

No. 20-843

---

---

IN THE  
**Supreme Court of the United States**

---

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

v.

KEVIN BRUEN, in His Official Capacity as  
Superintendent of the New York State Police, ET AL.,  
*Respondents.*

---

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

---

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

---

GEORGIA M. PESTANA  
*Corporation Counsel  
of the City of New York*

RICHARD DEARING  
*Counsel of Record*

CLAUDE S. PLATTON  
INGRID R. GUSTAFSON  
ELINA DRUKER  
100 Church Street  
New York, NY 10007  
(212) 356-2500  
rdearing@law.nyc.gov

*Counsel for Amicus Curiae*

September 21, 2021

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	1
ARGUMENT.....	5
I.    The Second Amendment permits states to experiment with firearms regulations to meet the needs of their communities...	5
II.   New York’s proper-cause requirement is the result of generations of government experimentation in response to evolving public-safety challenges in the City and the State .....	8
A.  At the Founding, New York’s firearms regulations varied according to local conditions .....	9
B.  New York adopted the proper-cause requirement in response to changing firearms technology and increasing gun crime after other approaches were unsuccessful.....	12
III.  The proper-cause requirement allows New York’s diverse communities to regulate concealed carry in line with local conditions and public-safety needs .....	20
A.  The City applies the proper-cause requirement relatively rigorously, in line with its unique conditions and public-safety concerns .....	20

TABLE OF CONTENTS—Continued

	Page
B. Petitioners elide the substantial local variation in the application of the proper-cause requirement.....	27
C. The proper-cause requirement reflects a public-safety judgment that other states have made, courts have upheld, and this Court should not lightly disturb.....	29
CONCLUSION .....	31
APPENDIX: HISTORICAL LAWS .....	1a

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Bonidy v. U.S. Postal Serv.</i> , 790 F.3d 1121 (10th Cir. 2015).....	30
<i>Dist. of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	6, 7, 23
<i>Drake v. Filko</i> , 724 F.3d 426 (3d Cir. 2013) .....	30
<i>Eddy v. Kirk</i> , 195 A.D.2d 1009 (4th Dep’t 1993) .....	28
<i>Gould v. Morgan</i> , 907 F.3d 659 (1st Cir. 2018) .....	25, 30
<i>In re Bastiani</i> , 23 Misc. 3d 235 (N.Y. Cnty. Ct. 2008).....	28
<i>In re O’Connor</i> , 154 Misc. 2d 694 (N.Y. Cnty. Ct. 1992)....	28
<i>Kachalsky v. Cnty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012) .....	30
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	5
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932).....	5
<i>O’Brien v. Keegan</i> , 87 N.Y.2d 436 (1996) .....	28
<i>Oregon v. Ice</i> , 555 U.S. 160 (2009).....	5
<i>Osterweil v. Bartlett</i> , 21 N.Y.3d 580 (2013) .....	21

## TABLE OF AUTHORITIES—Continued

	Page
<i>Patterson v. New York</i> , 432 U.S. 197 (1977).....	5
<i>Smith v. Robbins</i> , 528 U.S. 259 (2000).....	5
<i>United States v. Lopez</i> , 514 U.S. 549 (1995).....	5
<i>Woollard v. Gallagher</i> , 712 F.3d 865 (4th Cir. 2013).....	24, 30

## STATUTES

A Law for the Better Securing of the City of New York from the Danger of Gun Powder (1763) .....	11
A Law to Prevent Evil Practices in the City of Brooklyn (1836).....	11
A Law to Prevent the Firing of Guns in the City of New York (1803) .....	11
An Act to Revise the Charter of the City of Buffalo (Mar. 27, 1891).....	16
An Ordinance Prohibiting the Obstructing of Side-Walks, and for Other Purposes (1863), reprinted in Charter of the City of Schenectady [Passed Apr. 21, 1862, with Ordinances, Etc.] (1869) .....	15
An Ordinance Regulating the Carrying of Loaded Firearms and Other Dangerous Weapons in the City of Troy (May 4, 1905), reprinted in Municipal Ordi- nances of the City of Troy (1905) .....	16

## TABLE OF AUTHORITIES—Continued

	Page
An Ordinance Regulating the Carrying of Loaded Firearms in the City of Albany (Mar. 6, 1905), reprinted in Municipal Code of the City of Albany, N.Y. (1910)...	16
Ark. Acts 191, An Act to Preserve the Public Peace and Prevent Crime, ch. XCVI (1881).....	8
Carrying of Pistols, undated, reprinted in Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in Force January 1, 1881 (Elliott F. Shepard & Ebenezer B. Shafer eds., 1881) (New York, N.Y.) .....	16
City of Elmira—Official Notice, July 22, 1892, reprinted in Elmira Gazette, July 28, 1892 (Elmira, N.Y.).....	16
Dodge City, Kan. Ordinance 16, § 11 (1876).....	8
John Worth Edmonds, Statutes at Large of the State of New York, Comprising the Revised Statutes, as They Existed on the 1st Day of January, 1867, and All the General Public Statutes Then in Force (2d Ed. 1869) .....	15
Ky. Acts 100, An Act to Prevent Persons in This Commonwealth from Wearing Concealed Arms (1813).....	7

## TABLE OF AUTHORITIES—Continued

	Page
La. Acts 172, An Act Against Carrying Concealed Weapons, and Going Armed in Public Places in an Unnecessary Manner (1813).....	7
Mass. Acts 150, An Act to Regulate by License the Carrying of Concealed Weapons, ch. 172 (1906) .....	7
Neb. Laws 210, An Ordinance Regulating and Prohibiting the Use of Fire-arms, Fire-works and Cannon in the City of Lincoln (1895) .....	7
Laws of N.Y. 152, An Act to Prevent the Firing of Guns and Other Fire Arms Within This State, on Certain Days Therein Mentioned, ch. 81 (1785) .....	11
Laws of N.Y. 627, A Law for the Better Securing of the City of New York from the Danger of Gun Powder (1784) .....	11
N.Y. Act to Amend the Penal Law, in Relation to Pistol Licenses, L. 1935, ch. 508 .....	21
N.Y. Act to Amend the Penal Law, in Relation to the Sale, Possession, Use and Licensing of Firearms, L. 1931, ch. 792...	21
N.Y. City, N.Y., Act of Apr. 22, 1786, reprinted in The Daily Advertiser (N.Y., N.Y.) (Dec. 30, 1788) .....	11
N.Y. Laws 138, Ordinances of New Amsterdam (1652) .....	10

## TABLE OF AUTHORITIES—Continued

	Page
N.Y. Laws 442, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons, ch. 195 (1911) ....	17
N.Y. Laws 1627, An Act to Amend the Penal Law Generally, in Relation to the Carrying, Use and Sale of Dangerous Weapons, ch. 608 (1913) .....	17, 18
N.Y. Penal Code, in Force December 1, 1882, as amended by laws of 1882 and 1883 (1883).....	15
N.Y. Penal Code § 410 (1881), as amended by ch. 46, § 8, 1884 N.Y. Laws.....	16
N.Y. Penal Code § 410, as amended by Ch. 92, 1905 N.Y. Laws 129, as amended by ch. 93, 1908 N.Y. Laws 242 .....	16
N.Y. Penal Code § 412 (1881), repealed, 1882 N.Y. Laws 540, 544, ch. 384 .....	16
N.Y. Penal Law § 400.00 .....	21
Ordinances of the City of N.Y. (1763).....	11
Ordinances of the City of Schenectady (1824).....	11
Ordinances of the Village of Lansingburgh (1865).....	15
Ordinances of the Village of Mechanicville, NY (1881), reprinted in Charles Wheeler, By-Laws of the Village of Mechanicville, Adopted by the Trustees October 18, 1881 .....	15

## TABLE OF AUTHORITIES—Continued

	Page
Ordinance to Regulate the Carrying of Pistols (Oct. 25, 1880), reprinted in The Brooklyn Daily Eagle, Oct. 26, 1880 (Brooklyn, N.Y.) .....	16
Penal Ordinance No. 35: Concealed Weapon (Dec. 7, 1909), reprinted in Revised Charter and Ordinances of the City of Lockport (1913) .....	16
Syracuse, N.Y. Offenses Against the Public Peace and Quiet (1885) .....	8, 16
Tenn. Pub. Acts, 2d. Sess., An Act to Pre- serve the Peace and Prevent Homicide, ch. 13 (1869-1870) .....	8
Wyo. Terr. Comp. Laws 352, Act of Dec. 2, 1875, to Prevent the Carrying of Fire Arms and Other Deadly Weapons, ch. 52 (1876) .....	8
 RULES	
38 R. City of N.Y. § 3-01 .....	27
38 R. City of N.Y. § 5-01 .....	27
38 R. City of N.Y. § 5-03 .....	26
38 R. City of N.Y. § 5-23 .....	27
38 R. City of N.Y. § 5-24 .....	27

## TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES	Page
<i>A Child Shot and Killed and Shot with a Pistol</i> , N.Y. Daily Times, July 7, 1852 .....	14
<i>Accidents of the Fourth: Many Injured by Carelessly Handled Firearms and Fireworks</i> , N.Y. Times, July 5, 1894.....	14
Adler, Bess, <i>Friends Set Out to Visit 113 New York City Museums</i> , Metro N.Y. (Feb. 24, 2014), <a href="https://perma.cc/T4DC-WMHT">https://perma.cc/T4DC-WMHT</a> .....	23
<i>Anti-Firearm Bill Passed</i> , N.Y. Times, Mar. 15, 1905 .....	16
Aubertine, Darrel J., <i>Rural New York</i> , N.Y. State Senate (July 29, 2010), <a href="https://perma.cc/JKB8-UC5H">https://perma.cc/JKB8-UC5H</a> .....	2
Barclays Ctr. Brooklyn, <i>Prohibited Items</i> , <a href="https://perma.cc/CHP4-3WS4">https://perma.cc/CHP4-3WS4</a> (captured Sept. 19, 2021).....	24
Barone, Vincent, <i>New York City Sees Drop in Shootings, Murders as Gun Arrests Rise</i> , WCBS Newsradio 880 (Aug. 5, 2021 5:18 PM), <a href="https://perma.cc/D923-6ZEL">https://perma.cc/D923-6ZEL</a> ...	29-30
Bernstein, Victor H., <i>New Law on Pistols Hailed by Valentine: With Their Fingerprint Records the City Police Can Keep More Guns Out of the Hands of Gangsters</i> , N.Y. Times, May 5, 1935 .....	21
<i>Brooklyn</i> , Britannica, <a href="https://perma.cc/Q8VA-6KTK">https://perma.cc/Q8VA-6KTK</a> (captured Sept. 18, 2021) .....	16

## TABLE OF AUTHORITIES—Continued

	Page
Buffalo Police Department Website, <a href="https://perma.cc/U596-R5BT">https://perma.cc/U596-R5BT</a> (captured Sept. 17, 2021) .....	14
<i>Carrying Concealed Weapons</i> , N.Y. Times, Aug. 16, 1868.....	13
Castronuovo, Celine, <i>All 10 Largest Cities Grew</i> , The Hill (Aug. 12, 2021, 2:16 PM), <a href="https://perma.cc/2TCG-T2UG">https://perma.cc/2TCG-T2UG</a> .....	2
<i>City Crime Growing: Aliens Are Blamed</i> , N.Y. Times, Jan. 30, 1906.....	19
Devlin, Bill, <i>NYPD: Video Shows Man Wanted in Times Square Shooting That Injured Bystander</i> , NY1 (June 29, 2021), <a href="https://perma.cc/3YP4-6296">https://perma.cc/3YP4-6296</a> .....	24
Educ. Fund to Stop Gun Violence, <i>A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data</i> (Feb. 2021), available at <a href="https://perma.cc/4NH2-T6MF">https://perma.cc/4NH2-T6MF</a> .....	6, 30
Elmira Daily Advertiser, Apr. 30, 1881.....	14
Fagal, Andrew, <i>The Promise of American Repeating Weapons, 1791–1821</i> , The Age of Revolutions (Oct. 20, 2016), <a href="https://perma.cc/6KSD-4EMK">https://perma.cc/6KSD-4EMK</a> .....	12
Fed. Bureau of Investigation, <i>Uniform Crime Reporting Statistics: Their Proper Use</i> (May 2017), available at <a href="https://perma.cc/46X8-VD8A">https://perma.cc/46X8-VD8A</a> .....	6

## TABLE OF AUTHORITIES—Continued

	Page
Fishbein, Rebecca, <i>Neat Map Overlays Show How Big NYC Is Compared to Other Cities</i> , Gothamist (Apr. 23, 2015, 6:40pm), <a href="https://perma.cc/2ZKV-VH8V">https://perma.cc/2ZKV-VH8V</a> ....	22
Florida, Richard, <i>The Geography of U.S. Gun Violence: What We Can Say for Sure Based on Recent Data</i> , Bloomberg CityLab (Dec. 14, 2012, 1:23 PM), <a href="https://perma.cc/Y2SG-DKFJ">https://perma.cc/Y2SG-DKFJ</a> .....	6
Gibson, Campbell, <i>Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990</i> (U.S. Bureau of the Census, Working Paper No. POP-WP027, June 1998), available at <a href="https://www.census.gov/library/working-papers/1998/demo/POP-twps0027.html">https://www.census.gov/library/working-papers/1998/demo/POP-twps0027.html</a> .....	2
Giffords Law Ctr., <i>Concealed Carry</i> , <a href="https://perma.cc/AU3A-ZAA2">https://perma.cc/AU3A-ZAA2</a> (captured Sept. 18, 2021).....	7-8
Glazer, Elizabeth, <i>Testimony Delivered at the New York City Council Committee on Public Safety Hearing</i> (Mar. 30, 2017), available at <a href="https://perma.cc/V83D-VS7J">https://perma.cc/V83D-VS7J</a> ...	29
Gluckman, Arcadi, <i>United States Martial Pistols and Revolvers: A Reference and History</i> (1939).....	10
Grimes, William, <i>Where New Yorkers Worship: Finding God in a City of Bustle</i> , N.Y. Times, Dec. 24, 2015.....	23

## TABLE OF AUTHORITIES—Continued

	Page
Grossman, Eric, <i>New York City Anticipates a Summer Tourism Season Unlike Any Other</i> , Marketwatch (May 27, 2021, 1:10 PM), <a href="https://www.marketwatch.com/story/new-york-city-anticipates-a-summer-tourism-season-unlike-any-other-11622135445">https://www.marketwatch.com/story/new-york-city-anticipates-a-summer-tourism-season-unlike-any-other-11622135445</a> .....	22-23
<i>Guilty, Not Guilty</i> , Sullivan County Record, Aug. 26, 1892.....	14
Haag, Pamela, <i>Gunning of America: Business and the Making of American Gun Culture</i> (2016) .....	12
Harsanyi, David, <i>First Freedom: A Ride Through America’s Enduring History with the Gun</i> (2018) .....	10
<i>Increase in Homicides: Argument in Favor of Anti-Dangerous Weapon Bill</i> , N.Y. Tribune, Feb. 17, 1911.....	19
Kingston, N.Y. Police Dep’t, <a href="https://perma.cc/H9QP-ENPJ">https://perma.cc/H9QP-ENPJ</a> (captured Sept. 17, 2021) .....	25
Kyle, Chris, <i>American Gun: A History of the U.S. in Ten Firearms</i> (2013).....	9, 12
Lebrun, George P., <i>The Pistol Law: Coroner’s Clerk Says It Works to Decrease Suicide and Homicide</i> , N.Y. Times, Feb. 26, 1913 .....	18

## TABLE OF AUTHORITIES—Continued

	Page
Manseau, Peter, <i>Melancholy Accidents: Three Centuries of Stray Bullets and Bad Luck</i> (2016).....	22, 24
Marshall, Edward, <i>Guarding New York Against Death by Violence</i> , N.Y. Times, Mar. 1, 1914, at SM10 .....	18
McKelvey, Blake, <i>A History of the Police of Rochester, N.Y.</i> (1963).....	14
Metro. Trans. Auth., <i>Subway and Bus Ridership for 2020: Summary of Bus Ridership</i> , <a href="https://perma.cc/4DY9-NCTK">https://perma.cc/4DY9-NCTK</a> (captured Sept. 18, 2021).....	3, 22
Monkkonen, Eric, <i>Murder in New York City</i> 38 (2001), available at <a href="https://archive.org/details/murderinnewyorkc0000monk...">https://archive.org/details/murderinnewyorkc0000monk...</a>	13
Moore, Tina, Kevin Sheehan, & C.J. Sullivan, <i>Bystander Among Victims in Trio of Brooklyn Shootings</i> , N.Y. Post (Oct. 18, 2020), <a href="https://perma.cc/GT93-LXM7">https://perma.cc/GT93-LXM7</a> .....	24-25
N.Y. City Dep't of City Planning, <i>Capital Planning Platform, Facilities and Program Sites</i> , <a href="https://capitalplanning.nyc.gov/map#9/40.7128/-74.0807">https://capitalplanning.nyc.gov/map#9/40.7128/-74.0807</a> (last visited Sept. 18, 2021).....	23
N.Y. City Dep't of City Planning, <i>New York City Population</i> , <a href="https://perma.cc/8AUV-NCDN">https://perma.cc/8AUV-NCDN</a> (captured Sept. 18, 2021).....	2, 22

## TABLE OF AUTHORITIES—Continued

	Page
N.Y. City Dep't of City Planning, <i>Total and Foreign-born Population, 1790–2000</i> , <a href="https://perma.cc/S83Z-SUFT">https://perma.cc/S83Z-SUFT</a> (captured Sept. 16, 2021).....	13
N.Y. City Dep't of Educ., <i>DOE Data at a Glance: Schools and Programs</i> , <a href="https://perma.cc/YX35-PTXE">https://perma.cc/YX35-PTXE</a> (captured Sept. 17, 2021).....	23
N.Y. City Dep't of Parks and Recreation, <i>About Parks</i> , <a href="https://perma.cc/V55T-M2JX">https://perma.cc/V55T-M2JX</a> (captured Sept. 17, 2021) .....	23
N.Y. City Police Dep't, <i>Find Your Precinct and Sector</i> , <a href="https://perma.cc/SCZ4-EZED">https://perma.cc/SCZ4-EZED</a> (captured Sept. 17, 2021).....	26
N.Y. Dep't of Env'tl. Conservation, <i>Hunting</i> , <a href="https://perma.cc/U6YY-G9MP">https://perma.cc/U6YY-G9MP</a> (captured Sept. 18, 2021).....	3
N.Y. Dep't of Health, <i>Hospitals by Region/County and Service</i> , <a href="https://perma.cc/672Z-NJ8E">https://perma.cc/672Z-NJ8E</a> (captured Sept. 17, 2021).....	23
<i>New York City Has 1000th Shooting Victim of 2020 Amid Gun Violence Surge</i> , ABC News (Aug. 10, 2020), <a href="https://perma.cc/G7E3-Q23A">https://perma.cc/G7E3-Q23A</a> .....	22
Paddock, William Henry, <i>History of the Police Service of Albany from 1609 to 1902</i> (1902).....	15
<i>Pistols and Homicides</i> , <i>The Evening World</i> , Jan. 31, 1911 .....	15

## TABLE OF AUTHORITIES—Continued

	Page
Pollock, Henry W., <i>The New Pistol Law: Senator Pollock from First-Hand Knowledge Explains Its Purposes</i> , N.Y. Times, Sept. 1, 1911.....	19
<i>Reckless Use of Firearms: A Man Dangerously Wounded</i> , N.Y. Times, June 21, 1869 .....	14
<i>Rep. of the N.Y. State Joint Legis. Comm. on Firearms and Ammunition</i> (1962) .....	7
<i>Rep. of the N.Y. State Joint Legis. Comm. on Firearms and Ammunition</i> (1965) .....	18
<i>Revolver Killings Fast Increasing: Legislative Measure to Be Urged for Curbing the Sale of Firearms</i> , N.Y. Times, Jan. 30, 1911 .....	16-17, 19
<i>Riot in Buffalo: Furious Outbreak Between the Irish and Negroes</i> , N.Y. Times, July 10, 1863 .....	14
<i>Riot in Buffalo: Strike of Irish and German Stevedores: The Police Force Overpowered</i> , N.Y. Times, Aug. 13, 1862 .....	14
<i>Rioting and Bloodshed: The Fight at Cow Bay</i> , N.Y. Daily Times, July 6, 1857 .....	13
Roosevelt, Theodore, <i>Administering the New York Police Force</i> , in 2 <i>The Works of Theodore Roosevelt in Fourteen Volumes</i> (P.F. Collier 1897).....	15
Rose, Alexander, <i>American Rifle, A Biography</i> , (2008).....	9, 10

## TABLE OF AUTHORITIES—Continued

	Page
<i>Rowdyism: One Man Shot and Another Shooting Case</i> , N.Y. Daily Times, June 18, 1852 .....	14
Satia, Priya, <i>Empire of Guns: The Violent Making of the Industrial Revolution</i> (2019).....	9-10
Schulz, Dana, <i>See Manhattan’s Population Pulse over 24 hours</i> (May 10, 2018), <a href="https://www.6sqft.com/see-nycs-population-pulse-over-24-hours/">https://www.6sqft.com/see-nycs-population-pulse-over-24-hours/</a> .....	22
Schultz, Howard, Open Letter, Starbucks (Sept. 17, 2013), <a href="https://perma.cc/H7XE-HAQZ">https://perma.cc/H7XE-HAQZ</a> .....	24
Sherman, Steele, et al., <i>Stray Bullets and ‘Mushrooms’: Random Shootings of Bystanders in Four Cities, 1977–1988</i> , 5 J. QUANTITATIVE CRIMINOLOGY 297 (1989).....	22
<i>Shot by East River Thieves: How the Border Gang Squared Accounts with a Watchman</i> , N.Y. Times, Aug. 21, 1879 .....	14
<i>Shot Imperils Many Lives: Bullet Passes Through Brooklyn Crowd, Then Hits Woman</i> , N.Y. Times, Nov. 2, 1914.....	22
<i>Sullivan Law Cuts City’s Pistol Crime: Only 72 Homicides and 63 Suicides with Firearms Reported in 1914</i> , N.Y. Times, Jan. 2, 1915 .....	18

## TABLE OF AUTHORITIES—Continued

	Page
Sweeney, Kevin, <i>Firearms, Militias, and the Second Amendment, in The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller</i> (Cornell & Kozuskanich eds., 2013) .....	9, 10
<i>The Police and Their Duties</i> , N.Y. Times, Aug. 25, 1865.....	13
<i>The Police Reform</i> , N.Y. Daily Times, Mar. 24, 1857 .....	14
<i>The Sale of Deadly Weapons</i> , N.Y. Times, May 19, 1873 .....	15
<i>Topics of the Times: A Change in the Pistol Law</i> , N.Y. Times, May 24, 1913 .....	17
<i>Topics of the Times: Applying a Rule of Reason</i> , N.Y. Times, Nov. 6, 1911 .....	17
Troy, N.Y. Police Dep't, <a href="https://perma.cc/XGU5-BDS9">https://perma.cc/XGU5-BDS9</a> (captured Sept. 17, 2021)....	25
U.S. Patent No. USX9430 1 (issued Feb. 25, 1986), <i>available at</i> <a href="https://perma.cc/5GW3-B8TA">https://perma.cc/5GW3-B8TA</a> .....	12
Walter, John, <i>The Hand Gun Story: A Complete Illustrated History</i> (2014) .....	12
Wilson, Michael, <i>In New York, Old-School Officers Swear by the Vanishing .38</i> , N.Y. Times, Dec. 16, 2004 .....	15

## TABLE OF AUTHORITIES—Continued

	Page
Woods, Amanda, <i>Innocent Bystander Shot in Staten Island Dies of Her Injuries</i> , N.Y. Post (Nov. 26, 2020), <a href="https://perma.cc/78XV-MFY6">https://perma.cc/78XV-MFY6</a> .....	24
World Population Rev., <i>Gun Ownership by State 2021</i> , <a href="https://worldpopulationreview.com/state-rankings/gun-ownership-by-state">https://worldpopulationreview.com/state-rankings/gun-ownership-by-state</a> (last visited Sept. 20, 2021) .....	3, 20
Yang, Lucy, <i>Man Arrested in NYC Bodega Shooting That Wounded 3 Innocent Bystanders</i> , ABC7NY (Aug. 9, 2021), <a href="https://perma.cc/LRG5-5RAF">https://perma.cc/LRG5-5RAF</a> .....	24

## **INTEREST OF AMICUS CURIAE**

The City of New York submits this brief as amicus curiae in support of the constitutionality of New York State’s proper-cause requirement for concealed-carry licensing. State law makes the City responsible for licensing handguns in the City. Petitioners’ Second Amendment challenge to the proper-cause requirement thus directly implicates the City’s authority to regulate concealed carry within its borders. As the densest and most populous large city in New York—and indeed, the Nation—where the risks attendant to discharging a firearm are amplified, the City has a substantial public-safety interest in ensuring that individuals carrying concealed, loaded handguns in public possess an articulable and non-speculative need to do so for self-defense.

The City has applied the State’s proper-cause requirement for over a century as part of its broader efforts to address the grave harms caused by the discharge of firearms in a crowded urban environment, and it has seen a precipitous drop in gun violence during recent decades. The City thus has a vital interest in establishing that the proper-cause requirement—a key component of the City’s approach to regulating firearms—remains within the range of policy options permitted by the Second Amendment.

## **SUMMARY OF ARGUMENT**

The Second Amendment incorporates the fundamental federalist conviction that states and local governments may and should exercise their police powers to respond to evolving public-safety challenges. It leaves room for states to tailor their firearm policies based on their conditions and historical experience. Any Second Amendment analysis should

therefore give great weight to long-standing state judgments about the best means to meet the legitimate needs of gun owners and the safety needs of the broader public, and should permit variation among the states in response to local concerns and conditions.

The proper-cause requirement at the center of this case, which has antecedents that long predate the Founding, *see* Resp. Br. 3–6, 21–32, is a response to New York’s particular conditions and history. New York is, and has always been, geographically diverse. Eighty-seven percent of the State is rural, but the State is also home to New York City, by far the most populous and densest large city in the Nation, as well as to a host of towns and suburban communities in between.<sup>1</sup> And this circumstance is nothing new. The City has been the country’s most populous municipality in every census since the first, in 1790.<sup>2</sup> Today’s laws must simultaneously account for the interests of the State’s 4 million gun owners, almost 750,000 residents and non-residents who hunt in its rural areas, and 5.5 million riders who travel in

---

<sup>1</sup> Darrel J. Aubertine, *Rural New York*, N.Y. State Senate (July 29, 2010), <https://perma.cc/JKB8-UC5H>; N.Y. City Dep’t of City Planning, *New York City Population*, <https://perma.cc/8AUV-NCDN> (captured Sept. 18, 2021).

<sup>2</sup> Celine Castronuovo, *All 10 Largest Cities Grew*, The Hill (Aug. 12, 2021, 2:16 PM), <https://perma.cc/2TCG-T2UG>; Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*, tbls. 2–22 (U.S. Bureau of the Census, Working Paper No. POP-WP027, June 1998), *available at* <https://www.census.gov/library/working-papers/1998/demo/POP-twps0027.html>.

crowded New York City subway cars on a typical (non-pandemic) weekday.<sup>3</sup>

The proper-cause requirement reflects several centuries of accrued experience and learning in firearms regulation addressed to these varied conditions. Since the Founding, New York's state and local firearms laws have been responsive to the varying public-safety and self-defense needs of its communities, with a focus on conditions in New York City. Early firearms laws in the State differentiated between urban and rural areas. Starting in the mid-nineteenth century, following developments in firearms technology and a population explosion, handgun violence increased markedly in the State, and particularly in the City. After decades of attempts to address the problem by other means, the State required any person seeking to carry a concealed, loaded handgun in public to show proper cause—an articulable and non-speculative need for self-defense.

This proper-cause requirement is flexible enough to be applied sensibly throughout the State, in communities as different as urban New York City and rural Oswego County. In the City, millions of people of diverse backgrounds crowd subways and hurry along sidewalks; residents live closely packed in apartment buildings; and many schools, offices, houses of worship, and government buildings line the streets. Those

---

<sup>3</sup> See World Population Rev., *Gun Ownership by State 2021*, <https://worldpopulationreview.com/state-rankings/gun-ownership-by-state> (last visited Sept. 20, 2021) (noting gun-ownership rate of 20 percent in New York); N.Y. Dep't of Env'tl. Conservation, *Hunting*, <https://perma.cc/U6YY-G9MP> (captured Sept. 18, 2021); Metro. Trans. Auth., *Subway and Bus Ridership for 2020: Summary of Bus Ridership*, <https://perma.cc/4DY9-NCTK> (captured Sept. 18, 2021).

conditions increase the risks posed by any use of firearms in public and warrant careful scrutiny of all applicants seeking to carry a concealed handgun. As a result, the City's regulations for handgun licensure apply the proper-cause requirement in a relatively exacting manner.

Petitioners' characterization of the proper-cause requirement overlooks the substantial variation in application of the requirement across the State. Other localities that do not share the City's urban features may not regulate concealed carry as rigorously. Local licensing officials throughout the State apply their experience and judgment to issue concealed-carry permits based on the articulable needs of law-abiding gun owners, consistent with local conditions. The adaptability of the proper-cause requirement is among the licensing scheme's most vital features.

Proper cause is a critical part of New York's comprehensive efforts to address the problem of handgun violence while meeting the self-defense needs of its residents. It reflects a legislative judgment, born out of decades of trial and error, as to the approach best suited to conditions in the State. As courts around the country have recognized in reviewing similar requirements, the choice New York has made reflects a sound public-safety judgment. This Court should allow it to stand.

**ARGUMENT****I. The Second Amendment permits states to experiment with firearms regulations to meet the needs of their communities.**

The Constitution was adopted against a background expectation that the states would retain “primary” authority to protect public safety, *see United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995), and would serve “as laboratories for devising solutions to difficult legal problems,” *Oregon v. Ice*, 555 U.S. 160, 171 (2009); *see also Patterson v. New York*, 432 U.S. 197, 201 (1977). Local innovation and variation within the “broad bounds” of the Constitution are not just permitted but are celebrated as among the Nation’s greatest strengths. *Smith v. Robbins*, 528 U.S. 259, 272 (2000); *see also New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

The Second Amendment incorporates this federalist principle. It “limits,” but “by no means eliminates,” states’ “ability to devise solutions to social problems that suit local needs and values,” *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (plurality op.). Finding these tailored solutions necessarily entails “[s]tate and local experimentation with reasonable firearms regulations.” *Id.* (quotation mark omitted; alteration in original). Indeed, it is in combatting a complex problem like gun violence that “the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.” *Lopez*, 514 U.S. at 581 (Kennedy, J., concurring). Thus, although the Second Amendment takes “certain policy choices” for addressing handgun violence “off the table,” it leaves

states “a variety of tools for combating that problem.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

This flexibility is vitally important because gun violence varies widely among states and within them in both its incidence and its impacts. The FBI has identified multiple factors “known to affect the volume and type of crime occurring from place to place.” They include population density, composition, and stability, and the extent of urbanization, as well as economic conditions such as median income, poverty level, and job availability. Also contributing are the strength of law enforcement and the policies of other components of the criminal-justice system, including prosecutors, courts, and probation and correctional agencies.<sup>4</sup> Regarding handgun violence, the data also show wide variation based on similar factors, including levels of urbanization and poverty.<sup>5</sup>

Since the Founding, the regulation of firearms has been accomplished primarily by the states. States have responded to developments in firearms technology, changing demographics, increasing urbanization, and rising gun violence by enacting a diverse set of measures to protect the public from the risks presented by the carrying of firearms. These include a host of long-standing laws regulating concealed carry, including licensing laws as well as the outright pro-

---

<sup>4</sup> Fed. Bureau of Investigation, *Uniform Crime Reporting Statistics: Their Proper Use* 1–2 (May 2017), available at <https://perma.cc/46X8-VD8A>.

<sup>5</sup> Educ. Fund to Stop Gun Violence, *A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data* 17–23 (Feb. 2021), available at <https://perma.cc/4NH2-T6MF>; Richard Florida, *The Geography of U.S. Gun Violence: What We Can Say for Sure Based on Recent Data*, Bloomberg CityLab (Dec. 14, 2012, 1:23 PM), <https://perma.cc/Y2SG-DKFJ>.

hibitions that this Court has stated are presumptively constitutional.<sup>6</sup> *Heller*, 554 U.S. at 626–27 & n.26.

In taking a close look at its own concealed-carry licensing scheme in 1962, the New York Legislature’s Joint Legislative Committee on Firearms and Regulations stated its task succinctly: to prevent gun crime while preserving “the legitimate interests of individual liberty, training for national defense, hunting, target shooting and trophy collecting.”<sup>7</sup> The Committee recognized that states had adopted divergent solutions to the problem. It concluded, after review of regulations across the Nation, that above-average population density was the most salient commonality of jurisdictions that, like New York, had adopted licensing schemes addressing concealed carry.<sup>8</sup>

As the Legislature’s 1962 survey also confirms, concealed-carry regulations have not remained static. At the time of the survey, 28 states required licensure to carry a concealed handgun in public, 16 prohibited it entirely, and one more prohibited it in settled areas. Today, the number of states requiring licensure for concealed carry has increased to 31, and 10 of the 16 states that once prohibited concealed carry now permit it without a license.<sup>9</sup> And this type of

---

<sup>6</sup> *E.g.*, App. 28a, La. (1813); App. 28a, Ky. (1813); App. 32a, Neb. (1895); App. 32a, Mass. (1906).

<sup>7</sup> *Rep. of the N.Y. State Joint Legis. Comm. on Firearms and Ammunition* 11–12 (1962).

<sup>8</sup> *Id.* at 11–13 & tbl. 2.

<sup>9</sup> Those 10 states are Arizona, Idaho, Kansas, Kentucky, Missouri, Montana, Oklahoma, Tennessee, Texas, and Utah. The other six states that prohibited concealed carry in 1962—Nebraska, Ohio, Illinois, South Carolina, Maryland, and Wisconsin—have shifted to licensing. *Compare Rep. of the N.Y. State Joint Legis. Comm.*, *supra* note 7, at 11–13 & tbl. 2, with Giffords Law Ctr.,

experimentation and adjustment is nothing new. In the nineteenth century, three of the states that now have relatively relaxed carry laws once restricted carrying handguns in most circumstances, as did a diverse set of municipalities.<sup>10</sup>

Petitioners, however, ask this Court to ossify the law by constitutionalizing a requirement that law-abiding residents generally be allowed to carry concealed handguns, regardless of need—including most of the nearly seven million adults packed into New York City’s 303 square miles. But that result would be inconsistent with both the country’s history of firearms regulation, which has long reflected substantial variation with respect to concealed carry, and our federalist tradition. The judiciary should decline to disturb long-standing state regulations that are informed by decades of experimentation, should afford great weight to state judgments about the best ways to balance public safety with the legitimate needs of law-abiding gun owners, and should permit variation among the states in response to local concerns and conditions.

**II. New York’s proper-cause requirement is the result of generations of government experimentation in response to evolving public-safety challenges in the City and the State.**

The State’s current proper-cause requirement is the result of extensive experience with gun regulation.

---

*Concealed Carry*, <https://perma.cc/AU3A-ZAA2> (captured Sept. 18, 2021).

<sup>10</sup> See, e.g., App. 28a–29a, Tenn. (1870); App. 30a–31a, Wyo. (1876); App. 31a, Ark. (1881); App. 31a, Dodge City, Kan. (1876); App. 15a, Syracuse, N.Y. (1885).

This history exemplifies the type of state experimentation in response to changing firearms technology and public-safety needs that is encouraged and facilitated by our federalist system.

**A. At the Founding, New York’s firearms regulations varied according to local conditions.**

Before and during the Founding Era, New York’s gun laws addressed the primary risks presented by the firearms of the time and the distinct concerns of the State’s urban and rural communities.

The single-shot muzzle-loading long guns that would have been accessible to most New Yorkers were bulky, largely unreliable, and relatively inaccurate.<sup>11</sup> They could not generally be fired in wet weather or carried loaded for long periods, especially on humid days.<sup>12</sup> And handguns were not a significant factor: at

---

<sup>11</sup> See Kevin Sweeney, *Firearms, Militias, and the Second Amendment*, in *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller* 324, 330 (Cornell & Kozuskanich eds., 2013) (finding relatively low gun-ownership rates in New York City at the Founding and noting that most of the firearms owned in the Northeast were fowler and fusil muskets); Chris Kyle, *American Gun: A History of the U.S. in Ten Firearms* 16, 32 (2013) (explaining the mechanics and drawbacks of eighteenth-century smooth-bore muskets, as compared to American rifles); Alexander Rose, *American Rifle, A Biography*, ch.1 & n.7 (2008) (observing that during the Founding Era, rifles could be found in Pennsylvania and the South, while Northerners mostly had access to unreliable smooth-bore muskets).

<sup>12</sup> See Kyle, *supra* note 11, at 32 (explaining that because a flintlock mechanism relies on flint “struck to make a spark, creating a fire in a pan of fine priming powder, which in turn ignites the gunpowder charge ... [d]amp primer, wet powder, a worn flint ... almost guarantee complications”); Priya Satia, *Empire of Guns: The Violent Making of the Industrial Revolution*

the time, flintlock pistols, such as dueling pistols, were uncommon in New York.<sup>13</sup>

These characteristics made firearms a relatively ineffective tool for self-defense in dense or crowded areas.<sup>14</sup> A gun might not fire, and if it did, it was unlikely to hit its target, and would take time to reload. Nor, of course, would long guns have been well-suited to be carried concealed for self-defense.

New York’s early gun regulations targeted the most salient risks to the public presented by unreliable long guns: explosions and fires resulting from gunpowder, bystander injuries, and property damage in urban areas and places where people gathered. Thus, even before the Founding, the City restricted the use of firearms for hunting “to prevent accidents” because “People or Cattle might perhaps be struck and injured.” App. 1a, City of New Amsterdam (1652). The

---

230 (2019) (“[F]lintlocks were so unreliable, failing to fire even under the best conditions, and hardly at all in rain or damp, that soldiers just as often used them as pikes.”); *see generally* Rose, *supra* note 11, ch.1 (2008) (“On dry days alone muskets misfired 15 percent of the time; on wet, one in four shots never left the barrel.”).

<sup>13</sup> Sweeney, *supra* note 11, at 324, 341–42; *see* David Harsanyi, *First Freedom: A Ride Through America’s Enduring History with the Gun* 23 (2018) (noting that smooth-bore muskets were the most prevalent firearms); Arcadi Gluckman, *United States Martial Pistols and Revolvers: A Reference and History* 50 (1939) (observing that during “our early period as a nation,” pistols were “limited in number” and “of but limited use”).

<sup>14</sup> *See* Harsanyi, *supra* note 13, at 49 (surveying estate records and observing that “guns were more common in rural areas—which makes sense, when one considers that urban dwellers often rely on the protection of numbers and are insulated from frontier violence by professional soldiers and other law-keepers in their towns”).

City also placed restrictions on where guns could be discharged and gunpowder could be stored. *See* App. 1a–2a, N.Y. City, N.Y. (1763) (prohibiting shooting at “any mark” or “at random” in a street, orchard, garden, or enclosure, or in any place “where persons frequent to walk”); App. 2a–3a, N.Y. City, N.Y. (1763) (restricting amount of gunpowder that could be stored within two miles of City Hall).

After the Founding, the City adopted additional regulations targeting similar risks. *See* App. 7a, N.Y. City, N.Y. (1786) (prohibiting discharge of any gun or pistol anywhere in the City, to prevent fires and danger to houses, property, and persons); App. 7a–8a, N.Y. City, N.Y. (1803) (prohibiting discharge within four miles of City Hall to prevent “accidents and other dangerous consequences”). The State and other localities enacted similar restrictions. *See* App. 3a–6a, N.Y. (1784) (restricting storage of gun powder in the City and on vessels in its harbor); App. 6a–7a, N.Y. (1785) (prohibiting discharge within a quarter mile of any building on certain holidays); App. 8a, Schenectady, N.Y. (1824) (prohibiting discharge in any street or enclosure, or in any place where “persons frequent to walk”); App. 9a, Brooklyn, N.Y. (1836) (prohibiting discharge in “the first six wards”).

As these laws reflect, state and local gun regulations varied depending on the needs of diverse localities. Thus, urban areas prohibited the discharge of weapons entirely or in sensitive or populous areas, while the State more broadly prohibited discharge at specified times when people would gather.

**B. New York adopted the proper-cause requirement in response to changing firearms technology and increasing gun crime after other approaches were unsuccessful.**

1. Starting in the mid-nineteenth century, the public-safety needs of New York’s communities changed dramatically as a result of improved firearms technology and increasing gun crime. The State and local governments responded by experimenting with forms of regulation that were new for New York, but had long existed elsewhere. *See* Resp. Br. 3–6, 21–32.

With advances in firearms and manufacturing technology, easily concealable and reliable handguns capable of being carried loaded and firing multiple shots became readily available.<sup>15</sup> In the 1820s, rudimentary repeating firearms started to be mass produced.<sup>16</sup> Then, in 1836, Samuel Colt patented the first Colt revolver.<sup>17</sup> Smith & Wesson started mass marketing a pistol in 1857 that used preassembled cartridges.<sup>18</sup>

---

<sup>15</sup> Pamela Haag, *Gunning of America: Business and the Making of American Gun Culture* 36, 50, 70 (2016); Kyle, *supra* note 11, at 48, 56; *see* John Walter, *The Hand Gun Story: A Complete Illustrated History* 12 (2014) (noting that “certainty of ignition improved by a factor of six once the cap had replaced the flint”).

<sup>16</sup> Andrew Fagal, *The Promise of American Repeating Weapons, 1791–1821*, *The Age of Revolutions* (Oct. 20, 2016), <https://perma.cc/6KSD-4EMK>.

<sup>17</sup> U.S. Patent No. USX9430 | 1 (issued Feb. 25, 1986), *available at* <https://perma.cc/5GW3-B8TA>.

<sup>18</sup> *See* Kyle, *supra* note 11, at 54 (explaining how ammunition that combined bullet, powder, and primer in a single cartridge increased the reliability of firearms).

During this same period, the City underwent a striking transformation. The population soared, from roughly 30,000 residents at the Founding to over a half million by 1850.<sup>19</sup> Many of the City's newcomers lived in overcrowded and unsanitary tenement apartments. With the rise in poverty and population came a corresponding rise in gangs, violent crime, and urban riots, such as 1857's infamous two-day Dead Rabbits Riot between warring street gangs who attacked each other with guns, clubs, and bats.<sup>20</sup> Police struggled to quell the escalating violence.<sup>21</sup> In the wake of these demographic changes and rapid improvements in firearms technology came an acute rise in gun deaths. By the Civil War, 25 percent of homicides in the City were by gun, a significant increase from previous years.<sup>22</sup>

By the mid-nineteenth century, concealed handguns were a matter of significant public concern. The City's residents were alarmed by widespread violence and injuries to bystanders. *See Carrying Concealed Weapons*, N.Y. Times, Aug. 16, 1868, at 4 (calling

---

<sup>19</sup> New York City's historical census data are available on the City's website. *See* N.Y. City Dep't of City Planning, *Total and Foreign-born Population, 1790–2000*, <https://perma.cc/S83Z-SUFT> (captured Sept. 16, 2021).

<sup>20</sup> *Rioting and Bloodshed: The Fight at Cow Bay*, N.Y. Daily Times, July 6, 1857 (reporting that “[f]ire arms, clubs, brick-bats and stones were freely used” and that a “great many” were shot).

<sup>21</sup> *See The Police and Their Duties*, N.Y. Times, Aug. 25, 1865, at 4 (Police Commissioner's statement describing the Eighth Ward as “the worst of all sinks of iniquity,” full of “gangs of thieves and murderers”).

<sup>22</sup> *See* Eric Monkkonen, *Murder in New York City* 38 (2001), available at <https://archive.org/details/murderinnewyorkc0000monk>.

concealed firearms one of the most fruitful causes of crime, noting increasing armed street conflicts, and stating that “hundreds” of shooting cases had been reported in the preceding several months).<sup>23</sup> And the City was not alone. Other urban centers in the State also experienced riots and increased gun crime during this time.<sup>24</sup>

Jurisdictions across the State tried to tackle the increasing violence by professionalizing and reforming their police forces.<sup>25</sup> In 1895, when Theodore Roosevelt

---

<sup>23</sup> See also *Rowdyism: One Man Shot and Another Shooting Case*, N.Y. Daily Times, June 18, 1852, at 3 (reporting on two separate shootings); *A Child Shot and Killed and Shot with a Pistol*, N.Y. Daily Times, July 7, 1852, at 4; *Fatal Effects of Rowdyism: A Man Shot and Killed in Water-Street*, N.Y. Times, Sept. 23, 1857, at 1 (reporting two accidental shootings days apart); *Reckless Use of Firearms: A Man Dangerously Wounded*, N.Y. Times, June 21, 1869, at 5 (reporting shooting of a bystander); *Shot by East River Thieves: How the Border Gang Squared Accounts with a Watchman*, N.Y. Times, Aug. 21, 1879, at 5; *Accidents of the Fourth: Many Injured by Carelessly Handled Firearms and Fireworks*, N.Y. Times, July 5, 1894, at 2 (reporting 11 people shot by pistols celebrating the Fourth of July, including several bystanders).

<sup>24</sup> *Riot in Buffalo: Strike of Irish and German Stevedores: The Police Force Overpowered*, N.Y. Times, Aug. 13, 1862, at 5; *Riot in Buffalo: Furious Outbreak Between the Irish and Negroes*, N.Y. Times, July 10, 1863, at 8; *Elmira Daily Advertiser*, Apr. 30, 1881, at 1 (reporting two separate shootings of women in a single day); *Guilty, Not Guilty*, Sullivan County Record, Aug. 26, 1892, at 2 (reporting on murder trial following pistol shooting).

<sup>25</sup> New York City’s police force, which is one of the oldest professional police forces in the United States, underwent significant reforms in the 1850s. See *The Police Reform*, N.Y. Daily Times, Mar. 24, 1857, at 4. Rochester organized its night-watchmen into a police force in 1853. See Blake McKelvey, *A History of the Police of Rochester, N.Y.* (1963). Buffalo did the same in 1871. See Buffalo Police Department Website, <https://perma.cc/U596-R5BT> (captured Sept. 17, 2021). Albany created a

became New York City's Police Commissioner, he implemented a wide range of reforms, including arming officers with Colt revolvers.<sup>26</sup>

To stem gun deaths and protect bystanders and property, the State and localities strengthened existing prohibitions on the discharge of firearms in dense areas.<sup>27</sup> But discharge prohibitions alone were not sufficient. In 1873, *The New York Times* urged the adoption of a licensing regime after a 12-year-old was arrested for shooting his playmate and two teens killed a bystander during in a gun fight on a Brooklyn sidewalk.<sup>28</sup> Taking up the call, in 1881, the City enacted a licensing ordinance requiring permission to

---

professional police force in 1851 and reorganized it in 1870, and the State created a capital police force in 1865. See William Henry Paddock, *History of the Police Service of Albany from 1609 to 1902*, 16–25 (1902).

<sup>26</sup> Theodore Roosevelt, *Administering the New York Police Force*, in *2 The Works of Theodore Roosevelt in Fourteen Volumes* 203 (P.F. Collier 1897); Michael Wilson, *In New York, Old-School Officers Swear by the Vanishing* .38, *N.Y. Times*, Dec. 16, 2004, at A1.

<sup>27</sup> See, e.g., App. 9a, Schenectady, N.Y. (1863) (prohibiting discharge of firearms “except in a shooting gallery, within the lamp district of this city”); App. 10a, Village of Lansingburgh, N.Y. (1865) (prohibiting discharge of firearms within the village limits without the consent of the president or board of trustees); App. 10a–11a, N.Y. (1867) (prohibiting discharge within a quarter mile of any building on certain holidays); App. 13a, Village of Mechanicville, N.Y. (1881) (prohibiting discharge of firearms in the village except on Independence Day); App. 14a, N.Y. (1883) (prohibiting discharge “in any public place” or “in any place where there is any person to be endangered thereby”).

<sup>28</sup> See *The Sale of Deadly Weapons*, *N.Y. Times*, May 19, 1873, at 4; see also *Pistols and Homicides*, *The Evening World*, Jan. 31, 1911, at 16 (attributing spike in homicides to revolvers and urging “stricter regulations governing the sale of such weapons”).

carry concealed weapons.<sup>29</sup> At least six other urban centers in the State did the same.<sup>30</sup>

The State also responded. After temporarily making it a misdemeanor for anyone to carry a concealed loaded or partly loaded weapon, *see* App. 14a, N.Y. (1881, *repealed* 1882), the State enacted a series of targeted regulations, requiring minors to obtain permission before carrying firearms in public places, and prohibiting all carrying of firearms by non-citizens. *See, e.g.*, App. 14a–15a, N.Y. (1881, *amended* 1884); App. 18a–19a, N.Y. (1905, *amended* 1908). Then, in 1905, the State enacted a statute requiring any person over the age of sixteen to obtain a license to carry a concealed firearm within a city or village and prohibiting anyone under the age of 16 from carrying in public. App. 18a–19a, N.Y. (1905, *amended* 1908).<sup>31</sup> Three years later, the licensing requirement was extended to towns. *Id.*

2. When these measures did not successfully curb gun violence, the State again strengthened its firearms regulations. In the first decade of the twentieth century, the State’s urban communities continued to experience ever-increasing and widespread gun violence, prompting public alarm. *See, e.g., Revolver Killings Fast Increasing: Legislative Measure to Be*

---

<sup>29</sup> App. 12a–13a, N.Y. City, N.Y. (1881).

<sup>30</sup> *See* App. 11a–12a, Brooklyn, N.Y. (1880); App. 15a–16a, Buffalo, N.Y. (1891); App. 16a–18a, Elmira, N.Y. (1892); App. 19a–20a, Troy, N.Y. (1905); App. 20a–21a, Lockport, N.Y. (1909); App. 22a–23a, Albany, N.Y. (1910); *see also* App. 15a, Syracuse, N.Y. (1885) (prohibiting concealed and open carry). Brooklyn was a separate city until it was incorporated into New York City in 1898. *See Brooklyn*, Britannica, <https://perma.cc/Q8VA-6KTK> (captured Sept. 18, 2021).

<sup>31</sup> *Anti-Firearm Bill Passed*, N.Y. Times, Mar. 15, 1905, at 8.

*Urged for Curbing the Sale of Firearms*, N.Y. Times, Jan. 30, 1911, at 4 (citing a New York City coroner's office report finding that gun deaths and suicides were increasing). Drawing on experience gleaned from decades of experimentation, and following in the footsteps of other states that had adopted similar laws, see Resp. Br. 4–5; *supra* note 6, in 1911, New York enacted the Sullivan Law, so-called because of its sponsorship by State Senator Timothy Sullivan. For the first time, it was a felony to carry a concealed firearm in a city, town, or village without a license. The Sullivan Law also made it a misdemeanor to openly carry a concealable firearm without a license. App. 23a–24a, N.Y. (1911).

Just two years later, the State refined the Sullivan Law. Following criticism that the statute did not meet the legitimate self-defense needs of law-abiding individuals,<sup>32</sup> in 1913, the Legislature amended it to clarify that there were some categories of licenses that, in the Legislature's judgment, should be more freely issued. The Legislature tasked licensing officials with issuing permits to householders and merchants to possess a handgun in their places of residence and business if they were of good moral character and there was no good cause for the denial. App. 24a–26a, N.Y. (1913). The Legislature also created a category of permits to allow certain New Yorkers to carry concealed handguns in connection with their employment, such as correction officers and messengers for banks and express companies. *Id.* At the same time, the law granted local licensing officials the authority to issue licenses to individuals

---

<sup>32</sup> *Topics of the Times: A Change in the Pistol Law*, N.Y. Times, May 24, 1913, at 12; *Topics of the Times: Applying a Rule of Reason*, N.Y. Times, Nov. 6, 1911, at 10.

who had proper cause to carry a concealed handgun, without regard to employment. *Id.*

Through the 1913 addition of a proper-cause requirement, the State further refined the balance it had struck between the safety of the broader public and the needs of gun owners. The amendment ensured that licensing officials had authority to issue licenses to law-abiding individuals who did not fall into the law's specified categories, while limiting concealed carry to persons who had a non-speculative and articulable need for self-defense. *See Rep. of the N.Y. State Joint Legis. Comm. on Firearms and Ammunition* 10 (1965) (stating that the law's proper-cause requirement should be read to support issuance of a license in circumstances sharing common characteristics with the categories listed in the statute). This further refinement of the State's licensing regime was celebrated for reducing gun deaths.<sup>33</sup>

3. Petitioners and their amici attempt to paint the Sullivan Law as an inherently discriminatory measure passed to disarm Italian immigrants, *see* Pet. Br. 14; Br. of Italo-Am. Jurists and Att'ys 16–26, but they lack clear evidence of any such motivation. And both the history just outlined and contemporaneous evidence of legislative intent prove otherwise. State Senator Henry Pollock, who played a central role in

---

<sup>33</sup> George P. Lebrun, *The Pistol Law: Coroner's Clerk Says It Works to Decrease Suicide and Homicide*, N.Y. Times, Feb. 26, 1913, at 12; Edward Marshall, *Guarding New York Against Death by Violence*, N.Y. Times, Mar. 1, 1914, at SM10 (celebrating the law as reducing gun deaths without preventing any "reputable citizen" from keeping a revolver in the home for self-defense); *Sullivan Law Cuts City's Pistol Crime: Only 72 Homicides and 63 Suicides with Firearms Reported in 1914*, N.Y. Times, Jan. 2, 1915, at 11.

the law's enactment, explained in a letter to *The New York Times* that the law had "two objects," first, "to punish ... the unlawful possession of dangerous firearms," and second, to aid "the authorities in the identification of the owner of a firearm used in the commission of a crime."<sup>34</sup> He explained that the bill was carefully crafted, subject to numerous public hearings, amended three times to reflect suggestions made by stakeholders and legislators, and given "consideration and deliberation" by members of the State Senate and Assembly and by the Governor. He noted that the only opposition to the legislation was from "representatives of manufacturers and dealers in firearms."<sup>35</sup>

Other contemporaneous evidence supports Senator Pollock's account. For example, news reports show that the impetus for the law was quelling growing gun violence.<sup>36</sup> The law's proponents pointed to many recent shootings, including the assassination attempt on New York City Mayor Gaynor.<sup>37</sup> To be sure, there were those who believed that immigrants contributed to the increased violence in the City.<sup>38</sup> But there is no

---

<sup>34</sup> Henry W. Pollock, *The New Pistol Law: Senator Pollock from First-Hand Knowledge Explains Its Purposes*, N.Y. Times, Sept. 1, 1911, at 6.

<sup>35</sup> *Id.*

<sup>36</sup> *Increase in Homicides: Argument in Favor of Anti-Dangerous Weapon Bill*, N.Y. Tribune, Feb. 17, 1911, at 5.

<sup>37</sup> *See Revolver Killings Fast Increasing: Legislative Measure to Be Urged for Curbing the Sale of Firearms*, N.Y. Times, Jan. 30, 1911, at 5 (noting recent rise in shootings including assassination attempt on the mayor and murder of the author David Graham Phillips).

<sup>38</sup> *See City Crime Growing: Aliens Are Blamed*, N.Y. Times, Jan. 30, 1906, at 8.

evidence that the Sullivan Law was designed to impermissibly target a subset of the law-abiding public, as opposed to the grave and ongoing problem of gun violence.

**III. The proper-cause requirement allows New York's diverse communities to regulate concealed carry in line with local conditions and public-safety needs.**

Over the last century, the proper-cause requirement has proved sufficiently flexible to address the varying public-safety concerns of the State's communities and meet the needs of the State's 4 million gun owners.<sup>39</sup> The City has applied the requirement relatively rigorously, reflecting its unique conditions and safety challenges. Meanwhile, licensing officials in other local jurisdictions have tailored the requirement to their own circumstances, often issuing concealed-carry licenses more freely than the City. This Court should not lightly disturb a requirement that, emerging from long experience, has proved an effective tool across the State and an important component of the State's effort to combat gun violence.

**A. The City applies the proper-cause requirement relatively rigorously, in line with its unique conditions and public-safety concerns.**

The proper-cause requirement affords New York City the flexibility it needs to respond to the immense capacity for harm posed by firearms in crowded urban spaces. The State has long recognized the City's particular interest in close scrutiny of applications for concealed-carry licenses. Almost a century ago, it

---

<sup>39</sup> See World Population Rev., *supra* note 3.

granted the City control over licensing of concealed carry for its own residents and for state residents with licenses issued outside the City who sought to bring their guns into the City.<sup>40</sup> In the intervening period, the State further refined the law to enable the City to thoroughly vet every application and ensure that applicants meet permitting requirements. *See* N.Y. Penal Law § 400.00(3), (7), (9), (10), (14). Mindful of the risks posed by public possession of firearms, and consistent with the flexibility afforded it by state law, the City has adopted relatively exacting standards for what constitutes proper cause in the City and often tailors concealed-carry permits to meet applicants' specific needs.

1. The City's demographics and physical conditions heighten the potential for harm posed by firearms. Many of the same public-safety considerations that prompted the adoption of the proper-cause

---

<sup>40</sup> *See* App. 27a, N.Y. (1931) (requiring applicants to seek a concealed-carry license in their city or county of residence); App. 27a–28a, N.Y. (1935) (providing that concealed-carry licenses issued outside of the City are not valid in the City unless the City's Police Commissioner issues a "special permit" to that individual); *Osterweil v. Bartlett*, 21 N.Y.3d 580, 586 (2013) (concluding that Legislature had adopted a residency requirement to prevent city residents from obtaining handgun permits in counties where, at the time, investigations were less thorough than in the City); Victor H. Bernstein, *New Law on Pistols Hailed by Valentine: With Their Fingerprint Records the City Police Can Keep More Guns Out of the Hands of Gangsters*, N.Y. Times, May 5, 1935, at E11 (explaining that City had advocated for "special permit" requirement after residents and non-residents arrested in the City were found with permits issued by other counties—under false names and based on false justifications—that did not follow the same careful investigative procedures as the City).

requirement over a century ago continue to exist in the City today, and in fact have grown even more salient.<sup>41</sup>

New York City's population is enormous: more people reside in the City than in 40 of the States. One in every 38 people living in the United States is a resident of the City. And the City's population is crammed into a mere 303 square miles—just a half-percent of the State's total landmass—resulting in a population density of 27,000 residents per square mile.<sup>42</sup> Over 5.5 million people ride the City's subways every day; over a billion rides are taken each year.<sup>43</sup> Manhattan—measuring a mere 23 square miles—is home to nearly 1.7 million people, and its daytime population swells to 4 million on a typical (non-pandemic) weekday.<sup>44</sup> The City also welcomes over 66 million tourists in a typical year.<sup>45</sup> Commuters and

---

<sup>41</sup> See *Shot Imperils Many Lives: Bullet Passes Through Brooklyn Crowd, Then Hits Woman*, N.Y. Times, Nov. 2, 1914, at 14; *New York City Has 1000th Shooting Victim of 2020 Amid Gun Violence Surge*, ABC News (Aug. 10, 2020), <https://perma.cc/G7E3-Q23A>; see also Sherman, Steele, et al., *Stray Bullets and 'Mushrooms': Random Shootings of Bystanders in Four Cities, 1977–1988*, 5 J. QUANTITATIVE CRIMINOLOGY 297, 307, tbls. I–II (1989); see generally Peter Manseau, *Melancholy Accidents: Three Centuries of Stray Bullets and Bad Luck* (2016).

<sup>42</sup> See N.Y. City Dep't of City Planning, *supra* note 1; Rebecca Fishbein, *Neat Map Overlays Show How Big NYC Is Compared to Other Cities*, Gothamist (Apr. 23, 2015, 6:40pm), <https://perma.cc/2ZKV-VH8V>.

<sup>43</sup> See Metro. Trans. Auth., *supra* note 3.

<sup>44</sup> An interactive map of Manhattan's fluctuating population can be viewed at <https://www.6sqft.com/see-nycs-population-pulse-over-24-hours/>.

<sup>45</sup> Eric Grossman, *New York City Anticipates a Summer Tourism Season Unlike Any Other*, Marketwatch (May 27, 2021, 1:10

visitors fill the City's streets and highways, subway and train stations, office buildings, and tourist attractions.

The City is also a hub for sensitive gathering places. A person in the City is almost always within close proximity to schools, daycares, playgrounds, museums, houses of worship, hospitals, government buildings, and other locations where large numbers of people congregate.<sup>46</sup> There are over 1,800 public schools; 66 hospitals; 1,700 parks, playgrounds, and recreational facilities; 113 museums; and over 5,000 places of worship within the City's roughly 300 square miles.<sup>47</sup>

Concealed firearms create special concerns in this setting. Indeed, the Court has recognized the validity of restrictions on firearm possession in the kinds of sensitive public spaces that pervade the City. *See Heller*, 554 U.S. at 626–27 & n.26 (noting presumptive constitutionality of “laws forbidding the carrying of

---

PM), [www.marketwatch.com/story/new-york-city-anticipates-a-summer-tourism-season-unlike-any-other-11622135445](http://www.marketwatch.com/story/new-york-city-anticipates-a-summer-tourism-season-unlike-any-other-11622135445).

<sup>46</sup> For an illustration of the sheer number and density of sensitive places in the City, see N.Y. City Dep't of City Planning, *Capital Planning Platform, Facilities and Program Sites*, <https://capitalplanning.nyc.gov/map#9/40.7128/-74.0807> (last visited Sept. 18, 2021).

<sup>47</sup> N.Y. City Dep't of Educ., *DOE Data at a Glance: Schools and Programs*, <https://perma.cc/YX35-PTXE> (captured Sept. 17, 2021); N.Y. Dep't of Health, *Hospitals by Region/County and Service*, <https://perma.cc/672Z-NJ8E> (captured Sept. 17, 2021); N.Y. City Dep't of Parks and Recreation, *About Parks*, <https://perma.cc/V55T-M2JX> (captured Sept. 17, 2021); Bess Adler, *Friends Set Out to Visit 113 New York City Museums*, Metro N.Y. (Feb. 24, 2014), <https://perma.cc/T4DC-WMHT>; William Grimes, *Where New Yorkers Worship: Finding God in a City of Bustle*, N.Y. Times, Dec. 24, 2015, at C25.

firearms in sensitive places such as schools and government buildings”). Widespread concealed carry would also raise concerns about safe storage and theft of firearms, since many of these sensitive places, as well as private businesses ranging from coffee shops to basketball stadiums, forbid visitors to enter with firearms.<sup>48</sup>

The City’s substantial population also heightens the dangers of firearm use. Dense streets, sidewalks, mass transit, and apartment buildings result in innumerable daily interactions, which naturally increases the potential for conflict and sometimes violence. Adding firearms to the mix, even for self-defense, amplifies the danger of commonplace confrontations. *See Woollard v. Gallagher*, 712 F.3d 865, 879 (4th Cir. 2013) (noting “the likelihood that basic confrontations between individuals would turn deadly” in the presence of concealed firearms (quotation marks omitted)).

The danger is not just to the participants. When shooters miss their target, the risk of injury, if not death, to a nearby person is substantial. Indeed, the City receives all-too-frequent reminders of the tragic consequences of gunfire for bystanders.<sup>49</sup> While

---

<sup>48</sup> *See, e.g.*, Barclays Ctr. Brooklyn, *Prohibited Items*, <https://perma.cc/CHP4-3WS4> (captured Sept. 19, 2021); Howard Schultz, Open Letter, Starbucks (Sept. 17, 2013), <https://perma.cc/H7XE-HAQZ>.

<sup>49</sup> *See* Manseau, *supra* note 41; Lucy Yang, *Man Arrested in NYC Bodega Shooting That Wounded 3 Innocent Bystanders*, ABC7NY (Aug. 9, 2021), <https://perma.cc/LRG5-5RAF>; Bill Devlin, *NYPD: Video Shows Man Wanted in Times Square Shooting That Injured Bystander*, NY1 (June 29, 2021), <https://perma.cc/3YP4-6296>; Amanda Woods, *Innocent Bystander Shot in Staten Island Dies of Her Injuries*, N.Y. Post (Nov. 26, 2020), <https://perma.cc/78XV-MFY6>; Tina Moore, Kevin Sheehan, & C.J. Sullivan,

bystanders face some risk from gunfire in almost any setting, the potential for harm presented by firearm discharge on a packed New York City sidewalk or subway car at rush hour has few parallels.

Concealed firearms in the City also present distinct challenges for police, who are often called on to assess rapidly unfolding and tense encounters involving highly agitated civilians, and to swiftly restore the peace, often in tight public spaces, amidst crowds of bystanders. A member of the public—whether a possible suspect or bystander—reaching for a concealed firearm as officers arrive makes this task far more dangerous for everyone on the scene. It is easy to imagine “the potentially tragic consequences that can result from the presence of a third person with a handgun during a confrontation between a police officer and a criminal suspect,” as well as the increased difficulties for policing posed by “the presence of handguns during routine police-citizen encounters,” increased reports of “handgun sightings,” and the need to identify “persons carrying handguns who pose a menace.” *Gould v. Morgan*, 907 F.3d 659, 675 (1st Cir. 2018) (alterations and quotation marks omitted).

At the same time, the need for resort to firearm use for self-defense in public is offset by the presence of a professional police force that responds quickly to threats and emergencies. While most communities in the State have one or two police stations,<sup>50</sup> 77 police

---

*Bystander Among Victims in Trio of Brooklyn Shootings*, N.Y. Post (Oct. 18, 2020), <https://perma.cc/GT93-LXM7>.

<sup>50</sup> For example, the police department in Troy, New York has two locations. See Troy, N.Y. Police Dep’t, <https://perma.cc/XGU5-BDS9> (captured Sept. 17, 2021). The City of Kingston, New York has a single police station. See Kingston, N.Y. Police Dep’t, <https://perma.cc/H9QP-ENPJ> (captured Sept. 17, 2021).

precincts blanket the City.<sup>51</sup> On average, there is one uniformed officer for every 230 city residents, and there are 120 uniformed officers per square mile.

2. Responding to the difficulties posed by protecting public safety and preventing gun violence in such a community, New York City licensing officials have adopted a relatively exacting standard for proper cause. *See* 38 R. City of N.Y. §§ 5-03–5-24. For example, the City’s licensing regulations provide that proper cause can be demonstrated by showing that the applicant is exposed “by reason of employment or business necessity to extraordinary personal danger requiring authorization to carry a handgun” or by showing that the applicant faces “extraordinary personal danger, documented by proof of recurrent threats to life or safety requiring authorization to carry a handgun.” *Id.* at § 5-03. Still, the regulations clarify that the listed factors “are not all[-]inclusive,” and that licensing officials “will consider any proof, including [law-enforcement] records, which document the need for a handgun license.” *Id.* A particularized need cannot be shown by the “mere fact that an applicant has been the victim of a crime or resides in or is employed in a ‘high crime area,’” *id.*, which is not to say that this consideration cannot play a role in the licensing decision.

City licensing officials also have the option to tailor concealed-carry licenses to more limited self-defense needs. These restricted carry licenses include the Limited Carry Business License, which may be issued to an applicant who demonstrates proper cause “only

---

<sup>51</sup> N.Y. City Police Dep’t, *Find Your Precinct and Sector*, <https://perma.cc/SCZ4-EZED> (captured Sept. 17, 2021).

for [a] specific time frame,” such as during business hours. 38 R. City of N.Y. § 5-01(c). These licenses “permit[] the licensee to carry the handgun listed on the license concealed on the person to and from specific locations during the specific days and times set forth on the license.” *Id.* Other forms of restricted license include Carry Guard and Gun Custodian Licenses, which allow licensees to carry handguns when “actually engaged in a work assignment as a security guard or gun custodian.” *Id.* at § 5-24(a), (b). Further, licensing officials may issue special permits allowing non-residents who possess a carry license issued elsewhere in the State to carry a concealed handgun when in the City. *Id.* at § 5-01(e).

Unrestricted and restricted carry license are not the only options available to meet the self-defense needs of city residents. Licensing officials also regularly issue premises licenses, which allow a handgun to be kept in a home or business and to be transported for various purposes. *Id.* at § 5-23(a). Residents may also seek licenses to possess a rifle or shotgun for premises protection. *Id.* at § 3-01.

**B. Petitioners elide the substantial local variation in the application of the proper-cause requirement.**

Other localities in the State have their own approaches to gun licensure, and in particular the proper-cause requirement. Indeed, a key strength of the proper-cause requirement lies in its adaptability, which has allowed licensing officials to address the needs of law-abiding residents for self-defense in light of the particular safety risks posed by firearms in their communities. As one local licensing official has underlined, the “circumstances which exist in New York City are significantly different than those which exist

in [rural] Oswego or Putnam Counties,” and local licensing officials are best positioned to determine whether the interest “of the population of their county is furthered by the use of restrictions on pistol licenses,” in light of factors such as “variations in population density, composition, and geographical location.” *In re O’Connor*, 154 Misc. 2d 694, 698 (N.Y. Cnty. Ct. 1992).

A review of the record here, and of the case law addressing concealed-carry licensing in New York, confirms the point. Of course, determinations to grant unrestricted concealed-carry licenses do not result in legal challenges, and thus do not yield reported decisions. But even when licensing officials outside the City place restrictions on licenses, they nonetheless regularly exercise their judgment to allow carry outside populated areas, consistent with the gun owners’ needs and the prevalence of sensitive places in their counties. Indeed, the two individual petitioners in this case received precisely such tailored licenses. The local licensing official in Rensselaer County issued Brandon Koch and Robert Nash restricted carry licenses for target practice and hunting, while clarifying that the licenses permitted concealed carry in off-road “back country areas” as opposed to areas “frequented by the public.” J.A. 41, 114. The official also permitted Koch to carry a handgun concealed to and from work for self-defense. J.A. 114; *see also O’Brien v. Keegan*, 87 N.Y.2d 436, 438 (1996) (Albany County license for target practice and hunting); *Eddy v. Kirk*, 195 A.D.2d 1009, 1010 (4th Dep’t 1993) (same, in Herkimer County); *In re Bastiani*, 23 Misc. 3d 235, 238 (N.Y. Cnty. Ct. 2008) (Rockland County sportswoman’s license for activities including hiking, camping, and hunting).

Petitioners treat proper cause as if it were a monolith, ignoring the variation between New York City and other communities. The elision of that variation is shown by petitioners' decision to cite, as evidence of the purported narrowness of the proper-cause requirement, only state-court decisions arising out of New York City licensing determinations. Pet. Br. 16–18. What is more, almost all of those cases review city licensing officials' application of the City's current regulations, *id.*, rather than the underlying state law. Those regulations do not govern outside the City and are not the subject of this lawsuit. As already shown, other licensing officials in the State may apply the proper-cause requirement less rigorously, and the requirement's vitality lies in its flexibility.

**C. The proper-cause requirement reflects a public-safety judgment that other states have made, courts have upheld, and this Court should not lightly disturb.**

The proper-cause requirement is an essential piece of a larger state framework calculated to meet the varying public-safety needs of the State's communities while facilitating the possession of firearms for self-defense. That framework, which combines local implementation of multiple avenues for licensure with aggressive law-enforcement efforts to target the unlawful sale and possession of firearms, is working. Under this regulatory regime, gun crime in the City has dropped precipitously in recent decades, and the State has one of the lowest rates of gun deaths in the Nation, second only to Massachusetts.<sup>52</sup>

---

<sup>52</sup> Elizabeth Glazer, *Testimony Delivered at the New York City Council Committee on Public Safety Hearing* (Mar. 30, 2017), available at <https://perma.cc/V83D-VS7J>; Vincent Barone, *New*

The choice to require a showing of proper cause to obtain a concealed-carry license reflects a sound public-safety judgment that is not unique to New York. Jurisdictions across the Nation have found that laws imposing similar requirements contribute meaningfully to public safety. *See Drake v. Filko*, 724 F.3d 426, 438 (3d Cir. 2013) (observing that several states have reached the same “predictive judgment”). And courts reviewing these requirements have acknowledged their important benefits. *See id.* at 438–40; *Gould*, 907 F.3d at 675; *Woollard*, 712 F.3d at 879–80; *see also Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (“The right to carry weapons in public for self-defense poses inherent risks to others.”).

Courts across the Nation have consistently upheld these laws because they are the product of states’ collective wisdom and experience in addressing the substantial public-safety risks posed by the concealed carrying of loaded handguns in public spaces. *See, e.g., Gould*, 907 F.3d at 675; *Drake*, 724 F.3d at 438; *Woollard*, 712 F.3d at 879–81; *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012). This Court should likewise give great weight to New York’s judgment, born of centuries of experience and extensive experimentation, and not lightly disturb a long-standing licensing requirement that has evolved to respond to developing threats to its communities. To be sure, not every jurisdiction across the Nation may view proper cause as the appropriate requirement for its own circumstances. But the Constitution leaves

---

*York City Sees Drop in Shootings, Murders as Gun Arrests Rise*, WCBS Newsradio 880 (Aug. 5, 2021 5:18 PM), <https://perma.cc/D923-6ZEL>; Educ. Fund to Stop Gun Violence, *supra* note 5, at 18.

room for states to make different policy choices to suit their particular conditions, as New York has done here.

**CONCLUSION**

The Court should affirm.

Respectfully submitted,

GEORGIA M. PESTANA  
*Corporation Counsel  
of the City of New York*

RICHARD DEARING  
*Counsel of Record*

CLAUDE S. PLATTON  
INGRID R. GUSTAFSON  
ELINA DRUKER  
100 Church Street  
New York, NY 10007  
(212) 356-2500  
rdearing@law.nyc.gov

*Counsel for Amicus Curiae*

September 21, 2021

## **APPENDIX**

**APPENDIX****HISTORICAL LAWS****A. Pre-Founding-Era and Founding-Era Fire-arm Regulations in New York**

*1652 N.Y. Laws 138, Ordinances of New Amsterdam, Ordinance of the Director and Council of New Netherland Against Firing at Partridges or Other Game Within the Limits of New Amsterdam*

Whereas, many guns are daily discharged and fired at Partridges and other game within the jurisdiction of this city New Amsterdam and in the vicinity of the Fort, by which firing People or Cattle might perhaps be struck and injured, against which practice complaints have already been made, Therefore the Honorable Director General and Council, in order to prevent accidents, expressly forbid and interdict all persons henceforward firing within the jurisdiction of this city or about the Fort, with any guns at Partridges or other Game that may by chance fly within the city, on pain of forfeiting the gun and a fine at the discretion of the Judge, to be applied one-third to the Poor, one-third to the Church and one-third to the Officer.

*Ordinances of the City of N.Y., § 6 (1763), reprinted in Laws, Statutes, Ordinances and Constitutions, Ordained, Made and Established, by the Mayor, Aldermen, and Commonalty, of the City of New York, Convened in Common-Council, for the Good Rule and Government of the Inhabitants and Residents of the Said City 11*

And be it further ordained by the authority aforesaid, That if any Children, Youth, apprentices, Servants, or other persons, do fire and discharge any gun, pistol, leaden-gun, rockets, crackers, squibs, or other Fire-

Works, at any mark, or at random against any fence, pales or other place in any street, lane or alley, or within any orchard, garden or other enclosure, or in any place where persons frequent to walk, such person so offending shall forfeit for every such offense, the sum of forty shillings, current money of New York; and on refusal to pay the same, shall be committed to the House of Correction, at the discretion of the Mayor, recorder or aldermen, or any one of them before whom such offender shall be convicted, there to remain committed, not exceeding Twenty days; unless such forfeiture as aforesaid, be sooner paid with the lawful fees of commitment; one half thereof to the informer with costs, and the other half to the church wardens of this City, for the use of the poor thereof.

*A Law for the Better Securing of the City of New York from the Danger of Gun Powder (1763), reprinted in Laws, Statutes, Ordinances and Constitutions, Ordained, Made and Established, by the Mayor, Aldermen, and Commonalty, of the City of New York, Convened in Common-Council, for the Good Rule and Government of the Inhabitants and Residents of the Said City 39, Image 40*

Be it therefore ordained by the Mayor, Aldermen and Commonality of the City of New York, convened in Common Council, and it is hereby ordained by the authority of the same, the from and after the publication hereof, no person or persons whatsoever inhabiting within the said city, within two miles of the city-hall of the said city, shall presume to keep in any house, shop, cellar, store-house, or other place within the said city (his majesty's garrison and magazine only excepted) any more or greater quantity of gun-powder at one time, than twenty-eight pounds weight (except in the magazines or powder house aforesaid)

under the penalty of ten pounds current money of New York, for every offense.

*1784 Laws of N.Y. 627, An Act to Prevent the Danger Arising from the Pernicious Practice of Lodging Gun Powder in Dwelling Houses, Stores, or Other Places Within Certain Parts of the City of New York, or on Board of Vessels Within the Harbor Thereof, ch. 28*

WHEREAS the storing of gun powder within the city of New York is dangerous to the safety thereof.

*Be it therefore enacted by the People of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority the same, That from and after the passing of this act, it shall not be lawful for any merchant, shopkeeper, or retailer, or any other person, or persons whatsoever, to have or keep any quantity of gun powder exceeding twenty-eight pounds weight, in any one place, less than one mile to the northward of the city hall of the said city, except in the public magazine at the Fresh-water, and the said quantity of twenty-eight pounds weight, which shall be lawful for any person to have and keep at any place within this city, shall be separated into four stone jugs or tin cannisters, which shall not contain more than seven pounds each, on pain of forfeiting all such gun powder, and the sum of fifty pounds for every hundred weight, and in that proportion for a greater or lesser quantity, and upon pain of forfeiting such quantity which any person may lawfully keep as aforesaid, and which shall not be separated as above directed, with full costs of suit to any person, or persons, who will inform and sue for the same, by any action, bill, or information, in any of the courts of record, in this city, who are hereby empowered, and required, to give special judgment in such action bills or informations, to be brought by virtue of this act, as*

well for the recovery of the value of such gun powder in specie, as for the penalty aforesaid, besides costs, and to award, effectual execution thereon, provided always that all suits, actions, or prosecutions to be brought, commenced, or prosecuted, against any person or persons, for any thing done in pursuance of this act, shall be commenced and prosecuted without willful delay, within two calendar months next after the fact was committed, and not otherwise.

*And whereas* vessels arriving from sea, and having onboard as part of their cargo a quantity of gun powder.

*Be it enacted by the authority aforesaid,* That the commander, or owner or owners, of all such ships or vessels, having gun powder onboard, shall, within twenty-four hours after her arrival in the harbour, and before they hawl along side of any wharf, pier or key within the city, land the said gun powder, by means of their boat or boats, or any other craft, at any place along the ship yards on the East river, or at any place to the northward of the air furnace on the North river, which may be most contiguous to the magazine at Fresh water, and shall cause the same to be stored there, or in any other proper magazine, which now is or hereafter may be built for that purpose, at any place to the northward thereof, on pain of forfeiting all such gun powder, to any person or persons, who will inform and sue for the same, in like manner, as is herein before directed, with respect to the having and storing of gun powder within the city as aforesaid. And in order to prevent any fatal consequences which may arise, from the carriage of gun powder, in and through the streets of the city of New York, by carts, carriages, or by hand, or otherways, it shall be in tight cask, well headed and hooped, and shall be put into bags or

leather-cases, and entirely covered therewith, so as that none be spilt or scattered in the passage thereof, on pain of forfeiting all such gun powder, as shall be conveyed through any of the streets aforesaid in any other manner than is herein directed, and it shall and may be lawful for any person or persons, to seize the same to his or their own use and benefit—provided the person or persons so offending, be thereof lawfully convicted, before the mayor, recorder, or any two justices of the city aforesaid. And that it shall and may be lawful, for the mayor recorder, or any two justices of the peace of the city and county of New York, upon demand made by any inhabitant or inhabitants of the said city, who assigning a reasonable cause of suspicion on oath, of the sufficiency of which the said mayor or recorder, or justices, is and are to judge, to issue his or their warrant or warrants, under his or their hands and seals, for searching in the day time for gun powder in any building or place whatsoever, within the limits aforesaid, or any ship or vessel within forty eight hours after her arrival in the harbour, or at any time after any such ship or vessel shall and may have hawled alongside of any wharf pier or key within the limits aforesaid, and that upon any such search, it shall be lawful for the searchers or persons finding the same, immediately to seize, and at any time within twelve hours after such seizure, to cause the same to be removed to the magazine at Fresh water, or to any other proper magazine, which now is or hereafter may be at any place north of Fresh water aforesaid, and the same being so removed, it shall be lawful to detain and keep the same until it shall be determined by the mayor, recorder or any two of the justices of the peace of the city and county aforesaid, whether the same shall be forfeited by virtue of this act, and the person or persons so detaining

the same, shall not be subject or liable to any action or suit, for the detention thereof, provided always that nothing in the act contained, shall be construed to authorize any person, having such warrant to take advantage of the same, for serving any civil process of any kind whatsoever.

*1785 Laws of N.Y. 152, An Act to Prevent the Firing of Guns and Other Fire Arms Within This State, on Certain Days Therein Mentioned, ch. 81*

WHEREAS great dangers have arisen, and mischief been done, by the pernicious practice of firing guns, pistols, rockets, squibs, and other fireworks on the eve of the last day of December, and the first and second days of January; for prevention whereof for the future.

Be it enacted by the People of the State of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons whomsoever, shall fire or discharge any gun, pistol, rocket, squib or other firework, within a quarter of a mile of any building, on the said eve, or days beforementioned, every such person so offending, and being thereof convicted before any justice of the peace, of the city or county where such offence shall be committed either by the confession of the party or parties so offending, or the oath of any one credible witness, shall for every such offence forfeit the sum of forty shillings with costs of suit, to be levied by distress and sale of the offenders goods and chattels, by warrant under the hand and seal of the said justice, before whom such conviction or convictions shall be had as aforesaid, the one moiety of which forfeiture, to be applied to the use of the poor, of the town or place wherein such offender shall be convicted, and the other moiety to the use of the per-

son or persons who shall prosecute for the same and for want of sufficient distress, whereon to levy the same, every such justice is hereby impowered and required, by warrant under his hand and seal to commit every such person or persons, so as aforesaid offending, to the common gaol of the county wherein the said forfeiture shall arise, there to remain without bail or mainprize for the space of one month, unless such forfeiture or forfeitures be sooner paid.

*N.Y. City, N.Y., Act of Apr. 22, 1786, reprinted in The Daily Advertiser (N.Y. City, N.Y.) (Dec. 30, 1788)*

Notification. By the Order of the Record and Aldermen, The citizens are informed that the Act of the Legislatures for the more effectual prevention of fires in the city of New York, passed the 22d day of April, 1786, will be put into strict execution. By this law, any person of what age, sex or quality whatever, who shall discharge any gun, pistol, rocket, cracker, squib, or other fire-work, in this city, shall forfeit the penalty of twenty shillings for every offense. The danger to which the houses, property and persons of the citizens have been exposed by disorders of this nature, especially in the New Year Holy Days, render an obedience to this law indispensably necessary to the public safety; wherefore the constables, [illegible], and watchmen of this city, are required to vigilant in the execution thereof; and it is hoped that the good citizens will exert themselves in restraining their children, apprentices and servants, from offending against the same.

*A Law to Prevent the Firing of Guns in the City of N.Y., ch. XXIII, § 1 (1803)*

Ordinances of the City of New York, To Prevent the Firing of guns in the City of New York, § 1. Whereas

the firing of guns and the practice of fowling in the public streets and in the roads or highways in the vicinity of this city, are frequently productive of accidents and dangerous consequences are always to be apprehended therefrom: Be it therefore ordained by the Mayor, Aldermen, and Commonality of the City of New York, in the Common Council convened, That no person shall hereafter be permitted to fire or discharge any gun, pistol, fowling piece, or fire-arm, at any place on the island of New York, within the distance of four miles from the City Hall, under the penalty of five dollars upon each offender, to be recovered with costs. And if the person so offending shall be a minor, apprentice, servant or slave, the said fine shall be recoverable from his father, mother, master or mistress, together with costs. Provided always, that nothing contained in this ordinance shall be construed to extend to the reviews or exercises of any military company, or of the State Prison Guards.

*Ordinances of the City of Schenectady, XI (1824), reprinted in Laws of the State of New-York, Relating to the City of Schenectady: And the Laws and Ordinances of the Common Council of the City of Schenectady 58, Image 58*

And be it further ordained, That if any person shall fire or discharge any gun, pistol, rocket, cracker, squib or other fireworks, in any street, lane or alley, or in any yard, garden or other enclosure, or in any place which persons frequent to walk within the limits aforesaid, without permission of the mayor or one of the aldermen or assistants of this city, such person shall forfeit for every such offence the sum of one dollar ....

*A Law to Prevent Evil Practices in the City of Brooklyn, Title 1, §1 (1836), reprinted in Acts Relating to the City of Brooklyn, and the Ordinances Thereof; Together with an Appendix, Containing the Old Charters, Statistical Information, &c. &c. 25, Image 222*

The Mayor and Aldermen of the city of Brooklyn, in Common Council Convened, do ordain as follows: That it shall not be lawful for any person within the first six wards, and in so much of the seventh ward as lies westerly of Clinton avenue and the Jamaica turnpike, southerly of the place where the said turnpike is intersected by Clinton avenue, in said city, to fire or discharge any gun, pistol, fowling piece, or fire arms, or to explode or set off any squib, cracker, or other thing containing gunpowder, or any combustible material, under the penalty of five dollars for each and every offence. Provided, that nothing herein contained shall be construed to extend to any military exercise or review.

**B. Pre-Sullivan Law Regulations of Discharge and Carry of Firearms in New York**

*Schenectady, N.Y., An Ordinance Prohibiting the Obstructing of Side-Walks, and for Other Purposes, § 3 (1863), reprinted in Charter of the City of Schenectady [Passed Apr. 21, 1862, with Ordinances, Etc.] 97 (1869)*

It shall not be lawful for any person to discharge any gun, pistol or other fire-arms, except in a shooting gallery, within the lamp district of this city; and every person offending in this respect shall be punished by fine not exceeding ten dollars and the costs of the suit, and to stand committed until such fine and costs be paid, not exceeding ten days.

*Ordinances of the Village of Lansingburgh, §5 (1865), Charter of the Village of Lansingburgh, and the By-Laws and Ordinances Revised July 1865, at 50, Image 51*

It shall not be lawful for any person or persons to set fire to, or burn, or cause to be burned, any shavings, leaves, straw, chips, rubbish, barrels, boxes or other combustible materials in any street, or alley, or upon any lot in said village, unless the same be done between the hours of sunrise and ten o'clock in the morning; nor shall any person or persons fire any cannon, gun, pistol or other fire arms, or set fire to, or burn any squib, cracker, rocket or powder (except for the purpose of blasting rocks for improvements, or trying guns in the manufacturing of them,) within the limits of said village without the consent of the president or board of trustees of said village; and every person offending against any of the provisions of this section contained shall forfeit and pay for every offence the sum of twenty dollars.

*John Worth Edmonds, Statutes at Large of the State of New York, Comprising the Revised Statutes, as They Existed on the 1st Day of January, 1867, and All the General Public Statutes Then in Force, Vol. 1, at 613, Image 653 (2d Ed. 1869)*

Immorality, § 3. No person shall fire or discharge any gun, pistol, rocket, squib, cracker, or other fire-work, within a quarter mile of any building, on the twenty-fifth day of December, on the last day of December, on the first day of January, or on the twenty-second day of February, in any year; nor on the fourth day of July, or such other day as shall at the time be celebrated as the anniversary of American independence, without the order of some officer of the militia, while in the course of military exercises: every per-

son offending against these provisions, shall forfeit the sum of five dollars to be recovered by any person who will prosecute in the name of the overseers of the poor, with their consent and under their discretion, for the use of the poor.

*Pistols—Carrying Of: Ordinance to Regulate the Carrying of Pistols, Oct. 25, 1880, reprinted in The Brooklyn Daily Eagle, Oct. 26, 1880, at 1 (Brooklyn, N.Y.)*

Section 1: Every person, except those authorized by law to make arrests, all persons to whom permits shall have been issued, as hereinafter provided, who shall have in his possession, within the City of Brooklyn a pistol of any description, concealed on his person, shall be punished, on conviction, by a fine not exceeding ten dollars, or, in default of payment of such fine, by imprisonment not exceeding ten days.

Section 2: Any person twenty one years of age and over, except as provided in Section 1 of this ordinance, who has occasion to carry a pistol for his protection, may apply to the officer in command of the station house of the precinct where he resides, and such officer, if satisfied that the applicant is a proper and law abiding person, shall give said person a recommendation to the Superintendent of Police, or, in the absence of the superintendent, to the inspector in command at the central office, who may issue a permit, if approved by the Commissioners of Police and Excise, to the said person, allowing him to carry a pistol of any description.

Section 3: Any non-resident, who does business in the City of Brooklyn, and has occasion to carry a pistol while in said city, must make application for permission to do so to the officer in command of the station

house of the precinct in which he does business, in the same manner as is required by residents of said city, and shall be subject to the same conditions and restriction.

Section 4: The Commissioner of Police and Excise is hereby authorized and empowered, for reasons appearing to be satisfactory to him, to annul or revoke any permit given under this ordinance. All persons to whom such permission shall be given are hereby declared to be individually responsible for their own acts or the consequences that may arise from the use of pistols carried under the permission to be obtained as provided in this ordinance.

Section 5: If, at the time of the arrest of any person, a pistol of any description shall be found concealed on the person so arrested, without the necessary permit to carry the same, the officer making the arrest shall state such fact to the police magistrate before whom the prisoner is brought, and shall make a separate complaint (in addition to the complaint under which the arrest is made) against such prisoner for violation of this ordinance.

*Article XXVII: Carrying of Pistols, § 264–65, undated, reprinted in Ordinances of the Mayor, Aldermen and Commonalty of the City of N.Y., in Force January 1, 1881, 214–16 (Elliott F. Shepard & Ebenezer B. Shafer eds., 1881) (New York, N.Y.).*

§ 264. Every person except judges of the federal, state and city courts, and officers of the general, state and municipal governments authorized by law to make arrests, and persons to whom permits shall have been issued, as hereinafter provided, who shall have in his possession within the city of New York a pistol of any description concealed on his person, or not carried

openly, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction by a fine not exceeding ten dollars, or, in default of payment of such fine by imprisonment not exceeding ten days.

§ 265. Any person, except as provided in this article, who has occasion to carry a pistol for his protection, may apply to the officer in command at the station-house of the precinct where he resided, and such officer, if satisfied that the applicant is a proper and law abiding person, shall give said person a recommendation to the superintendent of police, or the inspector in command at the central office in the absence of the superintendent, who shall issue a permit to the said person allowing him to carry a pistol of any description. Any non-resident who does business in the city of New York, and has occasion to carry a pistol while in said city, must make application for permission to do so to the officer in command of the station-house of the police precinct in which his so does business, in the same manner as is required by residents of said city, and shall be subject to the same conditions and restrictions.

*Ordinances of the Village of Mechanicville, N.Y., Fires and Their Prevention, Fire Arms and Fire Works, § 20 (1881), reprinted in Charles Wheeler, By-Laws of the Village of Mechanicville, Adopted by the Trustees October 18, 1881, at 7, Image 8*

No person, except on the anniversary of our national independence, and on that day only, at such place or places as the President or Trustees shall permit, shall fire, discharge or set off, in the village, any gun, cannon, pistol, rocket, squib, cracker or fire ball, under the penalty of five dollars for each offense.

*N.Y. Penal Code § 412 (1881), repealed, 1882 N.Y. Laws 540, 544, ch. 384*

A person who carries concealed about his person any kind of fire-arms, being loaded or partly loaded, or any sharp or dangerous weapon such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

*The Penal Code of the State of New York, in Force December 1, 1882, as amended by laws of 1882 and 1883 with Notes of Decisions and a Full Index, Vol. 6, at 98, Image 104 (1883)*

Discharging Firearms in Public Places, § 468. A person, who willfully discharges any species of firearms, air-gun, or other weapon, or throws any deadly missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

*N.Y. Penal Code § 410 (1881), as amended by ch. 46, § 8, 1884 N.Y. Laws 44, 47*

Section four hundred and ten of said act is hereby amended so as to read as follows:

§ 410. A person who attempts to use against another, or who, with intent so to use, carries, conceals or possesses any instrument or weapon of the kind commonly known as the slung-shot, billy, sand-club or metal knuckles, or a dagger, dirk or dangerous knife, is guilty of a felony. Any person under the age of eighteen years who shall have, carry or have in his possession in any public street, highway or place in any city of this state, without a written license from a police magistrate of such city, any pistol or other fire-arm of any kind, shall be guilty of a misdemeanor. This section shall not apply to the regular and ordinary

transportation of fire-arms as merchandise, or for use without the city limits.

*Syracuse, N.Y., Offenses Against the Public Peace and Quiet, § 7 (1885), in Charter and Ordinances of the City of Syracuse: Together with the Rules of the Common Council, the Rules and Regulations of the Police and Fire Departments, and the Civil Service Regulations 215 (1885)*

Any person who shall carry about his or her person any dirk, bowie knife, sword or spear cane, pistol, revolver, slung shot, jimmy, brass knuckles, or other deadly or unlawful weapon, or shall use any deadly or unlawful weapon, with intent to do bodily harm to any person, shall be subject to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment in the penitentiary of the county for not less than thirty days nor longer than three months, or to both such fine and imprisonment.

*Title VII, Chap. II of the Department of Police, An Act to Revise the Charter of the City of Buffalo, Mar. 27, 1891, reprinted in Laws of the State of New York Passed at the One Hundred and Fourteenth Session of the Legislature 127, 176-77 (1891) (Buffalo, N.Y.), ch. 105, tit. 7, ch. 2, § 209*

Section 209: The superintendent may, upon application in writing, setting forth under oath sufficient reasons, issue to any person a permit in writing to carry a pistol or pistols in the city. If such person shall be a private watchman, whose employers recommend the issuing of such permit and whose duties may require the use of such weapon or weapons, such permit shall be issued without charge. For all other such permits issued said superintendent shall charge and receive an annual fee of two dollars and fifty cents,

in advance. Such permit shall not continue in force for more than one year, but may in the discretion of the superintendent, be revoked, or renewed from time to time upon the payment in advance of the fee of two dollars and fifty cents for each year. The superintendent shall keep a register, upon which shall be entered the name, residence and occupation of every person to whom he shall issue such permit, the date of issue or renewal, and the fee received for the same; and all the fees so received by him shall be deposited monthly in the city treasury to the credit and for the use of the police pension fund hereinafter mentioned.

No person, other than members of the police force, regularly elected constables, the sheriff of Erie county, and his duly appointed deputies, shall, in the city, carry concealed upon or about his person, any pistol or revolver, or other dangerous weapon or weapons, without having first obtained a permit, as hereinbefore provided; and such permit shall be produced and exhibited by any person holding the same, upon the request of a member of the police force. A violation of any of the provisions of this section shall be a misdemeanor and punishable as such; and all fines imposed and collected for such violations shall be deposited to the credit of said pension fund by the clerk of the court imposing the same.

*City of Elmira—Official Notice, Jul. 22, 1892, reprinted in Elmira Gazette, Jul. 28, 1892, at 7 (Elmira, N.Y.)*

The Common Council of the City of Elmira do ordain and enact as follows:

Section 1: Every person except those authorized by law to make arrests, and person to whom permits shall have been issued, as hereinafter provided, who shall

have in his possession within the city of Elmira, a pistol of any description concealed on his person, shall be punished on conviction, by a fine not exceeding ten dollars, or, in default of payment of such fine, by imprisonment not exceeding ten days.

Section 2: Any person twenty-one years old and over, except as provided in section one of this ordinance, who has occasion to carry a pistol for his protection, may apply to the chief of police of this city, and such officer if satisfied that the applicant is a proper and law-abiding person, may issue a permit, if approved by the Commissioners of Police, to the said person, allowing him to carry a pistol of any description. The chief of police shall keep a list of such permits granted and shall make returns of the same, upon suitable blanks, to the Commissioners of Police as each meeting of the board for their approval.

Section 3: The chief of police is hereby authorized and empowered, for reasons appearing to be satisfactory to him, to annul or revoke any permit given under this ordinance. All persons to whom such permission shall be given are hereby declared to be individually responsible for their own acts or the consequences that may arise from the use of pistols carried under the permission to be obtained as provided in this ordinance.

Section 4: If, at the time of the arrest of any person, a pistol of any description shall be found upon the person so arrested, without the necessary permit to carry the same, it shall be deemed to work a forfeiture of any right or interest such person may have to, or in such pistol; and the officer making the arrest shall, in addition to the complaint for which the arrest is made, make a separate complaint of violation of this ordinance.

Providing that this section shall not apply to any person who may be carrying a pistol unloaded from the place of its purchase to the residence or to the place of business of such person.

*N.Y. Penal Code § 410, as amended by ch. 92, 1905  
N.Y. Laws 129, as amended by ch. 93, 1908 N.Y. Laws  
242*

Carrying, et cetera, dangerous weapons. A person who attempts to use against another, or who carries, or possesses any instrument or weapon of the kind commonly known as a slungshot, billy, sandclub or metal knuckles, or who with intent to use the same against another, carries or possesses a dagger, dirk or dangerous knife is guilty of a felony. Any person under the age of sixteen years, who shall have, carry or have in his possession in any public place any of the articles named or described in the last section which it is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor. Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village or town of this state, any pistol, revolver or other firearm without a written license therefor, theretofore issued to him by a police magistrate of such city or village, or in such manner as may be prescribed by ordinance of such city or village or by a justice of the peace of such city, village or town shall be guilty of a misdemeanor. No person not a citizen of the United States, shall have or carry firearms or dangerous weapons in any public place at any time. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen or to other duly appointed peace officers, nor to duly authorized military or civil organizations when parading, nor to the members thereof when going to

and from the places of meeting of their respective organizations.

*An Ordinance Regulating the Carrying of Loaded Firearms and Other Dangerous Weapons in the City of Troy, May 4, 1905, reprinted in Municipal Ordinances of the City of Troy 425–26 (1905) (Troy, N.Y.)*

Section 1: Any person, other than a peace officer, who shall in any public street, highway or place within the City of Troy, have or carry concealed upon his person any loaded pistol, revolver, or other firearm, or any slungshot, billy, sand-club, or a dagger, dirk, stiletto, or dangerous knife, without theretofore having been authorized as hereinafter provided to carry the same, shall be guilty of a misdemeanor, punishable by a fine not exceeding one hundred and fifty dollars or by imprisonment in a penitentiary or county jail for not more than one hundred and fifty days, or by both.

Section 2: Any person, except as provided in this ordinance, who has occasion to carry a loaded revolver, pistol or firearms for his protection, may apply to the commissioner of public safety—and such officer, if satisfied that the applicant is a proper and law-abiding person, shall give the said person a permit allowing him to carry such loaded firearm for such period of time as he may deem proper. Any non-resident who does business in the City of Troy, and has occasion to carry a loaded pistol, revolver, or firearm while in the said city, must make application for permission to do so, to the commissioner of public safety, in the same manner as is required for residents of said city, and shall be subject to the same conditions and restrictions.

Section 3: If, at the time of arrest, a loaded pistol, revolver, or firearm of any description or slungshot, billy, sand club, or a dagger, dirk, stiletto, or danger-

ous knife, shall be found concealed on the person of the one arrested, the officer making the arrest shall state such fact to the Magistrate before whom the prisoner is brought, and shall make a separate complaint against such prisoner, for violation of the provisions of this ordinance.

Section 4: The commissioner of public safety is hereby authorized and empowered, for reasons appearing to be satisfactory to him, to annul, or revoke any permission given under this ordinance. Every person to whom a permit shall be given as above provided, shall pay therefor, the sum of two dollars and fifty cents; which shall be applied in aid of the police pension fund; and a return in detail, shall be made monthly by the commissioner of public safety, to the comptroller of the city, of the amount so received and credited. All persons to whom such permission shall be granted are hereby declared to be individually responsible for their own acts or the consequences that may arise from the use of loaded pistols, revolvers or firearms, carried under the permission obtained as provided in this ordinance.

Section 5: All ordinances or parts of ordinances of the City of Troy, inconsistent with the provisions of this ordinance are hereby repealed.

Section 6: This ordinance shall take effect immediately.

*Penal Ordinance No. 35: Concealed Weapon, Dec. 7, 1909, reprinted in Revised Charter and Ordinances of the City of Lockport 336-37 (1913) (Lockport, N.Y.)*

Section 1: No person over the age of 16 years shall have or carry concealed upon his person, in the said city, any pistol, revolver, or other firearm without a written license therefor, theretofore issued to him by the chief of police of such city as hereinafter provided.

21a

Section 2: The chief of police may, upon application therefor, issue to any person, who is over sixteen years of age and a citizen of the United States, a permit in writing to carry a pistol or revolver in said city. For such permits so issued said chief of police shall charge and receive a fee of one dollar and fifty cents in advance. Said permit shall not continue in force for more than one year, and may, in the discretion of the chief of police, be revoked or renewed from time to time upon the payment in advance of one dollar and fifty cents for each year, or fraction thereof. The chief of police shall keep a record of the name, age, residence and occupation of every person to whom he shall issue such permit, and date of issue, or renewal, and the fee received for the same; and all the fees so received by him shall be deposited monthly in the city treasury to the credit and for the use of the police pension fund of said city. Any permit issued hereunder shall be produced and exhibited by any person holding the same, upon the request of a member of the police department of said city.

Section 3: Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed fifty dollars, or imprisonment. And all fines imposed and collected for a violation of this section shall be deposited to the credit of said pension fund by the person so collecting the same.

Section 4: This ordinance shall take effect immediately.

*Chapter 72: An Ordinance Regulating the Carrying of Loaded Firearms in the City of Albany, Mar. 6, 1905, reprinted in Municipal Code of the City of Albany, N.Y. 849–50 (1910) (Albany, N.Y.)*

Section 1: Any person, other than a peace officer, who shall in any public street, highway or place within the City of Albany, have or carry concealed upon his person any loaded pistol, revolver, or other firearm, without theretofore having been authorized as hereinafter provided to carry the same, shall be guilty of a misdemeanor, punishable by a fine not exceeding one hundred and fifty dollars, or by imprisonment in a penitentiary or county jail for not more than one hundred and fifty days, or by both.

Section 2: Any person, except as provided in this ordinance, who has occasion to carry a loaded revolver, pistol or firearms for his protection, may apply to the Commissioner of Public Safety—and such officer, if satisfied that the applicant is a proper and law-abiding person, shall give the said person a permit allowing him to carry such loaded firearm for such period of time as he may deem proper. Any nonresident who does business in the City of Albany, and has occasion to carry a loaded pistol, revolver, or firearm while in the said city, must make application for permission to do so, to the Commissioner of Public Safety, in the same manner as is required for residents of said city, and shall be subject to the same conditions and restrictions.

Section 3: If, at the time of arrest, a loaded pistol, revolver, or firearm of any description shall be found concealed on the person of the one arrested, the officer making the arrest shall state such fact to the Magistrate before whom the prisoner is brought, and shall

make a separate complaint against such prisoner, for violation of the provisions of this ordinance.

Section 4: The Commissioner of Public Safety is hereby authorized and empowered, for reasons appearing to be satisfactory to him, to annul, or revoke any permission given under this ordinance. Every person to whom a permit shall be given as above provided, shall pay therefor, the sum of two dollars and fifty cents; which shall be applied in aid of the Police Pension Fund; and a return in detail, shall be made monthly by the Commissioner of Public Safety, to the Comptroller of the City, of the amount so received and credited. All persons to whom such permission shall be granted are hereby declared to be individually responsible for their own acts, or the consequences that may arise from the use of loaded pistols, revolvers or firearms, carried under the permission obtained as provided in this ordinance.

Section 5: All ordinances or parts of ordinances of the City of Albany, inconsistent with the provisions of this ordinance are hereby repealed.

### **C. The Sullivan Law and Amendments**

*1911 N.Y. Laws 442, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons, ch. 195, § 1*

Section ... eighteen hundred and ninety-seven ... [is] hereby amended to read as follows:

§ 1897. Carrying and use of dangerous weapons .... Any person over the age of sixteen years, who shall have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, issued to him by a police

magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance in such city, village or town, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, theretofore issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a felony.

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any public place, at any time, shall be guilty of a felony. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the places of meeting of their respective organizations.

*1913 N.Y. Laws 1627, An Act to Amend the Penal Law Generally, in Relation to the Carrying, Use and Sale of Dangerous Weapons, ch. 608, § 1*

Section eighteen hundred and ninety-seven of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime, constituting chapter forty of the consolidated laws," as amended by chapter one hundred and ninety-five of the laws of nineteen hundred and eleven, is hereby amended to read as follows:

§ 1897. Carrying and use of dangerous weapons ....  
Any person over the age of sixteen years, who shall

have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, issued to him as hereinafter prescribed, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, issued as hereinafter prescribed and licensing such possession and concealment, shall be guilty of a felony.

Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any place, at any time, shall be guilty of a felony, unless authorized by license issued as hereinafter prescribed.

It shall be the duty of any magistrate in this state to whom an application therefor is made by a commissioner of correction of a city or by any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted of or accused of crime, or offences, or held as witnesses in criminal cases, to issue to each of such persons as may be designated in such applications, and who is in the regular employ in such institution of the state, or of any county, city, town or village therein, a license authorizing such person to have and carry concealed a pistol or revolver while such person remains in the said employ.

It shall be the duty of any magistrate in this state, upon application therefor, by any householder, merchant, storekeeper or messenger of any banking institution or express company in the state, and provided

such magistrate is satisfied of the good moral character of the applicant, and provided that no other good cause exists for the denial of such application, to issue to such applicant a license to have and possess a pistol or revolver and authorizing him (a) if a householder, to have such weapon in his dwelling, and (b) if a merchant, or storekeeper, to have such weapon in his place of business, and (c) if a messenger of a banking institution or express company, to have and carry such weapon concealed while in the employ of such institution or express company.

In addition, it shall be lawful for any magistrate, upon proof before him that the person applying therefor is of good moral character, and that proper cause exists for the issuance thereof, to issue to such person a license to have and carry concealed a pistol or revolver without regard to employment or place of possessing such weapon, provided, however, that no such license shall be issued to any alien, or to any person not a citizen of and usually resident in the state of New York, except by a judge or justice of a court of record in this state, who shall state in such license the particular reason for the issuance thereof, and the names of the persons certifying to the good moral character of the applicant.

Any license issued in pursuance of the provisions of this section may be limited as to the date of expiration thereof and may be vacated and cancelled at any time by the magistrate, judge or justice who issued the same or by any judge or justice of a court of record. Any license issued in pursuance of this section and not otherwise limited as to place or time or possession of such weapon, shall be effective throughout the state of New York, notwithstanding the provisions of any local law or ordinance.

This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the place of meeting of their respective organizations.

*An Act to Amend the Penal Law, in Relation to the Sale, Possession, Use and Licensing of Firearms, L. 1931, ch. 792, § 9-a*

No license shall be issued by the police commissioner of the city of New York except to a resident of that city. Outside of the city of New York, no license shall be issued by a judge or justice of a court of record except to a resident of the county in which the office of such judge or justice is located. A license may be issued, however, to a qualified person principally employed in such city or county and to a merchant or storekeeper having his principal place of business in such city or county.

*An Act to Amend the Penal Law, in Relation to Pistol Licenses, L. 1935, ch. 508, § 9-a*

No license shall be issued by the police commissioner of the city of New York except to a resident of that city nor by the Nassau county chief of police except to a resident of that city nor by the Nassau county chief of police except to a resident of that county. Outside of the city of New York and of the county of Nassau, no license shall be issued by a judge or justice of a court of record, except to a resident of the county in which the office of such judge or justice is located. A license may be issued, however, to a qualified person principally employed in such city or county and to a merchant or storekeeper having his principal place of

business in such city or county. A license issued by any person other than the police commissioner of the city of New York shall have no validity within that city, unless a special permit granting it such validity is issued by said police commissioner.

**D. Firearms Regulations from Other Jurisdictions**

*1813 La. Acts 172, An Act Against Carrying Concealed Weapons, and Going Armed in Public Places in an Unnecessary Manner, § 1*

Be it enacted by the senate and house of representatives of the state of Louisiana, in general assembly convened, That from and after the passage of this act, any person who shall be found with any concealed weapon, such as a dirk, dagger, knife, pistol, or any other deadly weapon concealed in his bosom, coat, or in any other place about him that do not appear in full open view, any person so offending, shall on conviction thereof before any justice of the peace, be subject to pay a fine ....

*1813 Ky. Acts 100, An Act to Prevent Persons in This Commonwealth from Wearing Concealed Arms, Except in Certain Cases, § 1*

Be it enacted by the General Assembly of the Commonwealth of Kentucky, that any person in this Commonwealth, who shall hereafter wear a pocket pistol, dirk, large knife, or sword in a cane, concealed as a weapon, unless when travelling on a journey, shall be fined ....

*1869-1870 Tenn. Pub. Acts, 2d. Sess., An Act to Preserve the Peace and Prevent Homicide, ch. 13, § 1*

That it shall not be lawful for any person to publicly or privately carry a dirk, swordcane, Spanish stiletto,

belt or pocket pistol or revolver. Any person guilty of a violation of this section shall be subject to presentment or indictment, and on conviction, shall pay a fine of not less than ten, nor more than fifty dollars, and be imprisoned at the discretion of the court, for a period of not less than thirty days, nor more than six months; and shall give bond in a sum not exceeding one thousand dollars, to keep the peace for the next six months after such conviction.

*1871 Tex. Gen. Laws 25, An Act to Regulate the Keeping and Bearing of Deadly Weapons, ch. 34*

Art. 6512. Any person carrying on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purpose of offense or defense, unless he has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the state, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fines imposed and collected shall go into the treasury of the county in which they may have been imposed: Provided, That this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or

her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the state from keeping or carrying arms with their baggage: Provided further, that members of the legislature shall not be included under the term "civil officers" as used in this act.

Art. 6513. Any person charged under the first section of this act, who may offer or prove, by way of defense, that he was in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense ....

Art. 6515. This act shall not apply to nor be enforced in any county of the state which may be designated in a proclamation of the governor as a frontier county, and be liable to incursions of hostile Indians.

*1876 Wyo. Terr. Comp. Laws 352, Act of Dec. 2, 1875, to Prevent the Carrying of Fire Arms and Other Deadly Weapons, ch. 52, § 1*

§ 1. That hereafter it shall be unlawful for any resident of any city, town or village, or for any one not a resident of any city, town or village, in said Territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

§ 2. That if any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of this act by a proper peace officer, continue to carry or bear upon his person any fire arm or other deadly weapon, he or she, shall be deemed to be guilty of a violation of the provisions of this act and shall be punished accordingly.

§ 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days.

*Dodge City Ordinance 16, § 11 (1876)*

That any person who shall in the City of Dodge City carry concealed or otherwise about his or her person, a pistol, bowie knife, sling shot, or other dangerous or deadly weapon, except United States [illegible] Officers, State, County, Township or City Officers shall be fined, not less than one nor more than twenty-five dollars.

*1881 Ark. Acts 191, An Act to Preserve the Public Peace and Prevent Crime, ch. XCVI (96), § 1*

That any person who shall wear or carry, in any manner whatever, as a weapon, any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States, shall be guilty of a misdemeanor.

*1895 Neb. Laws 210, Laws of Nebraska Relating to the City of Lincoln, An Ordinance Regulating and Prohibiting the Use of Fire-arms, Fire-works and Cannon in the City of Lincoln ... Prescribing Penalties for Violation of the Provisions of This Ordinance, and Repealing Ordinances in Conflict Herewith, Art. XVI, § 6*

The Mayor may grant to so many and such persons as he may think proper, licenses to carry concealed weapons, and may revoke any and all of such licenses at his pleasure. Every such license shall state the name, age, occupation, and residence, of the person to whom granted, and shall be good for one year. A fee of fifty cents shall be paid therefor to the City Treasurer, and by him placed in the police fund.

*1906 Mass. Acts 150, ch. 172, An Act to Regulate by License the Carrying of Concealed Weapons*

Section 2. Whoever, except as provided by the laws of this Commonwealth, carries on his person a loaded pistol or revolver, without authority or permission as provided in section one of this act, or whoever carries any stiletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment.