police commissioners or the sheriff. This statute does not make it impossible to exercise the right to bear arms under the Second Amendment, because the granting of a license is determined by an official assessing if the applicant has a reason to believe that they will encounter "objective circumstances justify[ing] the use of deadly force." *Kachalsky*, 701 F.3d at 100. While revolver killings were steadily increasing, instead of letting the people freely exercise the fundamental right of carrying a weapon for self-defense, the highly populated area of New York created legislation based on scientific research to reduce the amount of violent crimes in their state.

To satisfy intermediate scrutiny, we must conclude that New York's Sullivan law is substantially related to achieving a greater public safety. Before we empirically conclude that New York's Sullivan law does in fact reduce the amount of gun violence, we emphasize that the Daubert test allows for scientific evidence to influence judicial decisions. Courts and states can measure security empirically by any scientific conclusion that survives analysis under Daubert. The Constitution was cognizant that new learning matters and can innovate new ways to protect rights and promote state interests. After all, Article I, Section 8, Clause 8, grants Congress the enumerated power "To promote the progress of science and

useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." U.S. Const., Article I, Section 8, Clause 8. The Daubert test is used when a trial judge needs to assess whether a scientific testimony is true. Under this standard, there are five factors to be considered. The first is whether the theory or technique in question can be and has been tested; the second being whether it has been subjected to peer review and publication; the third being its known or potential error rate; the fourth being the existence and maintenance of standards controlling its operation; and lastly, whether it has attracted widespread acceptance within a relevant scientific community. This test is the standard in all federal courts and many state courts.

Evidence that satisfies the Daubert standard empirically demonstrates that New York's concealed-carry regulatory regime promotes the government and public interest in safety. A free state, as defined before, has the ability to defend themselves against tyranny. These individuals also have the right to protect themselves in the home by the use of a pistol, and can do the same on the street when they are in imminent danger. Due to the fact that *Heller* identified the Second Amendment's power to create security, not just of a 'free state' but of one's person, evidence satisfying the Daubert standard promotes the goals of the Second Amendment.

For the past half century, the per-capita rate of homicides using firearms in the U.S. are at least twenty to twenty-five times higher than in other advanced democracies. Per-capita suicides using guns are around seven to eight times higher as well. Erin Grinshteyn, PhD, David Hemenway, PhD: *Violent Death Rates: The U.S. Compared with Other High-income OECD Countries, The American Journal of Medicin*e. While the U.S is an outlier

internationally, it doesn't point to a problem in all states. CDC data each year from 2005-2019, shows that all of the top five states with the lowest firearm mortality rates did not have shall issue permitting regimes for concealed carry weapons. Furthermore, many studies have been conducted to measure the effects of gun ownership rates and concealed-carry laws in all 50 states. One study in particular, done by Professor Emma Fridel titled *Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide*, examined these variables from 1991 to 2016, found that while controlling for variables like unemployment rates, poverty levels, and states' mental health expenditures, gun deaths are 11% less likely in states with "may issue regimes". She also found that higher rates of firearm ownership overall are associated with a 53.5% increase in the likelihood of a mass shooting. Most importantly, Fridel's research showed that concealed carry laws are a stronger predictor of firearm homicides than gun ownership, stating that: "Concealed-carry laws are such a strong effect that it drowns the firearm ownership rate out." *Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide.* While her findings are far from unique, we highlight them because they are the most recent and because they draw on data across a long period of time. The Proceedings of the National Academies of Science published *Changes in firearm mortality following the implementation of state laws regulating firearm access and use,* in which they found that "state laws restricting firearm storage and use are associated with a subsequent 11% decrease in the firearms-related death rate. In a hypothetical situation in which there are 39,000 firearms deaths nationally under the permissive combination of these three laws, we expect 4,475 (80% CI, 1,761 to 6,949)

more deaths nationally than under the restrictive combination of these laws." More importantly, "the probability of being associated with an increase in firearm-related deaths was 0.87 for RTC laws." Terry L. Schell, Matthew Cefalu, Beth Ann Griffin, Rosanna Smart, and Andrew R. Morral: *Changes in firearm mortality following the implementation of state laws regulating firearm access and use.* Another study, done by Am J Public health in 2019, written by Doucette ML, Crifasi CK, Frattaroli S. titled *Right-to-carry Laws and Firearm Workplace Homicides: A longitudinal Analysis (1992-2017),* concluded that "From 1992 to 2017, the average effect of having an RTC law was significantly associated with 29% higher rates of firearm WPHs (95% confidence interval [CI] = 1.14, 1.45)." Also stating that "findings indicate that RTC laws likely pose a threat to worker safety and contribute to the recent body of literature that finds RTC laws are associated with increased incidence of violence." Doucette ML, Crifasi CK, Frattaroli S. titled *Right-to-carry Laws and Firearm Workplace Homicides: A longitudinal Analysis (1992-2017).*

The assumption of the Court seems to be that there is social science on each side, this is false. If we look to the most referenced Brief of Amici Curiae William English, and The Center For Human Liberty In Support Of petitioners, we see that it focuses on disproving the results of the Donohue study. Although we believe these criticisms are incorrect, the consensus is that Donahue's conclusions are "Generally accepted as reliable in the relevant scientific community." Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579 (1993). Because there is a scientific consensus that shall issue concealed carry regimes incur more firearms deaths, the Sullivan law empirically reduces the amount of gun violence and gun

deaths in New York State. *See* Daniel W. Webster, ScD, MPH Cassandra K. Crifasi, PhD, MPH Jon S. Vernick, JD, MPH Alexander McCourt, JD, MPH, *Concealed Carry of Firearms: Fact vs. Fiction*; Mitchell L. Doucette, Maria T. Bulzacchelli, Shannon Frattaroli and Cassandra K. Crifasi, *Workplace homicides committed by firearm; recent trends and narrative text analysis*; Crifasi CK, Merrill-Francis M, McCourt A, Vernick JS, Wintemute GJ, Webster DW. J Urban Health, Association between Firearm Laws and Homicide in Urban Counties; Crifasi C. Appl Health Econ Health Policy. 2018, Gun Policy in the United States: Evidence-Based Strategies to Reduce Gun Violence.

Applying this research, it is reasonable to expect significantly more gun deaths in these states with cities of high populations if the Court mandates "shall issue" concealed-carry permitting across our country. This outcome goes against the government and public safety and the goals of the second amendment.

The petitioners argue that the right to carry arms is a fundamental right, which gives rise to a higher form of scrutiny, this being strict. As stated before, this test has two prongs. The first being that the legislature must have passed the law to further a 'compelling governmental interest,' and must have narrowly tailored the law to achieve that interest. While both sides agree that public safety is a compelling governmental interest, the disagreement resides in whether the Sullivan law is narrowly tailored to achieve assurance of public safety. By restricting the ability to defend oneself by deadly means using a pistol unless imminent danger exists, New York is protecting the public and state interest of safety while ensuring that citizens can rightfully defend themselves. There is no less restrictive way to get the same reduction in gun violence New York and many other states are

pursuing. The laws would be unconstitutional if an ordinary citizen couldn't receive a license when in imminent danger, but they are as narrowly tailored as possible to ensure the right to self-defense via the use of a pistol remains an option when needed while protecting public safety to the highest extent. McCulloch stated that something is not narrowly tailored when it "burden[s] substantially more [protected conduct] than is necessary to further the government's legitimate interests." McCulloch v. Maryland, 17 U.S. 316 (1819). Not only is public safety a government interest, it is the highest interest of the government and the people. Primitive instincts make us consider the safety of our surroundings and the security of our person before anything else. While the right of a citizen to protect themselves with a pistol is a pre-existing right crystallized in the Constitution, it does not and never will hold more weight than the interest of public safety. A state can choose to value the public safety of their citizens over this right as long as citizens still have the ample opportunity to defend themselves with a weapon when need be.

CONCLUSION

The longstanding proper-cause requirement of New York's law is constitutional, and does not violate the Second Amendment. To review a law's constitutionality under the Second Amendment, this Court should first look to the text, history, and tradition of the right. In Heller, this Court wrote that these sources on their own can determine a law's constitutionality, by striking down a separate law regulating the possession of firearms in the home, but emphasizing that there are still a broad range of long standing regulations on firearms permissible under the Second Amendment. New York's law, itself a century old, is one such regulation, and fits well within the tradition of legislatures in England, the colonies, and in the States having enacted a variety of regulations on the carrying of firearms in public, in the interest of public safety. In fact, New York's law is less restrictive than a number of laws that existed from the founding through the nineteenth century. Moreover, we believe the history is clear, but if this Court finds the history ambiguous, it should weigh this case using intermediate scrutiny, which New York's law also satisfies. There is a clear link between the law and public safety, the law is limited to the carrying of handguns or similar firearms in public, and allows for people who show a need to carry a handgun for self-defense to do so. This court should therefore affirm the decision of the Second Circuit.

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