No. 20-843

In the Supreme Court of the United States

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

v.

KEVIN P. BRUEN, *et al.*,
Respondents.

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

BRIEF FOR THE STATES OF CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW JERSEY, NEW MEXICO, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, WASHINGTON, AND WISCONSIN, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

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

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INTERESTS OF AMICI

Amici are States from every corner of our Nation: South, East, West, and Midwest. We are committed to protecting the individual liberties of our residents, including their constitutionally protected right "to keep and bear Arms." U.S. Const. amend. II. We are also committed to preserving order and protecting public safety within our borders, including by adopting reasonable policies that regulate the carry of firearms on the streets and in the crowded public squares of our cities and towns. The nature of those policies varies between, and sometimes within, the States. That regional variation is consistent with historical practice and with our system of federalism, which affords the States a measure of latitude to craft policies that protect their residents and are tailored to the needs and concerns of their communities.

The narrow question presented by this case is whether New York violated the Second Amendment rights of two petitioners by denying them an unrestricted license to carry a concealed handgun in public under a state licensing scheme. *See* N.Y. Penal Law § 400.00(2)(f). The amici States agree with respondents that this Court should affirm the court of appeals' judgment that petitioners have not stated a claim under the Second Amendment. Alternatively, the Court should clarify the governing legal standard and remand for further analysis by the courts below in light of the particular facts and circumstances of this case.

But petitioners seek a ruling that goes far beyond the particular circumstances of their license applications. They want this Court to hold that the Second Amendment confers an almost unfettered right for them and most other Americans to carry loaded firearms in virtually any public place at virtually any

time, based solely on a stated desire to be armed for purposes of self-defense. That rule would impose—for the first time—a one-size-fits-all approach to regulating public carry. It would foreclose reasonable policies adopted by democratically elected officials to address the public safety needs of their jurisdictions—policies that are consistent with the longstanding approach to regulating public carry in America and England. The amici States submit this brief to explain why any such rule would be contrary to historical practice, precedent, and principles of federalism.

ARGUMENT

The Second Amendment right to bear arms must be construed and applied with careful attention to its "historical background." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *see id.* at 576-626. Attention to historical practice is critical "because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." *Id.* at 592. Thus, while the Second Amendment's inclusion in the Bill of Rights indicates that the right to bear arms ranks as fundamental, it did not change the right into anything more comprehensive or absolute than would have been commonly understood and expected by "ordinary citizens in the founding generation." *Id.* at 577.

That commonly understood right was—and is—"not unlimited." *Heller*, 554 U.S. at 595, 626. It is not a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," *id.* at 626, or "to carry arms for *any sort* of confrontation," *id.* at 595. On the contrary, this Court has made clear that the Second Amendment right is subject to many reasonable regulations—including with respect to the public carry of weapons. *See id.* at 626-627; *see also*

McDonald v. City of Chicago, 561 U.S. 742, 785 (2010) (plurality opinion) (Second Amendment does not eliminate States' "ability to devise solutions to social problems that suit local needs and values").

These principles foreclose the sweeping constitutional argument advanced by petitioners here. A fair-minded and thorough assessment of the history establishes that there is "no general right to carry arms into the public square for self-defense" and that States and local governments may "regulate arms in the public square." *Young v. Hawaii*, 992 F.3d 765, 813 (9th Cir. 2021) (en banc) (Bybee, J.). Indeed, one consistent feature of the history in this area is a substantial degree of regional variation with respect to government regulations on the public carry of firearms, as elected officials in States and localities have adopted reasonable restrictions tailored to the circumstances and needs of their jurisdictions. The Second Amendment may well impose limits on the States' ability to regulate public carry, but there is no basis in text, history, or precedent for holding that it categorically requires the States to authorize "ordinary, law-abiding citizen[s] to obtain a license to carry a handgun for self-defense" in public whenever and virtually wherever they want. Pet. Br. 18

I. PUBLIC CARRY OF FIREARMS HAS BEEN SUBJECT TO SUBSTANTIAL AND VARIED FORMS OF REGULATION THROUGHOUT ANGLO-AMERICAN HISTORY

Only recently, an en banc opinion authored by Judge Bybee offered the most detailed and "systematic review of the historical right to carry weapons in public" of any judicial decision to date. *Young*, 992 F.3d at 785; *see id.* at 785-826. The opinion recognized that the history of public carry regulations was "far from uniform," *id.* at 785, and that any court conducting a

historical inquiry must resist the temptation to "pick[] its friends and come to a fore-ordained conclusion," *id.* at 823. But after a comprehensive survey of "more than 700 years of English and American legal history"—including each of the periods that *Heller* viewed as significant to the meaning of the Second Amendment—*Young* discerned a "strong theme": that "government has the power to regulate arms in the public square." *Id.* at 813. Indeed, the "overwhelming evidence" demonstrates that it was never commonly understood "that individuals have an unfettered right to carry weapons in public spaces." *Id.* And historical regulations of the public carry of firearms, like those that exist today, varied substantially between and within the States—the result of accountable policymakers enacting regulatory schemes tailored to local needs and conditions, in a manner consistent with the principles of federalism inherent in our constitutional structure.

A. Early English Regulations

The history of government restrictions on the public carry of firearms dates back almost as far as the history of firearms. "English law restricted public firearm possession as early as the thirteenth century." *Young*, 992 F.3d at 786. Royal decrees and parliamentary enactments tightly restricted the ability of gun owners to carry their firearms in public. *See id.* at 786-794. And even when the English Bill of Rights created "a right for certain people to possess arms" in 1689, that right "was not guaranteed to the people generally" and "could be curtailed by government action 'as allowed by law.'" *Id.* at 793.

Although England was ruled by a unitary government, its public carry regulations applied in different

ways in different parts of the realm and under different circumstances. Some of the earliest restrictions were focused on densely populated areas, where the presence of arms posed a heightened threat to public safety. For example, King Edward I issued an edict making it a crime to be "found going or wandering about the Streets of [London], after Curfew . . . with Sword or Buckler, or other Arms for doing Mischief . . . [nor] in any other Manner." 13 Edw. 1, 102 (1285). His successor, Edward II, ordered the sheriff of Surrey to "proclaim" that "no knight, esquire, or other shall . . . go armed at Croydon or elsewhere before the king's coronation." 1 Calendar Of The Close Rolls, Edward II, 1307-1313, at 52, (Feb. 9, 1308, Dover) (H.C. Maxwell-Lyte, ed. 1892).

Parliament continued that tradition in 1328 by enacting the Statute of Northampton, which became the "foundation for firearms regulation in England for the next several centuries" and was "widely enforced." *Peruta v. County of San Diego*, 824 F.3d 919, 930 (9th Cir. 2016) (en banc). The statute placed special emphasis on the carrying of arms in crowded public places, providing that "no Man great nor small" was to "go nor ride armed by night nor by day, *in Fairs, Markets, nor in the presence of the Justices or other Ministers*, nor in no part elsewhere." 2 Edw. 3, 258, ch. 3 (1328) (emphasis added). Northampton was "understood to be a 'complete prohibition on carrying weapons in public, at least in populated areas.'" *Young*, 992 F.3d at 788. It also reflected the more general rule that, in populated places within the reach of the king's officials, the king had "responsibility to maintain the peace in his domain." *Id.* at 788 n.8.

By the same token, however, Northampton did not "extend to the realm's unpopulated and unprotected

enclaves." Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 19 (2012). English law "generally made exceptions for the use of arms in the countryside to those persons qualified by law to possess them." *Id.* For example, it exempted subjects who lived in the Channel Islands, near the border with Scotland, or in other remote areas beyond the security of the Crown. *See, e.g.*, 33 Hen. 8, 835, ch. 6 (1541).

B. Early American Regulations

That trend of regulation and regional variation continued on this side of the Atlantic, where "'states and their predecessor colonies and territories have taken divergent approaches to the regulation of firearms,'" *Gould v. Morgan*, 907 F.3d 659, 669-670 (1st Cir. 2018), in a manner befitting our federal system of government.

1. Before the founding, many colonies regulated the carrying of firearms in public. For example, as early as the seventeenth century, Massachusetts, New Hampshire, and New Jersey adopted public-carry restrictions modeled on Northampton. *See Young*, 992 F.3d at 794-795. Other early regulations on public carry had different aims, including sometimes requiring individuals to carry arms at particular times or places, such as while they were gathered for church. *See id.* at 795-796. Those mandates reflected the "realities of colonial life, especially the ongoing hostile relationships with Native Americans and the omnipresent danger of slave uprisings in the South." Cornell, *The Right to Keep and Carry Arms in Anglo-American Law*, 80 L. & Contemp. Probs. 11, 28 (2017). And while they may "evince a general acceptance by local governments of some firearms in the public

square," they also demonstrate that "the colonies assumed that they had the power to *regulate*—whether through *mandates* or *prohibitions*—the public carrying of arms." *Young*, 992 F.3d at 796.

More States adopted restrictions on public carry in the period immediately surrounding the ratification of the Second Amendment. For example, Virginia adopted a Northampton statute in 1786, *see* 1786 Va. Acts 33, ch. 21, and North Carolina followed suit six years later, *see* 1792 N.C. Law 60, ch. 3. Of course, like the colonies before them, the States did not prohibit carrying arms in all circumstances. Many early Americans lived and worked in rural or wilderness areas, beyond the protection of local officials, and needed firearms for hunting and to fend off dangerous animals, strangers, or "foreign enemies." Levy, *Origins of the Bill of Rights* 139 (1999). Early Americans also commonly carried firearms when "traveling on unprotected highways[,] through the unsettled frontier," or to the "town center for repair." Charles, *The Faces of the Second Amendment Outside the Home, Take Two*, 64 Clev. St. L. Rev. 373, 401 (2016). But once they reached the "great Concourse of the People," state and local authorities retained the ability to limit—and even flatly prohibit—the public carrying of firearms. Davis, *The Office and Authority of a Justice of the Peace* 13 (1774).

2. In the early nineteenth century, States continued to follow a variety of approaches to regulating the public carry of firearms. For example, Tennessee adopted its own version of Northampton in 1801, *see* 1801 Tenn. Laws 259, 260-261, ch. 22, § 6, and later made it a crime to carry "pocket pistols" or other weapons, 1821 Tenn. Pub. Acts 15, ch. 13. In 1836, Massachusetts replaced its Northampton statute with a

statute that prohibited "go[ing] armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault." 1836 Mass. Acts 748, 750, ch. 134, § 16. At least seven more States adopted similar "reasonable cause" statutes over the next several decades. *See Young*, 992 F.3d at 799-800.

Other States took a more permissive regulatory approach in the years preceding the Civil War. They prohibited the carrying of concealed firearms but generally allowed open carry. *See, e.g.*, 1813 Ky. Acts 100, ch. 89, § 1; 1813 La. Acts 172, § 1. That choice, predominantly made by southern States, reflected local customs and concerns. In those States, guns were occasionally carried openly, "partly as a protection against the slaves" and partly to be used "in quarrels between freemen." Hildreth, *Despotism in America* 90 (1854). Even there, however, the practice of open carry was unusual. *See State v. Smith*, 11 La. Ann. 633, 634 (1856).

Judicial opinions from this period addressing the right to bear arms mostly arose from southern States. Except for one "short-lived exception," those courts uniformly upheld state laws prohibiting the concealed carry of firearms in public places. *Peruta*, 824 F.3d at 933-936. And while some opinions reflected a local preference for permissive *open* carry laws, *see, e.g.*, *Nunn v. State*, 1 Ga. 243 (1846), others suggested that the Second Amendment or state constitutional analogue allowed legislatures to ban public carry altogether, *see State v. Buzzard*, 4 Ark. 18, 27 (1842); *Aymette v. State*, 21 Tenn. 154, 159-162 (1840).

3. Public carry restrictions proliferated after the Civil War. The postbellum constitutions of six States gave their legislatures "broad power to regulate the

manner in which arms could be carried," and five others empowered legislatures to prohibit the carrying of concealed weapons. *Peruta*, 824 F.3d at 936-937. Several States made it illegal to carry weapons in all public places.[1] Texas and West Virginia banned public carry without good cause.[2] Other States and territories made it illegal to carry firearms "concealed or openly" within the "limits of any city, town, or village." *E.g.*, 1875 Wyo. Laws 352, ch. 52, § 1.[3] Similarly, local governments across the country prohibited the carrying of firearms in populated places, including in cattle towns in Kansas, mining towns like Tombstone, and the city of Los Angeles.[4]

Like the antebellum period, the post-Civil War era saw several constitutional challenges to statutes restricting public carry. None succeeded. The Tennessee Supreme Court held that the legislature could broadly restrict the carrying of firearms "among the people in public assemblages where others are to be affected," although not "where it was clearly shown they were worn *bona fide* to ward off or meet imminent and threatened danger to life or limb, or great bodily harm." *Andrews v. State*, 50 Tenn. 165, 186, 191

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[1] *See* 1870 S.C. Laws 403, no. 288, § 4; 1869-1870 Tenn. Pub. Acts, 2d Sess., ch. 13, § 1; 1881 Ark. Laws 490, ch. 53, § 1907; 1890 Okla. Laws 495, ch. 25, art. 47, §§ 2, 5.

[2] *See* 1870 W. Va. Laws 702, ch. 153, § 8; 1871 Tex. Gen. Laws 1332, art. 6512.

[3] *See also* 1869 N.M. Laws 312, ch. 32, § 1; 1889 Ariz. Laws 16, ch. 13, § 1; 1889 Idaho Laws 23, § 1.

[4] *See* Dykstra, *The Cattle Towns* 121 (1968); Winkler, *Gunfight* 165, 172-173 (2011); Los Angeles, Cal., Ordinance nos. 35-36 (1878).

(1871). Texas prohibited the carrying of firearms (unless the carrier had reasonable grounds for fearing an unlawful attack), and the Texas Supreme Court upheld that law as "a legitimate and highly proper regulation." *State v. Duke*, 42 Tex. 455, 456 459 (1874). Other courts reached similar results.[5] And in 1874, the Georgia Supreme Court—which had previously suggested that the State could not prohibit open carry, *see Nunn*, 1 Ga. at 251—upheld a statute prohibiting the carrying of a pistol or revolver "openly or secretly" in places of worship and public gatherings, *Hill v. State*, 53 Ga. 472, 480-481 (1874).

Although this record plainly establishes a broad acceptance of public carry regulations during the period surrounding the ratification of the Fourteenth Amendment, some advocates have argued that this Court should draw a different lesson from that era. In their view, Congress's adoption of the Freedmen's Bureau Act in 1866 and the Ku Klux Klan Act in 1871 demonstrates that the "generation that ratified the Fourteenth Amendment well understood[] the freedmen's need for—and right to—armed self-defense . . . on the public highways where armed and disguised marauders were likely to attack them." Pet. Br. 37. That narrative is simply incorrect. No one disputes that the Amendment's framers were concerned about *discriminatory* laws and policies aimed at disarming freed slaves. *Young*, 992 F.3d at 822 n.43. But they were surely also aware of the longstanding and widespread practice of imposing *race-neutral* restrictions on carrying firearms in populated areas—including in States

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[5] *See Fife v. State*, 31 Ark. 455, 461-462 (1876); *Walburn v. Territory*, 59 P. 972, 973 (Okla. Terr. 1899).

outside the South.[6] History shows that people of all colors were prosecuted for violating those laws. *See* Charles, *Take Two*, 64 Clev. St. L. Rev. at 430 n.288 (collecting newspaper reports). That tradition of race-neutral restrictions on public carry was not a subject of concern for the framers of the Fourteenth Amendment.

4. Petitioners acknowledge that the "historical inquiry" is central to the constitutional analysis in this case. Pet. Br. 2; *see id.* at 4. They assert that it is "abundantly clear that the founding generation understood the [Second] Amendment to enshrine" a virtually unfettered "right to carry arms outside the home for self-defense." Pet. Br. 29. But their argument in support of that assertion amounts to a "'law office history,'" *Young*, 992 F.3d at 785, the "equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends," *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment); *see* Pet. Br. 4-13, 29-40. Petitioners focus on a few scattered sources that lend support to their thesis while ignoring the "many other faces in the" historical crowd, "most of which . . . are set against" it. *Conroy*, 507 U.S. at 519 (Scalia, J., concurring in the judgment).

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[6] Indeed, "Reconstruction-era Republicans were strong supporters of generally applicable and racially neutral gun regulations, including in some cases, bans on traveling armed and bans on handguns." Cornell, *The Right to Carry Firearms Outside of the Home*, 39 Fordham Urb. L.J. 1695, 1724 (2012). Among other things, several military governors administering former Confederate States issued blanket prohibitions on public carry by civilians. *See, e.g.*, Second Military District Order No. 10 (Charleston, S.C. Apr. 11, 1867).

Indeed, petitioners do not acknowledge or respond to the contrary historical points made in Judge Bybee's 42-page historical analysis—the most recent appellate decision on the subject and the only one to thoroughly review the history. For example, petitioners contend that English legal authorities understood the Statute of Northampton to "proscribe[] only going armed 'to terrify the King's subject[s]' and did not interfere with the baseline right to carry arms for self-defense." Pet. Br. 30. But they do not acknowledge Blackstone's writings that "clarified" that the "mere act of going armed in and of itself terrified the people," *Young*, 992 F.3d at 793 (citing 4 Blackstone, *Commentaries* 148-149 (1769)), or Coke's observations that a person "cannot assemble force, *though he be extremely threatened*, to go with him to church, or market, or any other place, but that is prohibited by" Northampton, *id.* (quoting Coke, *The Third Part of the Institutes of the Laws of England* 160-161 (E. and R. Brooke ed., 1797)). Similarly, petitioners do not even mention the works of many prominent early American commentators—most of whom "assumed that the state had the right to regulate arms in the public square." *Id.* at 809; *see id.* at 809-810 (discussing Rawle, *A View of the Constitution of the United States of America* (1829) and Cooley, *The General Principles of Constitutional Law in the United States of America* (1880), among other authorities).

No matter how much petitioners would prefer for history to make it "clear beyond cavil" (Pet. Br. 1) that their preferred policy position is required by the Second Amendment, they cannot change what actually happened in the past. And while any honest assessment of the historical record must acknowledge that the "history is complicated, and the record is far from uniform," *Young*, 992 F.3d at 785, there are certain

historical truths that cannot be disputed: For "more than 700 years," in England and America, governments have exercised "the power to regulate arms in the public square." *Id.* at 813. Our Anglo-American system of jurisprudence has never before "assumed that individuals have an unfettered right to carry weapons in public spaces," nor recognized any "general right to carry arms into the public square for self-defense." *Id.*

C. Modern American Regulations

The history of extensive restrictions on public carry continued throughout the twentieth century and up to the present day. Consistent with historical practice, States today follow a variety of regulatory approaches, tailored to local needs and circumstances. On this subject, too, petitioners demonstrate a casual indifference to the details. They attempt to group the States into two camps: those that supposedly "ban . . . carrying handguns for self-defense" outside the home, Pet. Br. 40, and "the vast majority of states—at least 43—[that] continue to respect the right of their citizens to carry arms for self-defense," *id.* at 13. But they fail to identify any authority for that grouping—indeed, they do not cite *any* of the modern state laws other than New York's. And a closer look reveals that their thumbnail characterization of the state regulatory scene is highly inaccurate.

1. At present, 29 States require a license for individuals to carry concealed firearms in most public places. The particulars of those licensing regimes vary

substantially from State to State. But it is hardly correct to suggest that any of the States categorically "ban" carry outside the home. Pet. Br. 40.[7]

As an initial matter, many States with licensing regimes allow public carry without a license in certain places and under certain circumstances. In California, for example, law-abiding adults may carry firearms in unincorporated areas that are not in towns or villages, or in any part of incorporated cities or unincorporated towns that are not "public place[s]" or "public street[s]." Cal. Penal Code §§ 25400, 25850, 26350. They may also carry firearms at their own places of businesses, at campsites or other temporary residences, and when hunting, target shooting, or taking a firearm to a repair shop or home from the place of purchase. *See generally id.* §§ 25400-26030. Other States similarly authorize unlicensed public carry in a variety of places and circumstances. *See, e.g.*, *Woollard v. Gallagher*, 712 F.3d 865, 869 (4th Cir. 2013) (Maryland); *Drake v. Filko*, 724 F.3d 426, 428 n.1 (3d Cir. 2013) (New Jersey).

With respect to the licensing regimes, petitioners and their amici emphasize that some States direct that officials "shall" issue concealed carry licenses provided that an applicant meets certain objective criteria. *See, e.g.*, Arizona et al. Br. 7. But many of those States also give officials a measure of discretion to deny permits. In Alabama, for example, sheriffs "shall" grant concealed carry permits to individuals

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[7] States also have varying rules with respect to open carry. Some generally prohibit it. *See, e.g.*, Fla. Stat. § 790.053. Others require a permit. *See, e.g.*, Conn. Gen. Stat. § 29-35(a). And some generally allow open carry without requiring individuals to secure a permit. *See, e.g.*, *Commonwealth v. Hicks*, 652 Pa. 353, 369 (2019).

who meet specific criteria—but are authorized to deny a permit whenever they have "reasonable suspicion that the [applicant] may use a weapon unlawfully or in such other manner that would endanger the person's self or others." Ala. Code § 13A-11-75(a)(1)a. In making that determination, the sheriff may consider a range of factors, including whether the applicant "[c]aused justifiable concern for public safety." *Id.* Rhode Island also provides that authorities "shall" issue licenses, but only "if it appears that the applicant has good reason to fear an injury to his or her person or property" or has "any other proper reason" to carry and is a "suitable person" to be licensed. R.I. Gen. Laws § 11-47-11(a). At least eight other "shall issue" States—including some of petitioners' amici—give state or local officials some discretion to deny permits based on particular considerations.[8]

Other States, including New York, provide that state or local authorities "may" issue permits to carry concealed weapons outside the home if an applicant satisfies certain criteria.[9] In some of these States, applicants must show that they have particular cause or reason for public carry. *See, e.g.*, N.Y. Penal Law § 400.00(2)(f) ("proper cause"). The required showing varies between States, as one would expect in a federal

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[8] *See* Colo. Rev. Stat. § 18-12-203(1); Ga. Code § 16-11-129(a)(1), (b.1)(3), (d)(4); 430 Ill. Comp. Stat. §§ 66/10, 66/20; Ind. Code § 35-47-2-3(g); Minn. Stat. § 624.714(6)(3); Or. Rev. Stat. §§ 166.291, 166.293(2); 18 Pa. Cons. Stat. § 6109(e)(1)(i); Va. Code § 18.2-308.09(13).

[9] *See* Cal. Penal Code §§ 26150, 26155; Conn. Gen. Stat. § 29-28(b); Del. Code tit. 11, § 1441; Haw. Rev. Stat. § 134-9; Md. Code, Pub. Safety § 5-306(a)(6)(ii); Mass. Gen. Laws ch. 140, § 131(d); N.J. Stat. § 2C:58-4(c); N.Y. Penal Code § 400.00(2)(f); D.C. Code §§ 7-2509.11(1), 22-4506(a)-(b), *abrogated in part by Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017).

system. *See, e.g.*, *Woollard*, 712 F.3d at 868-870 (discussing Maryland's "'good and substantial reason'" requirement); *Drake*, 724 F.3d at 428-429 (New Jersey's "'justifiable need'" standard). Other "may issue" States allow officials to grant or deny permits based on whether the applicant might pose a threat to public safety. *See, e.g.*, *Kuck v. Danaher*, 822 F. Supp. 2d 109, 119-122 (D. Conn. 2011) (discussing Connecticut's "'suitable person'" standard).

Some "may issue" States take a more localized approach, empowering city or county authorities to define the requisite showing based on local concerns and considerations. For example, Massachusetts has a "proper purpose" requirement, but "[m]unicipalities differ in their requirements for an applicant to establish" that they have such a purpose. *Gould*, 907 F.3d at 663. Some require an applicant to furnish information that "distinguish[es] his own need for self-defense from that of the general public," while others grant permits to any otherwise qualified individual who wants one for self-defense purposes. *Id.* Similarly, California requires local licensing authorities (usually county sheriffs) to adopt and publish local policies on what constitutes "good cause" to obtain a public carry license, *see Peruta*, 824 F.3d at 926-927, while allowing unlicensed carry by most individuals in many rural and remote regions of the State, *supra* p. 14.

These policies are not only consistent with the long history of state and local restrictions on public carry, they also make good sense from a public safety standpoint. Limiting the public carry of firearms to those who demonstrate a particular need for armed self-defense "protects citizens and inhibits crime" by reducing the "likelihood that basic confrontations between

individuals would turn deadly," "[c]urtailing the presence of handguns during routine police-citizen encounters," and "[d]ecreasing the availability of handguns to criminals via theft." *Woollard*, 712 F.3d at 879-880. Empirical studies bear this out. On average, States that generally allow most residents to carry in most public places experience higher rates of violent crime and homicides than those that do not.[10]

2. Notwithstanding that empirical evidence, other States have opted for a more permissive approach to regulating public carry. Some require a state-issued license in order to carry concealed firearms in public, but do not give any discretion to the issuing authority over whether to grant licenses.[11] Others allow most

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[10] *See, e.g.*, Donohue et al., *Right to Carry Laws and Violent Crime*, 16 J. Empirical Legal Stud. 198, 198 (2019) (violent crime increased 13-15% in States that adopted permissive public carry laws); Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 Am. J. Pub. Health 1923, 1927 (Dec. 2017) (finding a significant association between right-to-carry laws and higher homicide rates); Fridel, *Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide*, 38 Just. Q. 892, 907 (2021) (permissive concealed carry legislation associated with "10.8% increase in the firearms homicide rate"); *see generally* Social Scientists and Public Health Researchers Br.

[11] *See* Fla. Stat. § 790.06; La. Stat. § 40:1379.3; Mich. Comp. Laws §§ 28.422, 28.422a, 28.425b; Neb. Rev. Stat. §§ 69-2430, 69-2433; Nev. Rev. Stat. § 202.3657(5); N.M. Stat. § 29-19-4; N.C. Gen. Stat. § 14-415.12; Ohio Rev. Code § 2923.125(D)(1); S.C. Code § 23-31-215; Wash. Rev. Code § 9.41.070(1); Wis. Stat. § 175.60(3).

individuals to carry concealed weapons in public without a license.[12] But even States with permissive policies actively regulate public carry—with a particular eye towards the dangers that the widespread carry of loaded firearms presents in crowded public places. While they place few restrictions on *who* may carry a concealed firearm, many also impose a wide range of restrictions on *where* individuals may carry. For example, Missouri generally prohibits concealed carry in 17 locations, such as amusement parks, "riverboat gambling operation[s]," airports, and hospitals. Mo. Rev. Stat. § 571.107(1); *see also id.* § 571.030. In North Dakota, individuals may not carry at bingo halls or places where alcohol is sold and consumed. N.D. Cent. Code § 62.1-02-04. And in Florida, individuals may not carry at most "athletic event[s] not related to firearms." Fla. Stat. § 790.06(12a)(9); *see also id.* §§ 790.01, 790.053.[13]

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[12] *See* Alaska Stat. § 11.61.220(a); Ariz. Rev. Stat. § 13-3102; Ark. Code §§ 5-73-101, 5-73-120(c)(4); Idaho Code § 18-3302; Iowa Code § 724.5; Kan. Stat. § 21-6302; Ky. Rev. Stat. § 237.109; Me. Stat. tit. 25, § 2001-A; Miss. Code § 45-9-101(24); Mo. Rev. Stat. § 571.030; Mont. Code § 45-8-316; N.H. Rev. Stat. § 159:6; N.D. Cent. Code § 62.1-04-01; Okla. Stat. tit. 21, § 1272(6); S.D. Codified Laws §§ 13-32-7, 22-14-23, 23-7-7, 23-7-70, 23-7-71; Tenn. Code § 39-17-1307(g); Tex. Penal Code § 46.02; Utah Code §§ 76-10-504, 76-10-523; Vt. Stat. tit. 13, §§ 4003-4004, 4016; W. Va. Code § 61-7-3; Wyo. Stat. § 6-8-104.

[13] *See also, e.g.*, Alaska Stat. § 11.61.220(a)(2), (4); Ariz. Rev. Stat. § 13-3102(A)(10)-(13); Idaho Admin. Code r. 16.06.02.734; La. Stat. § 40:1379.3(N); Mich. Comp. Laws § 28.425o; Miss. Code § 45-9-101(13), (24); Neb. Rev. Stat. §§ 28-1202, 69-2441(1); N.H. Rev. Stat. § 159:19(I); N.C. Gen. Stat. §§ 14-269.2-14-269.4, 14-277.2(a), 14-415.11; Okla. Stat. tit. 21, § 1277; S.C. Code § 23-31-215(M); S.D. Codified Laws § 23-7-70; Wash. Rev. Code §§ 9.41.300, 70.108.150, 72.23.300; Wis. Stat. § 175.60(16).

In many of these States, moreover, the current approach to regulating public carry represents a sharp break from historical practice. For example, Alabama had a "may issue" system similar to the one challenged here until 2013. *See* 2013 Ala. Laws 938, 941-945 (amending Ala. Code § 13A-11-75). Ohio barred concealed carry in most circumstances until 2004. *See* 2004 Ohio Laws 3297, 3315-3316 (amending Ohio Rev. Code § 2923.12). And quite a number of States that generally allow concealed carry today tightly regulated that conduct during the periods that *Heller* viewed as critical in determining the meaning of the Second Amendment.[14]

Of course, it is within the prerogatives of a State's elected policymakers to weigh the public safety risks associated with more-permissive public carry policies in light of local conditions and choose to enact such a policy. That kind of "variation in state responses reflects our constitutional system of federalism," in which "[d]ifferent state legislatures may make different choices." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 32-33 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

But modern policy shifts cannot alter what was commonly understood about the scope of the Second Amendment by "ordinary citizens in the founding generation," *Heller*, 554 U.S. at 577—at a time when many of the same States that have lately adopted permissive policies on public carry chose to tightly regulate or prohibit it. And contemporary policy

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[14] *See, e.g.*, 1786 Va. Acts 33, ch. 21; 1792 N.C. Law 60, ch. 3; 1821 Tenn. Pub. Acts 15, ch. 13; 1838 Wisc. Laws 381, § 16; 1841 Me. Laws 709, ch. 169, § 16; 1869 N.M. Laws 312, ch. 32, § 1; 1881 Kan. Sess. Laws 80, ch. XXXVII, § 23; 1889 Ariz. Laws 16, ch. 13, § 1; 1889 Idaho Laws 23, § 1.

preferences in some States surely cannot deprive sister sovereigns of the latitude they enjoy, under our federal system, to continue to impose reasonable policies that protect citizens and police and are consistent with the long Anglo-American history of public carry regulation.

II. THE SECOND AMENDMENT PRESERVES FLEXIBILITY FOR STATES TO REGULATE THE PUBLIC CARRY OF FIREARMS

Petitioners argue that they are entitled to a concealed-carry license based only on their asserted desire "to carry arms for self-defense," and that New York's law "is fundamentally incompatible with the Second Amendment" because it requires a more particularized showing of need. Pet. Br. 40. That argument runs counter to historical tradition and this Court's precedents. Any proper approach to Second Amendment analysis would preserve the latitude that States have traditionally enjoyed to regulate the carry of firearms in public places—particularly in the crowded streets and squares of our cities and towns.

A. The Second Amendment Does Not Require Petitioners' One-Size-Fits-All Approach to Public Carry

As discussed above, a rule of concealed carry on demand is certainly an available policy option. A number of States have adopted it, and Amici respect their right to do so. But neither text, history, nor precedent supports petitioners' contention that the federal Constitution requires every State to adopt that policy.

1. The text of the Second Amendment does not impose the sweeping constitutional requirement that petitioners seek. Petitioners argue that because the term "bear arms" means to carry them for the "specific

purpose[]" of "confrontation," they are entitled to carry loaded firearms almost anywhere confrontations might occur—which is, effectively, everywhere. Pet. Br. 26-27 (quoting *Heller*, 554 U.S at 584). But *Heller* carefully parsed the same text and concluded that it does *not* confer an individual right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," *id.* at 626, or "to carry arms for *any sort* of confrontation," *id.* at 595. *Heller* also expressly sanctioned restrictions on the carrying of firearms in certain places where violent confrontations can (and frequently do) occur, including schools and government buildings. *See id.* at 626. And it strongly suggested that "prohibitions on carrying concealed weapons" are among those "limitation[s] on the right to keep and carry arms" that States may adopt consistent with the Second Amendment. *Id.* at 626-627.

Petitioners therefore overreach in arguing that the text of the Second Amendment resolves this case in their favor. *See* Pet. Br. 25-29. Instead, *Heller* directs that the threshold Second Amendment inquiry examines the "historical understanding of the scope of the right." 554 U.S. at 625.

2. In this case, history demonstrates that the Second Amendment does not require every State and locality to issue public carry licenses on demand. As discussed above, it has never been commonly understood—in England or America—"that individuals have an unfettered right to carry weapons in public spaces." *Young*, 992 F.3d at 813. Governments have substantially restricted public carry since the earliest days of firearms, and sometimes have prohibited it altogether. *See id.* at 786-813; *supra* pp. 4-6. And a critical feature of that history involves the kind of

regional variation that petitioners decry, *see, e.g.*, Pet. Br. 1, with accountable decisionmakers adopting policies that meet the unique needs of their States and local jurisdictions, *see supra* pp. 6-13. Any analysis that accounts for "the historical background of the Second Amendment" in assessing the scope of the "*pre-existing* right" that it codified, *Heller*, 554 U.S. at 592, is incompatible with petitioners' understanding of the right as it relates to public carry.

Petitioners argue that "[t]he prospects for confrontations outside the home," which "were heightened in colonial America and the early Republic," establish a general historical "right to carry arms outside the home" wherever such confrontations might occur. Pet. Br. 27, 28. But that ignores the historical evidence showing that governments routinely adopted policies prohibiting public carry in particular cities and towns—where confrontations commonly occurred, but where government officials were on hand to protect citizens and maintain order. *See supra* p. 7. Moreover, the same States that petitioners praise as "respect[ing] the right of their citizens to carry arms for self-defense" (Pet. Br. 13) routinely forbid their citizens from carrying arms in crowded public places where modern confrontations are most likely to occur, such as in establishments "where intoxicating liquor is sold for consumption on the premises," Alaska Stat. § 11.61.220(a)(2), at "athletic event[s]," Fla. Stat. § 790.06(12a)(9), and at "demonstration[s]" or "picket line[s]," N.C. Gen. Stat. § 14-277.2(a). Both historically and today, governments have recognized that the mere possibility that a confrontation might arise somewhere outside the home does not entitle a citizen to carry a firearm. Presumably they have done so in recognition of the fact that the combination of crowded

places, confrontations, and the carriage of firearms often produces devastating consequences.

3. Finally, this Court's precedents do not support the novel public-carry right proposed by petitioners. Contrary to petitioners' assertion, public carry restrictions like the ones challenged here are not "incompatible with the entire thrust of *Heller* and *McDonald*." Pet. Br. 39. No one disputes that self-defense is a central component of the Second Amendment right, *see Heller*, 554 U.S. at 599, or that a need for self-defense can arise in places "beyond the curtilage of one's home," Pet. Br. 39. But neither *Heller* nor *McDonald* recognized any unfettered right to carry firearms in the crowded public squares of cities and towns, based solely on an individual's stated desire to be "armed and ready for offensive or defensive action in a case of conflict with another person," *Heller*, 554 U.S. at 584. On the contrary, both decisions recognized that States may adopt a range of gun safety restrictions consistent with the Second Amendment. *See Heller*, 554 U.S. at 595, 626; *McDonald*, 561 U.S. at 785-786 (plurality opinion).

B. Intermediate Scrutiny Is the Proper Form of Means-Ends Analysis for Public Carry Regulations

Assuming that government regulations on public carry are subject to constitutional scrutiny, *but see Young*, 992 F.3d at 826, they are properly analyzed under a searching form of means-ends analysis—but not the strictest form of scrutiny. Under the proper mode of analysis, States retain latitude to regulate public carry in a variety of ways, including through the type of "proper cause" licensing regime that petitioners challenge here.

1. Petitioners and some jurists have suggested that laws regulating firearms should not be subject to means-ends scrutiny at all, but rather should be assessed solely "based on text, history, and tradition[.]" *Heller v. District of Columbia*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). Those considerations are undoubtedly critical to the constitutional analysis. In some cases, they may be dispositive. *See, e.g.*, *Heller*, 554 U.S. at 598-619, 629.[15] But an approach to Second Amendment analysis that focuses exclusively on those considerations in *every* case would be inconsistent with precedent—including *Heller* itself—and would prove unworkable in many contexts.

Since *Heller*, lower courts have carefully analyzed the text of the Second Amendment and this Court's precedents to determine the appropriate Second Amendment test. And each of the eleven federal courts of appeals to squarely address the question has concluded that means-ends scrutiny is a proper part of the inquiry. *See N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 254 & n.49 (2d Cir. 2015) (collecting cases); *Gould*, 907 F.3d at 668-669. As the Fifth Circuit explained, that conclusion follows from "the language of *Heller*." *NRA v. ATF*, 700 F.3d 185, 197 (5th Cir. 2012). By "taking rational basis review off the table," "faulting a dissenting opinion for proposing an interest-balancing inquiry *rather than* a traditional level of scrutiny," and stating that D.C.'s handgun ban would be "unconstitutional 'under any of the standards of scrutiny that the Court has applied to enumerated constitutional rights,'" *Heller* strongly

[15] Indeed, given the centuries-long tradition of regulating firearms in public, this Court could resolve this case in respondents' favor based on history alone. *Cf. Young*, 992 F.3d at 786-826.

supports the view that intermediate and strict scrutiny "are on the table" in this context. *Id.* at 197 & n.10 (quoting *Heller*, 554 U.S. at 628-629) (brackets omitted).

That conclusion also comports with the approach generally used in other areas of constitutional law. As Justice Scalia recognized, "[n]o fundamental right—not even the First Amendment—is absolute." *McDonald*, 561 U.S. at 802 (Scalia, J., concurring). Just as First Amendment analysis does not end with a determination that a law regulates speech or is not neutral with respect to religion, and Fourth Amendment analysis does not end with a determination that there has been a search, the Second Amendment inquiry should not end if a court concludes that a law implicates the right to keep and bear arms. On the contrary, defining the exact contours of that right through careful judicial scrutiny is especially important because of the profound public interests at stake in this context. *See United States v. Masciandaro*, 638 F.3d 458, 475-476 (4th Cir. 2011) (Wilkinson, J.) ("miscalculat[ion] as to Second Amendment rights" could lead to "unspeakably tragic act[s] of mayhem").

A test based solely on text, history, and tradition would also prove unworkable in many contexts. For example, many of the restrictions *Heller* identified as "presumptively lawful," 554 U.S. at 627 n.26, did not emerge until the mid- to late-twentieth century: the first federal statute barring felons from possessing firearms was not adopted until 1938 (and that law "covered only a few violent offenses"), while federal limits on the possession of firearms by the mentally ill were not enacted until 1968. *United States v. Skoien*, 614 F.3d 638, 640-641 (7th Cir. 2010) (en banc). Similarly, laws restricting new and emerging firearms—

including machine guns, large-capacity magazines, and homemade "ghost guns"—necessarily lack founding-era analogues because those weapons had not been invented (or were not widely available to the public) at the time of the founding.

2. Petitioners contend that if public carry regulations are subject to means-ends scrutiny, they must be reviewed under strict scrutiny. Pet Br. 45. That is incorrect.

This Court has typically reserved strict scrutiny for categories of laws that "are presumptively unconstitutional" because they impinge on the core conduct protected by a constitutional provision. *E.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 163-164 (2015). For example, content-based restrictions on speech trigger strict scrutiny because they contravene "the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration and adherence" that lies at the "heart of the First Amendment." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994) (*Turner I*). Strict scrutiny also applies to laws that discriminate on the basis of race, "'because racial characteristics so seldom provide a relevant basis for disparate treatment.'" *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2208 (2016). Statutes like these are hardly ever permissible; that is why the Court only upholds them on a showing that they are the least restrictive means of achieving a compelling public interest. *See, e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444-456 (2015).

That demanding standard is unsuited for reviewing public carry restrictions like the ones challenged here. The "historical prevalence" of public carry restrictions similar to—and often more restrictive than—the statute at issue in this case undercuts the

assertion that only strict scrutiny can apply here. *Kachalsky v. County of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012). Because "[f]irearms have always been more heavily regulated in the public sphere," the Second Amendment should "operate[] in a different manner" in that setting than when it applies to statutes impinging directly on the core right to keep and bear arms in the home. *Drake*, 724 F.3d at 430 n.5.

Applying a standard that is less demanding than strict scrutiny to public carry regulations also makes good practical sense. When individuals move beyond the curtilage of their homes—and particularly when they move about in populated areas—their interest in carrying a firearm for self-defense is much more likely to come into conflict with the public interest in order and safety. *See, e.g.*, *Gould*, 907 F.3d at 671-672. The "inherent" risk that loaded guns present when carried in crowded public places "distinguishes the Second Amendment right from other fundamental rights . . . such as the right to marry and the right to be free from viewpoint discrimination, which can be exercised without creating a direct risk to others." *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015). At the same time, any individual need to carry is substantially reduced in many public places—especially within cities and towns, where "police officers, security guards, and the watchful eyes of concerned citizens . . . mitigate threats." *Gould*, 907 F.3d at 671.

Petitioners contend that applying "something 'less than' strict scrutiny" in this context would be inconsistent with the way this Court analyzes other "provisions of the Bill of Rights." Pet. Br. 45. That is wrong. For example, free speech is essential to our democratic society, but this Court routinely applies intermediate scrutiny when analyzing restrictions on the time,

place, and manner of speech. *See, e.g.*, *Ward v. Rock Against Racism*, 491 U.S. 781, 798-799 (1989). And when public safety is implicated, the Court has held that States may ban some types of speech altogether. *See Watts v. United States*, 394 U.S. 705, 707-708 (1969) (per curiam) (true threats); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573-574 (1942) (fighting words); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam) (incitement).

The Court has also recognized that constitutional rights may be subject to greater government regulation outside the home. For instance, while the Fourth Amendment protects the privacy of "persons" no matter where they are, there is no question that its application is most stringent inside the home. *See Florida v. Jardines*, 569 U.S. 1, 6 (2013). It has never been thought to denigrate the fundamental nature of the Fourth Amendment right to hold that its application may vary depending on the place where a search occurs, *see Collins v. Virginia*, 138 S. Ct. 1663, 1669-1672 (2018), or when the circumstances indicate that public or officer safety may be at risk, *see Chimel v. California*, 395 U.S. 752, 763 (1969). Indeed, many constitutional rights are "virtually unfettered inside the home but become subject to reasonable regulation outside the home." *Gould*, 907 F.3d at 672; *see, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (consensual sexual intimacy); *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) (possessing obscene materials).

3. The proper mode of constitutional scrutiny for public carry regulations is a form of intermediate scrutiny that entails a searching inquiry into the fit between means and ends. Courts have "used various terminology to describe the intermediate scrutiny standard," but its central requirements are that "the

government's stated objective . . . be significant, substantial, or important" and that there be a "reasonable fit between the challenged regulation and the asserted objective." *Jackson v. City & County of San Francisco*, 746 F.3d 953, 964 (9th Cir. 2014) (Ikuta, J.) (citing *Ward*, 491 U.S. at 798 and *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989)). The "[g]overnment may employ the means of its choosing so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and does not burden substantially more [protected conduct] than is necessary to further that interest." *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 213-214 (1997) (*Turner II*). Unlike strict scrutiny, the government need not show that its regulation is the "least restrictive or least intrusive means" of securing its objective, *McCullen v. Coakley*, 573 U.S. 464, 486 (2014), and the regulation is not presumed to be unconstitutional. *See also Fox*, 492 U.S. at 480 (question is whether the law's "scope is 'in proportion to the interest served'").

In applying this form of scrutiny, this Court has properly afforded a measure of deference to legislative judgments: it has declined "to reweigh the evidence *de novo*," *Turner II*, 520 U.S. at 211; accorded "substantial deference to the [legislature's] predictive judgments," *id.* at 195; and limited its role to assuring that "in formulating its judgments, [the State] has drawn reasonable inferences based on substantial evidence," *id.* That approach is premised on the view that legislatures are "far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions." *Id.* (internal quotation marks omitted). The need for some measure of deference to legislative judgments extends to questions of fit: intermediate scrutiny "affords the Government

latitude in designing a regulatory solution," *id.* at 213, and takes account of the "difficulty of establishing with precision the point at which restrictions become more extensive than their objectives," *Fox*, 492 U.S. at 480-481; *see also id.* (under commercial speech doctrine, elected branches have "leeway" to make "reasonable" judgments regarding the ""fit" between the legislature's ends and the means chosen to accomplish those ends"').

Of course, that means-ends analysis "is far different" from the "'rational basis' test used for Fourteenth Amendment equal protection analysis." *Fox*, 492 U.S at 480. Deference to legislative judgments on fact-intensive policy questions does not "foreclose [courts'] independent judgment of the facts bearing on an issue of constitutional law." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 129 (1989). A legislature "must do more than simply 'posit the existence of the disease sought to be cured'"; it must "demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner I*, 512 U.S. at 664 (plurality opinion). And it may not rely on "shoddy data or reasoning." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002) (plurality opinion).

This approach is well suited to assessing whether state and local restrictions on public carry violate the Second Amendment. Public carry restrictions like the one challenged here are not "salient outlier[s] in the historical landscape of gun control." *NRA*, 700 F.3d at 205. Instead, limits on carrying firearms in crowded public places have been common for more than seven centuries. Requiring the government to establish that there is a reasonable fit between such regulations and

the substantial interests they serve provides appropriate protections for Second Amendment rights, while allowing governments to retain their historic ability to respond to the weighty safety concerns that are presented when individuals carry firearms in public.

4. As respondents have explained, when reviewed under the proper constitutional standard, the denial of petitioners' applications for unrestricted concealed carry licenses did not violate the Constitution. *See* Resp. Br. 32-36, 46-47. But even if this Court agreed with petitioners that the Second Circuit's analysis was "alien to 'any of the standards that' this Court has 'applied to enumerated constitutional rights,'" Pet. Br. 44-45, that would not provide any basis for the Court to hold that "New York's regime is irreconcilable with" the Second Amendment, *id.* at 2. In that event, the Court should instead clarify the proper constitutional standard, vacate the judgment of the court of appeals, and remand for the lower courts to assess petitioners' as-applied constitutional claim under that standard.

Any further means-ends analysis, whether by this Court or the courts below, should of course consider the particular facts and circumstances surrounding New York's licensing regime and the specifics of petitioners' applications. It should also take account of the means that States have historically used to serve the ends of maintaining order and protecting the public and police from gun violence. A candid assessment of that history would have to acknowledge that—in both England and America—restrictions on public carry were typically relaxed (whether *de jure* or *de facto*) for those in remote and isolated places. *See supra* pp. 4-13. Those places typically lacked law enforcement officials to provide protection from dangerous animals

or adversaries—and they also typically lacked innocent bystanders who might fall victim to indiscriminate gunfire. If a regulation deprived law-abiding adults who desire to carry firearms for self-defense in such places of any outlet for doing so, it might very well lack a reasonable fit, in that respect, with the asserted objective of protecting lives.

But candor would also require acknowledging "the overwhelming evidence" from seven centuries of Anglo-American history that establishes a tradition of regulating or even prohibiting the public carry of firearms in the streets and squares and markets of cities and towns. *Young*, 992 F.3d at 813. That history is simply incompatible with the one-size-fits-all rule that petitioners seek, which would require every State to allow most individuals to carry firearms in most public places. *See* Pet. Br. 40-42. And it is incompatible with petitioners' preferred form of means-ends analysis, *see id.* at 45, which would presume the unconstitutionality of public carry regulations that are deeply rooted in our history and traditions. However the Court resolves this particular case, it should make clear that the Second Amendment preserves the latitude of the States to adopt a variety of regulatory approaches to public carry—especially with respect to crowded public places in cities and towns, where governments have historically enjoyed discretion to tightly regulate or prohibit the carry of firearms, and where widespread carry would pose the most acute threat to human life.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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