

No. 20-843

**In the
Supreme Court of the United States**

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

Petitioners,

v.

KEITH M. CORLETT, *ET AL.*,

Respondents.

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

**BRIEF OF *AMICI CURIAE* LAW ENFORCEMENT
GROUPS AND STATE AND LOCAL FIREARMS
RIGHTS GROUPS IN SUPPORT OF PETITIONERS
(*AMICI* LISTED ON INSIDE COVER)**

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International Law Enforcement Educators and Trainers Association
Law Enforcement Legal Defense Fund
Association of New Jersey Rifle & Pistol Clubs, Inc.
Bridgeville Rifle & Pistol Club, Ltd.
Connecticut Citizens Defense League
CRPA Foundation
Delaware State Sportsmen's Association
Gun Owners' Action League Massachusetts
Gun Owners of California
Hawaii Rifle Association
Maryland State Rifle & Pistol Association
Vermont Federation of Sportsmen's Clubs
Vermont State Rifle & Pistol Association
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INTEREST OF *AMICI CURIAE*¹**National Association of Chiefs of Police**

The mission of the National Association of Chiefs of Police (“NACOP”), a non-profit organization founded in 1967, is to promote and support the law enforcement profession. Membership is limited to command staff officers, and it currently has over 7,000 members. Among many other activities, NACOP provides frequent handgun training for law enforcement personnel and civilians.

Western States Sheriffs’ Association

The Western States Sheriffs’ Association was established in 1993, and consists of more than three hundred members from seventeen member states throughout the Western United States. Its mission is to assist sheriffs and their offices with federal and state legislative issues, address policy and procedural matters, and work together to keep the office of sheriff strong.

California State Sheriffs’ Association

The California State Sheriffs’ Association is a nonprofit professional organization that represents each of the fifty-eight California sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental

¹No party’s counsel authored this brief in whole or in part. No party or party’s counsel, and no person other than *amici*, their members, or their counsel contributed money that was intended to fund preparation or submission of this brief. Counsel of record for all parties received timely notice of intent to file this brief under Rule 37.2(a) and consent was granted by all parties.

personnel, in order to improve law enforcement throughout the state.

International Law Enforcement Educators and Trainers Association

The International Law Enforcement Educators and Trainers Association (“ILEETA”) is an association of 4,000 professional law enforcement instructors committed to the reduction of law enforcement risk, and to saving lives of police officers and the general citizenry through the provision of training enhancements for criminal justice practitioners. ILEETA’s *amicus* briefs were cited in *District of Columbia v. Heller* and in *McDonald v. Chicago*.

Law Enforcement Legal Defense Fund

Law Enforcement Legal Defense Fund (“LELDF”) is a 501(c)(3) non-profit organization, headquartered in Alexandria, Virginia, that provides legal assistance to law enforcement officers. LELDF has aided nearly one hundred officers, many of whom have been acquitted, mostly in cases where officers have faced legal action for otherwise authorized and legal activity in the line of duty.

The following are state and local groups that promote the shooting sports, provide firearms safety training, enhance marksmanship, educate the public about firearms, and defend Second Amendment rights, including the right of ordinary citizens to lawfully carry firearms for legitimate purposes such as self-defense: Association of New Jersey Rifle & Pistol Clubs, Inc., Bridgeville Rifle & Pistol Club, Ltd., Connecticut Citizens Defense League, CRPA

Foundation, Delaware State Sportsmen's Association, Gun Owners' Action League Massachusetts, Gun Owners of California, Hawaii Rifle Association, Maryland State Rifle & Pistol Association, Vermont Federation of Sportsmen's Clubs, Vermont State Rifle & Pistol Association, and Virginia Shooting Sports Association. These organizations have numerous members who are current or former law enforcement officers.

Thus, *amici* are all organizations that understand and support the right of law-abiding citizens to carry handguns for self-defense. It is their intent to provide this Court with some valuable information about the actual operation of carry laws from the perspective of both civilian gun owners and law enforcement.

INTRODUCTION

Petitioners have convincingly demonstrated that there is a deep, long-standing split among the circuits regarding whether the protection of the Second Amendment to carry handguns exists outside the home, and that it is imperative for this Court to resolve that circuit split.

Amici in this brief address the practical, "on the ground" effects of that split, which show the importance and urgency of granting certiorari. The continued refusal of eight states, with the blessing of four Circuit Courts of Appeals, to recognize Second Amendment rights outside the home is depriving tens of millions of law-abiding citizens of the most fundamental right of all, the right to defend one's own life and the lives of others.

This brief shows how states with “discretionary” or “may-issue” licensing regimes for carry outside the home are, contrary to the individual right recognized in *District of Columbia v. Heller*,² stripping their citizens of the ability to protect themselves lawfully against murder, rape, deadly assaults, armed robbery, and other serious crimes. One might assume that under discretionary licensing systems very substantial numbers of law-abiding citizens might still be issued licenses or permits to carry firearms outside the home. But that is not true. In the eight states that have may-issue systems, the highest percentage of adults with carry permits is 7.32%, and even that is an outlier. The rest of the may-issue states have far smaller percentages: the majority of those seven remaining states issue carry permits to fewer than 1% of the adult population, and in practice several of them deny altogether the right to carry a handgun for self-protection outside the home.

This case presents more than a circuit split. It represents a denial by several states and circuits of the fundamental right to preserve one’s life and safety recognized by the Second Amendment. This Court would not allow other fundamental constitutional rights to be denied by a handful of states with the approval of the federal courts. It should not allow the most fundamental right, the right to protect one’s life and safety against criminal assault, to be erased. The Court should therefore grant certiorari in this case.

² 554 U.S. 570 (2008).

SUMMARY OF ARGUMENT

This case presents an issue of exceptional importance. In the vast majority of states, the right of law-abiding citizens to carry a handgun outside the home is freely exercised. This is most frequently done under a “shall-issue” system, in which a license or permit must be issued if the applicant meets objective criteria specified by statute. In addition, sixteen states have “permitless” or “constitutional” carry, in which no permit is required to carry a concealed handgun outside the home.

Eight states have a “may-issue” permitting system in which officials have great discretion in issuing permits. They require the applicant to demonstrate “exceptional need,” “good cause,” “good reason,” specific documented threats, or some other need that distinguishes him or her from the general public. In practice, nearly all of these eight states either will not issue a permit at all, or do so in such tiny numbers that the right of ordinary citizens to carry concealed outside the home is essentially abolished.

In Hawaii, a statute theoretically allows a carry permit to issue to an ordinary citizen in an “exceptional case” when the applicant shows reason to fear injury to his or her person or property. But in practice such permits are never issued to ordinary citizens.

In New Jersey, the permit statute requires the applicant to show “justifiable need” to carry. The individual must “specify in detail the urgent necessity for self-protection” as evidenced by specific threats or previous attacks which demonstrate a

“special danger to the applicant’s life” which cannot be avoided other than by issuance of a handgun carry permit. In practice, the statutory tests are almost never found to have been met. In 2016-17, only 1,090, or .016% of New Jersey residents, had an active carry permit. The real number is probably much lower, since this includes permits issued to employees of private detective agencies, armored car companies, and private security companies.

California generally prohibits the carrying of loaded or unloaded handguns, whether openly or concealed. But discretion is given to local sheriffs and chiefs of police to issue a concealed carry license to an individual who resides or works in their county or city upon a showing of “good cause.” Practice varies widely across cities and counties. But overall, only a mere 0.39% of California residents have a concealed carry license, and the right to carry concealed simply does not exist for most residents.

Under New York’s stringent licensing system, only 1.27% of the adult population had carry licenses. This restrictive system undoubtedly contributed to a recent scandal in which New York Police Department licensing officials accepted bribes from “expeditors” to obtain licenses for their clients.

Maryland’s “good and substantial reason” requirement has resulted in only 0.59% of the adult population having a carry permit. Again, this is an overstatement of the true number, because this percentage includes permits issued for security businesses, guards, and the like.

In Delaware, issuance of carry licenses is left entirely to the discretion of local judges, under very

vague tests. Delaware licensees constitute only 2.77% of the adult population. In the adjoining state of Pennsylvania, which has a shall-issue system, 13.94% of the adult population—five times as many—has a permit.

Only .23% of the adult population of Rhode Island, or fewer than one in 400 adults, has a concealed carry license under its may-issue regime.

Under its discretionary system, Massachusetts has the highest percentage of license holders, 6.9%, of the eight may-issue states. But that remains a far cry from some of the high rates seen in shall-issue states. Alabama, which has the highest rate for shall-issue states—28.45%—has a rate of issuance more than four times as high.

While it may be contended that these denial of permits to carry are of little importance because few people defend themselves with handguns outside the home, well-designed research shows otherwise. Studies show that there are probably more than one million defensive gun uses annually, most of which do not involve firing a shot. More than 60% of these defensive uses take place outside the home.

ARGUMENT**I. THIS CASE PRESENTS AN ISSUE OF EXCEPTIONAL IMPORTANCE BECAUSE SOME STATES VIRTUALLY ELIMINATE THE RIGHT TO CARRY OUTSIDE THE HOME.**

Petitioners have very ably demonstrated that a longstanding circuit split exists on whether the Second Amendment right of citizens to keep and bear arms extends outside the home, and have also shown the importance of this case. But this case is exceptionally important in another way not fully explored by the petition.

In the vast majority of states, the right of law-abiding citizens to carry concealed handguns is freely exercised outside the home.³ This is most frequently done under a shall-issue permitting system, under which officials exercise little or no discretion in issuing a permit, and the permit must be issued if the applicant meets certain objective criteria specified by statute.⁴ In addition, sixteen

³ This brief principally discusses concealed carrying of handguns, because that is the most common method of carry for most people in most states. Many states allow open carry of handguns, though sometimes with restrictions, exceptions, limitations, or permit systems. Four states (Florida, Illinois, New York, and South Carolina) plus the District of Columbia prohibit open carrying *de jure*. In several others, open carry is barred *de facto* due to restrictive permit systems. California generally bans open carry, but under that state's complicated system open carry of handguns may sometimes be legal in remote areas or rural counties.

⁴ Connecticut is technically a "may issue" state, but because the governing statute specifies objective criteria and disqualifications, and does not require a showing of "need" or

states⁵ now have “permitless” or “constitutional” carry, in which no license or permit is required to carry a handgun concealed outside the home.⁶ Forty-two states plus the District of Columbia have a shall-issue system, a permitless system, or both.⁷

Only eight states—California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island—have a may-issue concealed carry permitting system, in which officials are vested with discretion as to whether to issue a permit or license to an individual.⁸ Typically, to issue a permit or

“good cause,” it is generally counted as a shall-issue state. *See* Conn. Gen. Stat. § 29-28(b); *Kuck v. Danaher*, 822 F. Supp.2d 109, 129 (D. Conn. 2011).

⁵ The sixteen states with permitless carry are Alaska, Arizona, Arkansas, Idaho, Kansas, Kentucky, Maine, Mississippi, Missouri, New Hampshire, North Dakota, Oklahoma, South Dakota, Vermont, West Virginia, and Wyoming. There had been some dispute regarding whether a permit was required in order to carry in Arkansas, but the current judicial interpretation is that a permit is not required. *Taff v. State*, 562 S.W.3d 877 (Ark. App. 2018). Vermont has held since 1903 that it is unconstitutional to require written permission from a mayor or chief of police in order to carry a pistol or concealed weapon. *State v. Rosenthal*, 55 A. 610 (Vt. 1903).

⁶ Of course, persons disqualified from possession of firearms under state or federal law, such as felons or domestic abusers, cannot legally carry a handgun in those states because they cannot legally possess one.

⁷ Some states that have permitless carry regimes retain a shall-issue permit system, so that residents desiring to carry in other states may do so if those other states have reciprocity with the issuing state.

⁸ Cal. Penal Code §§ 25400, 26150(a)(2), 26155(a)(2); 11 Del. Crim. Code § 1441; Haw. Rev. Stat. § 134-9; Md. Code, Crim.

license such states require a showing of “exceptional need,” “good cause,” “good reason,” specific documented threats to the applicant, or some other test that distinguishes the applicant from the general public as a whole. In some of these states, officials may also put additional limits on the license, restricting the places or conditions under which the license will be valid.⁹

In some of these eight states the system is not really discretionary. In practice, from the point of view of the ordinary citizen, concealed carry permits are simply unavailable for purposes of defense outside the home. The licensing authorities either simply refuse to issue permits, or the numbers reflect that only a pitifully small percentage of law-abiding citizens are able to obtain the permits that might protect their lives.

A review of the laws and actual practices in these eight states reveals the extraordinary extent of the strictures on the right to carry for self-defense, amounting to near prohibition in most of them, and

Law, § 4-203(a), (b)(2); Md. Code, Pub. Safety, § 5-306; Mass. Gen. Laws Ch. 140 § 131(a), (d); Mass. Gen. Laws Ch. 269 § 10(a); N.J. Stat. 2C:58-4(d); N.Y. Penal Law § 400.00(1), (2)(f); 11 R.I. Gen. Laws, § 11-47-11.

⁹ See, e.g., Cal. Penal Code § 26200(a) (license “may include any reasonable restrictions or conditions that the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the licensee may carry [a handgun]”); Mass. Gen. Laws, Ch. 140, § 131(a)(i) (licensee may possess and carry firearms “subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority considers proper”).

thus the importance of this Court's granting of certiorari in this case.

A. Hawaii

Hawaii state law theoretically allows ordinary law-abiding citizens to obtain permits to carry outside the home, either openly or concealed. Hawaii has statutes that generally require that gun owners may only keep their firearms at their "place of business, residence, or sojourn."¹⁰ A permit to carry concealed may be granted by the local Chief of Police "in an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property..."¹¹ For open carry of a loaded handgun, the Chief of Police may grant a license only where "the urgency or the need has been sufficiently indicated" and the applicant "is engaged in the protection of life and property."¹²

Even though these licenses are supposedly available to ordinary citizens by application to the local Chiefs of Police, in practice such applications are uniformly denied. As stated by the Hawaii Rifle Association in its summary of Hawaii firearms law, although permits to carry are:

allowed by law in special circumstances of threat to self or property, the Chiefs' policy at present is to grant only to law enforcement and those military and security guards whose

¹⁰ Haw. Rev. Stat. §§ 134-23, 134-24, 134-25.

¹¹ Haw. Rev. Stat. § 134-9.

¹² *Id.*

duties specifically require such. Private citizens are denied.¹³

The Second Amendment constitutional right to carry outside one's home or place of business does not exist in Hawaii. Instead, carrying outside the home is a crime.¹⁴

B. New Jersey

New Jersey also essentially prohibits ordinary citizens from carrying a handgun outside the home. New Jersey requires a permit to carry a handgun outside the home, either openly or concealed.¹⁵ To obtain such a permit, each application by a private citizen:

shall be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and, in the case of a private citizen, shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to

¹³ Max Cooper, Hawaii Rifle Association, Hawaii Firearms Laws (revised February 4, 2018), <https://hawaiirifleassociation.org/hawaii-gun-laws/>. *See also* John R. Lott, Jr. and Rujun Wang, Concealed Carry Permit Holders Across the United States: 2020, Crime Prevention Research Center (“Crime Prevention Research Center 2020 Report”) 17, 22 (Sep. 21, 2020) (zero active civilian permits), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3703977.

¹⁴ Haw. Rev. Stat. §134-51.

¹⁵ N.J. Stat. §§ 2C:39-5(b), 2C:58-4.

carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of the incidents to the appropriate law enforcement agencies.¹⁶

This “justifiable need” test is impossible for most people to meet because criminals who may attack an individual on the street rarely issue threats in advance. In cases where a threat is issued in advance, by the time an individual has documented such threats by reporting them to law enforcement and going through the application process, it is likely that the threat either will have passed, or that the threatened harm will have already occurred.¹⁷

New Jersey does not publish the number of active concealed carry permits. An open records request covering the period 2016-17 indicated that there

¹⁶ N.J. Stat. § 2C:58-4(c).

¹⁷ In 2015, Carol Bowne was stabbed to death by her ex-boyfriend in the front yard of her Berlin Township, New Jersey home. She had previously obtained a restraining order against him, and in mid-April sought to obtain a handgun purchase permit. The application was still pending when she was murdered in early June. As explained in the cited article, permits take months to process. Although the murdered woman sought only a purchase permit and not yet a carry permit, this tragic story illustrates that forcing a person to wait until she can actually document the “urgent necessity for self-protection” required by § 2C:58-4(c) means, as with a purchase permit, that a carry permit (if ultimately issued) will often come too late. Greg Adomaitis, *Berlin murder victim told neighbor about gun permit application, then nothing*, NJ.COM (Jun. 5, 2015), https://www.nj.com/camden/index.ssf/2015/06/berlin_murder_victim_told_neighbor_about_gun_permit.html.

were 1,090 active permits in New Jersey.¹⁸

In 2017, the estimated adult population of New Jersey was 6,688,119.¹⁹ Those 1,090 active permit-holders constituted .016% of the adult population of New Jersey. In other words, only one of about 6,136 adults in New Jersey has a carry permit. The other 99.984% of ordinary citizens cannot leave the home with a handgun for self-defense, even when the potential danger may be very real. In essence, New Jersey’s “justifiable need” test has stripped nearly all citizens of their “individual right to possess and carry weapons in case of confrontation,” which this Court found in *Heller* to be the right guaranteed by the operative clause of the Second Amendment.²⁰

C. California

California generally prohibits the carrying of loaded or unloaded handguns, whether openly or concealed.²¹ It is a may-issue state, and an exception

¹⁸https://www.cnjfo.com/resources/Documents/w139606%20Cheeseman_Redacted.pdf. The number of permits issued to ordinary private citizens is undoubtedly lower, probably vastly lower, since New Jersey issues carry permits to “employees of private detective agencies, armored car companies and private security companies” under the same statutory scheme. N.J. Admin. Code § 13:54-2.4(d)(2).

¹⁹ United States Census Bureau, ACS Demographic and Housing Estimates (2017), New Jersey, <https://data.census.gov/cedsci/table?q=new%20jersey%20population%202017&tid=ACS DP1Y2017.DP05&hidePreview=false>.

²⁰ 554 U.S. at 592.

²¹ See Cal. Penal Code § 25850 (prohibiting carry of loaded firearms in public), § 26350 (prohibiting open carry of unloaded handguns in public), and § 25400 (prohibiting concealed carry of firearms outside the home).

applies to the concealed carry ban if the individual obtains a concealed carry license.²²

Concealed-carry licenses are issued by the sheriff or police chief in the county or city where the individual resides or works.²³ There are many objective standards that must be met, but in addition the sheriff or chief must determine whether the applicant is of “good moral character” and has “good cause” to carry a loaded handgun in public.²⁴

Many chiefs and sheriffs of the most populous cities and counties have determined that “good cause” does not include an individual right to carry for purposes of defense in the event of confrontation outside the home. For example, the Los Angeles Police Department Policy provides that “good cause exists if there is convincing evidence of a clear and present danger to life or of great bodily injury to the applicant, his (or her) spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant’s carrying of a concealed firearm.”²⁵ The Policy then goes on to list five situations in which good cause may be found to exist, followed by a number of “favorable factors” and “unfavorable factors” which are somehow blended into the

²² *Id.* § 25655

²³ *Id.* §§ 26150, 26155.

²⁴ *Id.* §§ 26150(a)(1)-(2), 26155(a)(1)-(2).

²⁵ LAPD Carry Concealed Weapon License Policy, <http://lapd-assets.lapdonline.org/assets/pdf/updated-2021-ccw-policy.pdf>.

discretionary determination.

Because of the restrictive practices in some California cities and counties, the most recent data show that there are only 120,582 concealed carry license holders in all of California.²⁶ That is a mere 0.39% of the adult population of California.²⁷

D. New York

New York State has several types of handgun licenses. A concealed carry permit may issue to an ordinary citizen who meets qualification criteria and can show “proper cause.”²⁸

The state does not collect or publish the data for concealed carry permits at the state level. Statewide, the Crime Prevention Research Center estimates that, as of June 2020, only 196,132 individuals had carry licenses.²⁹ That is a mere 1.27% of the adult population.³⁰

As noted by the dissent in *New York State Rifle & Pistol Association v. New York City*, the requirements for licenses in the City of New York are even more restrictive than in the rest of New York State.³¹ Reportedly, in 2011 “about 4,000 people had permits to carry concealed handguns citywide. The vast majority tended to be retired cops,

²⁶ Crime Prevention Research Center 2020 Report 17.

²⁷ *Id.* at 21.

²⁸ N.Y. Penal Law § 400.00(1), (2)(f).

²⁹ Crime Prevention Research Center 2020 Report 21.

³⁰ *Id.* at 18.

³¹ 140 S.Ct. 1525, 1529-30 (2020) (premises licenses).

active security guards and business owners who handle significant amounts of cash, along with a few well-to-do famous names.”³²

That extremely restrictive system no doubt contributed to a scandal, running from at least 2010 to 2016, in which the New York Police Department licensing officials accepted bribes from “expeditors” to obtain carry licenses for their clients.³³ “[A]uthorities described a scam in which police employees traded speedy handling of gun permits for paid vacations, jewelry, catered parties, cash and visits to strip clubs,” and licenses were issued to individuals who were disqualified.³⁴

E. Maryland

In Maryland, an individual may not “wear, carry, or transport a handgun, whether concealed or open, on or about the person” without a permit.³⁵ Maryland requires law-abiding citizens to prove that they have a “good and substantial reason” to carry in order to obtain such a permit.³⁶ Permits may be issued for persons whose job or profession puts them

³² Hollie McKay, *Here’s why a New York City concealed carry permit is almost impossible to obtain*, FOXNEWS (May 18, 2020); Jo Craven McGinty, *The Rich, the Famous, the Armed*, NEW YORK TIMES (Feb. 18, 2011).

³³ CBS2, *Former Police Officers, Ex-Brooklyn Assistant DA Arrested In NYPD Gun License Bribery Scandal* (Apr. 25, 2017).

³⁴ *Id.*

³⁵ Md. Code, Crim. Law, § 4-203(a)(1)(i).

³⁶ Md. Code, Pub. Safety, § 5-306(a)(5).

at presumed risk, such as security guards, judges, prosecutors, and the like. For ordinary private citizens to obtain a permit, they must show “apprehended danger.” Maryland courts have interpreted this requirement narrowly, such that apprehended danger cannot be established by a “vague threat” or “personal anxiety.”³⁷ Rather, the applicant must document a current threat aimed at him or her individually.

As a result of this restrictive system, in Maryland in 2020 there were only 27,760 active permits, amounting to 0.59% of the adult population.³⁸ As in other jurisdictions, this percentage undoubtedly overstates the percentage actually issued to ordinary citizens for self-defense, because the numbers include permits issued for security businesses, guards, and the like.

F. Delaware

In Delaware, the issuance of carry licenses is entirely at the discretion of Superior Court judges.³⁹ The individual desiring a license submits an application together with “a certificate of 5 respectable citizens of the county” stating that “the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order” and that “the

³⁷ *Scherr v. Handgun Permit Review Bd.*, 880 A.2d 1137, 1148 (Md. Ct. Spec. App. 2005) (quoting *Snowden v. Handgun Permit Review Bd.*, 413 A.2d 295, 298 (Md. Ct. Spec. App. 1980)).

³⁸ Crime Prevention Research Center 2020 Report 18, 21.

³⁹ 11 Del. Crim. Code § 1441.

carrying of a concealed deadly weapon ... is necessary for the protection of the applicant or the applicant's property, or both."⁴⁰ A training course is required.⁴¹ The Court may hear additional evidence, and the Superior Court "may or may not, in its discretion, approve any application."⁴²

This system has resulted in Delaware licensees constituting only 2.77% of the adult population.⁴³ In the adjoining state of Pennsylvania, which has a shall-issue system, individuals with permits constitute 13.94% of the adult population—five times as many as in Delaware.

G. Rhode Island

Rhode Island has a discretionary, two-tier system of licensing, in which a license or permit to carry can be issued by a city or town, or a license can be issued by the Attorney General. The statute authorizing localities to issue a concealed carry license or permit states that the permit "shall" be issued to residents "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 for carrying a pistol or revolver, and that he or she is a suitable person to be so licensed."⁴⁴ The Attorney General "may" issue a license or permit to any person over 21 "to carry a pistol or revolver, whether concealed or not, upon his

⁴⁰ 11 Del. Crim. Code § 1441(a)(1)-(2).

⁴¹ 11 Del. Crim. Code § 1441(a)(3).

⁴² 11 Del. Crim. Code § 1441(d).

⁴³ Crime Prevention Research Center 2020 Report 21.

⁴⁴ 11 R.I. Gen. Laws, § 11-47-11.

or her person upon a proper showing of need....”⁴⁵

Both statutes require the applicant to qualify by firing a certain score at a specified target at a certain distance within a specified time.⁴⁶ Both statutes vest enormous discretion in the issuing authority because of the vagueness of the terms “good reason” to fear injury, “other proper reason,” “suitable person,” and “proper showing of need.” Both statutes have been interpreted extremely narrowly, and only .23%, or fewer than one out of 400 adults, holds a concealed carry permit in Rhode Island.

H. Massachusetts

Until January 1, 2021, Massachusetts had two types of carry licenses: Class A and Class B. Class B licenses have now been phased out, and there is now a single license to carry handguns.

As of October 1, 2020, there were 361,715 active handgun carry licenses in Massachusetts.⁴⁷ The adult population in Massachusetts is estimated to be 5.24 million,⁴⁸ so about 6.9% of that population has a permit. While that is a higher percentage than in other may-issue states, it is still a far cry from the

⁴⁵ *Id.*, § 11-47-18.

⁴⁶ *Id.*, §11-47-15.

⁴⁷ MASS.GOV, Firearms Licenses Active 10.01.20 (downloadable Excel spreadsheet), <https://www.mass.gov/doc/firearms-licenses-active-100120>.

⁴⁸ United States Census Bureau, ACS Demographic and Housing Estimates (2019), Massachusetts, <https://data.census.gov/cedsci/table?q=massachusetts%20population%202019&tid=ACSDP1Y2019.DP05&hidePreview=false>.

higher percentages that one sees in shall-issue states. In Alabama, which has the highest percentage of concealed carry permits of the shall-issue states at 28.45%, the rate is more than four times as high as in Massachusetts, the highest of the may-issue states.⁴⁹

In Boston, there were only 7958 active permits in October 2020. The estimated number of people age 21 years and older in the city in 2019 was 540,829.⁵⁰ Thus, only about 1.47% of Boston residents had carry permits, less than a quarter of the rate for Massachusetts as a whole. The ability to defend one's life outside the home should not depend on whether one lives in Boston or in a suburb.

These laws and practices severely restricting the right to carry in cases of confrontation have been allowed to stand because an unequivocal statement by this Court that the Second Amendment applies outside the home has not been forthcoming. The problem has not been limited to federal courts; state courts have also limited the application of *Heller* to the home.⁵¹

⁴⁹ Crime Prevention Research Center 2020 Report 20.

⁵⁰ United States Census Bureau, ACS Demographic and Housing Estimates (2019), Boston city, Massachusetts, <https://data.census.gov/cedsci/table?q=boston%20population&tid=ACSDP1Y2019.DP05&hidePreview=false>.

⁵¹ See *Commonwealth v. Gouse*, 965 N.E.2d 774, 802 (Mass. 2012) (“The case before us does not implicate [the Second Amendment] right: the defendant was charged with and convicted of possessing a firearm in an automobile, not his home...”); *Williams v. State*, 10 A.3d 1167, 1777 (Md. 2011) (“If the Supreme Court ... meant its holding to extend beyond home

II. FIREARMS ARE FREQUENTLY USED FOR DEFENSE IN CONFRONTATIONS THAT OCCUR OUTSIDE THE HOME.

It may be contended that the denial by states of the means to defend oneself outside the home, and the approval of the denial by at least four Circuits, is of little consequence because most people never need to defend themselves with a handgun outside the home.

There are three important answers to such a contention.

First, the Second Amendment provides that the right of the people to keep and bear arms shall not be infringed. States are not at liberty to infringe upon that right outside the home, or in any other way. A showing of “need” to exercise a constitutional right is unnecessary.

Second, just because a fundamental constitutional right might never be exercised by an individual or group of individuals does not mean it can be eliminated by statute. A state cannot take away the right to publish political books or articles on grounds that most people will never write and publish such materials. It cannot restrict the right to the free exercise of religion just because there are many who never attend religious services and may not intend to do so. A state cannot allow searches and seizures without a warrant even though most

possession, it will need to say so more plainly.”); *Mack v. United States*, 6 A.3d 1224, 1236 (D.C. 2010) (“[W]e simply cannot find any error that is ‘plain’ in failing to extend *Heller* to a case ... where a weapon is carried outside the home.”).

people will never need that protection.

Third, carrying and using firearms outside the home for purposes of self-defense actually occurs very frequently, in numbers running into the millions annually. *Heller* concluded that the Second Amendment codifies a pre-existing “individual right to possess and carry weapons in case of confrontation.”⁵² The home may indeed be the place where “the need for defense of self, family, and property is most acute.”⁵³ The best-designed, authoritative research study shows that the majority of confrontations take place at locations outside the home, as described below.

The number of these defensive gun uses (“DGUs”) per year can only be estimated, but a number of studies have tried to do just that. Gary Kleck and Mark Gertz conducted an especially thorough survey in 1993, with stringent safeguards to weed out respondents who might misdescribe or misdate a DGU report. The Kleck and Gertz results showed that there are between 2.2 and 2.5 million DGUs annually.⁵⁴ They found that most defensive uses involved handguns, and the large majority of defensive uses do not involve firing the weapon, but merely displaying it to deter an attacker (80 percent of DGUs are with handguns; 76 percent do not

⁵² 554 U.S. at 592.

⁵³ 554 U.S. at 628.

⁵⁴ Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOL. 150 (1995). (“Kleck & Gertz”). DGUs rarely are reported to police, because both parties usually have reasons not to want police to be involved.

involve a shot being fired).⁵⁵

Philip Cook of Duke and Jens Ludwig of Georgetown were skeptical of Kleck's results, so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs.⁵⁶ In the mid-1990s, the Centers for Disease Control did well-designed research (though they did not publicize the results) that supports a finding of something over 1 million DGUs a year.⁵⁷ The National Opinion Research Center argues that the actual annual DGU figure is in the range of 256,500 to 1,210,000.⁵⁸

Kleck and Gertz's definitive study of defensive gun uses shows that 62.7% of defensive uses by citizens against human aggressors take place outside the home itself.⁵⁹ Based on the research cited above, one million DGUs is a likely floor for the number of annual DGUs, making the number of DGUs outside the home almost certainly over 600,000 per year. Over time, the ability to carry outside the home,

⁵⁵ *Id.* at 175.

⁵⁶ PHILIP COOK & JENS LUDWIG, GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE (1996).

⁵⁷ Brian Doherty, *A Second Look at a Controversial Study About Defensive Gun Use*, REASON (Sep. 4, 2018), <https://reason.com/2018/09/04/what-the-cdcs-mid-90s-surveys-on-defensi>.

⁵⁸ Tom W. Smith, *A Call for a Truce in the DGU War*, 87 J. Crim. L. & Criminol. 1462 (1997).

⁵⁹ Kleck & Gertz at 185.

which was never cast in doubt by *Heller* and is supported by *Heller*'s reasoning, has saved countless lives and countless people from having violence committed against them. That is another exceptionally important reason for granting the writ and clarifying that the Second Amendment's protections exist outside the home.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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