No. 20-843

# In the Supreme Court of the United States

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

*Petitioners*,

v.

KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.,

*Respondents.*

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

## BRIEF OF *AMICI CURIAE* SOCIAL SCIENTISTS AND PUBLIC HEALTH RESEARCHERS IN SUPPORT OF RESPONDENTS

Elizabeth Vicens
*Counsel of Record*
Samuel Levander
Rachel Polan
Katerina Wright
CLEARY GOTTLIEB STEEN & HAMILTON LLP
*Counsel for Amici Curiae*
One Liberty Plaza
New York, New York 10006
212-225-2000
evicens@cgsh.com

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Other Authorities**

## INTEREST OF *AMICI CURIAE*[1]

*Amici curiae* are social science researchers and public health experts who are widely recognized as leading scholars in the field of gun violence and public safety.[2] As scholars who have dedicated significant portions of their careers to studying the causes and patterns of American gun violence and identifying the public policies most effective in combating it, *amici* have a strong interest in ensuring that the Court appropriately considers scientific evidence in its constitutional analysis. *Amici* submit this brief in support of Respondents' argument that New York's regime governing licenses to carry concealed firearms in public is both constitutional and promotes the Government's interest in saving lives and reducing violent crime.

**John J. Donohue III, PhD**, is C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. Professor Donohue has been one of the leading empirical researchers in the legal academy over the past twenty-five years. Professor Donohue is an economist as well as a lawyer and is well known for

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[1] In accordance with Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in any part, and that no person or entity, other than *amici* and their counsel, made a monetary contribution to fund its preparation and submission. Petitioners filed a blanket consent to the filing of *amicus* briefs. Respondents consented to the filing of this brief.

[2] A complete list of *amici curiae* is attached as Appendix A.

using empirical analysis to determine the impact of law and public policy in a wide range of areas, including civil rights and antidiscrimination law, employment discrimination, crime and criminal justice, and school funding. Professor Donohue previously was a member of the Stanford Law School faculty from 1995-2004.

Before rejoining Stanford Law School in 2010, Professor Donohue was the Leighton Homer Surbeck Professor of Law at Yale Law School. He recently co-authored *Employment Discrimination: Law and Theory* with George Rutherglen. Earlier in his career, he was a law professor at Northwestern University as well as a research fellow with the American Bar Foundation. Additionally, he clerked with Chief Judge T. Emmet Clarie, of the U.S. District Court for the District of Connecticut. He is a member of the American Academy of Arts and Sciences, and the former editor of the American Law and Economics Review. Professor Donohue also served as president of the American Law and Economics Association and co-President of the Society for Empirical Legal Studies.

## BACKGROUND AND SUMMARY OF ARGUMENT

New York's firearm licensing regime saves lives. The State's regime, which requires that an applicant who seeks a license to carry a concealed firearm in public show "proper cause" for a need to carry a gun in public for self-defense, is an appropriate standard born from a long history and tradition of legislative firearm regulation in New York State and is supported by the leading empirical scientific evidence.

A key element in evaluating the challenge to New York's regulations of gun carrying outside the home is whether the regulations protect public safety better than unrestricted gun carrying. States such as New York that have adopted more restrictive concealed carry laws have better, safer outcomes with regard to rates of homicide and violent crime than states that have enacted "right-to-carry" or "shall issue" concealed carry laws.

Right-to-carry ("RTC") laws, also referred to as "shall issue" laws, do not require a showing of need to carry guns in public, in contrast to the "proper cause" (or "may issue") approach taken by New York. The leading rigorous empirical research shows that RTC laws are associated with an increase in violent crime.[3]

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[3] *See, e.g.*, John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, 16 J. Empirical Legal Stud. 198, 200 (2019) (hereinafter "RTC Laws and Violent Crime").

States with RTC laws report increased lethality arising from mundane situations, such as road rage, unintentional shootings, and incidents of well-intentioned permit holders elevating the crime count by shooting an innocent party or being killed by the criminal.[4] An increased prevalence of gun ownership also increases the risks for police that they might encounter armed citizens in the course of their everyday duties, and results in increased use of lethal force by the police.[5]

Proponents of RTC laws argue that the increased carrying of guns decreases violent crime because armed law-abiding citizens may thwart or deter criminals. Yet the most frequent occurrence each year involving crime and an armed law-abiding citizen is the theft of that citizen's gun, which occurs hundreds of thousands of times each year.[6] Increased firearm ownership among law-abiding citizens thus has the effect of putting more firearms into the hands of criminals—and this is particularly true for guns carried outside the home or stored in a vehicle outside the home, which are far more frequently lost and stolen. The evidence also shows that criminals react to the adoption of RTC laws by seeking out more

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4 *Id.* at 204-05.

5 *Id.* at 209-13.

6 *Id.* at 207.

firearms, for the simple reason that they are encouraged by an ever-heightening arms race.[7]

In other words, there is substantial and abundant evidence from top experts in public health and empirical social scientists that the health and safety of American citizens are impaired if states do not restrict access to gun carrying to those for whom the benefits of gun carrying are sufficiently high that they outweigh the costs imposed by the carrying of guns outside the home for protection. More specifically, the best empirical evidence available indicates that the restrictions that New York imposes on gun carrying promote the State's interest of reducing violent crime and promoting the health and safety of its citizens.

In determining whether New York's licensing laws are supported by substantial (or even compelling) governmental interests, the Court properly should consult the empirical evidence that strongly supports the effectiveness of New York's licensing regime. Overall, there is no compelling research that expanded RTC laws and other lax gun licensing regimes enable self-defense and improve public safety; rather, the evidence overwhelmingly demonstrates that unregulated possession of firearms leads to

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[7] John J. Donohue, *The Swerve to "Guns Everywhere": A Legal and Empirical Evaluation*, 83 L. & Contemp. Probs. 117, 128 (2020).

increased fatalities and other socially harmful consequences.

The Supreme Court has long relied on empirical data as the basis for such important governmental interests, and accords deference to the legislature on empirical questions outside of the judiciary's expertise, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010), because the legislature is in a "better position than the [j]udiciary to gather and evaluate data on local problems," *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 440 (2002). Indeed, this Court recognizes that heightened constitutional scrutiny may be satisfied by empirical evidence that supports the challenged law. *See, e.g.*, *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 391 (2000) ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised."). The Second Amendment should be afforded the same treatment as other constitutional rights. *See, e.g.*, *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) (upholding regulation that allegedly violated the First Amendment and finding substantial governmental interests based on the experience of and studies produced by the City of Seattle).

Several Courts of Appeals have properly relied on empirical evidence supporting a substantial governmental interest in upholding gun regulations. *See, e.g.*, *Gould v. Morgan*, 907 F.3d 659, 675 (1st Cir.

2018) (upholding handgun carry permit law supported by studies showing that states with robust licensing schemes have "significantly lower rates of gun-related homicides and other violent crimes"); *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 966 (9th Cir. 2014) (upholding safe-storage law based on "evidence that storing handguns in a locked container reduces the risk of both accidental and intentional handgun-related deaths"); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 209-11 (5th Cir. 2012) (upholding gun purchase age restrictions based on evidence that eighteen to twenty-year-olds disproportionately used firearms in committing crimes); *United States v. Booker*, 644 F.3d 12, 26 (1st Cir. 2011) (upholding restrictions on gun possession by convicted domestic abusers based on statistics showing that "'[t]he presence of a gun in the home of a convicted domestic abuser is strongly and independently associated with an increased risk of homicide'") (citation omitted); *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (upholding the constitutionality of the federal law restricting gun ownership for individuals convicted of domestic violence misdemeanor crimes based on studies showing that firearms are five times more deadly than knives and are more likely to cause injury or death in domestic situations).[8]

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[8] While peer-reviewed studies have long established the efficacy of restrictive public carry laws, such robust data is not a prerequisite for demonstrating a substantial governmental

Here, where a well-established body of social science research demonstrates the efficacy of New York's concealed carry licensing regime in serving the State's public safety and crime prevention interests, the Court should determine that this regime is sufficiently related to New York's governmental interests to pass constitutional muster. Any move in the direction of greater gun carrying would undermine this important governmental interest.

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interest, and the government's interest in stemming harms that flow from firearms cannot always be reduced to a scientific study. *See Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973) ("We do not demand of legislatures 'scientifically certain criteria of legislation.'") (citation omitted). When states regulate "in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation." *Marshall v. United States*, 414 U.S. 417, 427 (1974); *Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997) (disagreements among researchers "do not tie the State's hands" in its policy choices).

## ARGUMENT

### A. Abundant Empirical Evidence Supports The Value Of Restricting Gun Carrying In Reducing Violent Crime

Laws regulating carrying guns in public—like New York State's regime—prevent a statistically significant number of irresponsible or criminal actors from carrying firearms and using them to do harm, while preserving the right of law-abiding citizens to obtain a firearm for self-defense. A wide array of social science research empirically demonstrates the effectiveness and beneficial policy outcomes of licensing laws and other firearm regulations. Stricter licensing regimes, including New York's "may issue" legislation, are associated with lower rates of violent crime and, in particular, lower rates of firearm homicides in urban areas, of critical importance to New York State. Research has documented and demonstrated how these laws directly save lives and confer broad public safety benefits.[9]

According to *amicus* John Donohue's 2019 study that examined RTC laws in thirty-three states between 1981 and 2007, states that set stronger

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[9] *See generally* David Hemenway & Matthew Miller, *Public Health Approach to the Prevention of Gun Violence*, 368 New Eng. J. Med. (2013); *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Daniel W. Webster & Jon S. Vernick eds., 2013).

licensing requirements for the concealed carry of firearms experienced a decline in violent crime over the approximately forty-year period that was nearly *ten times greater* than states that did not have such licensing regimes.[10]

"May issue" concealed carry licensing laws are particularly effective at reducing violent crime in cities and urban areas, which is of acute importance in New York State. Specifically, empirical evidence demonstrates that firearm permit requirements are associated with a twenty-one percent decrease in homicide rates in large cities, and "may issue" laws are associated with a seventeen percent decrease in firearm homicide rates in large cities.[11] These findings are corroborated by other studies, each supporting the conclusion that firearm regulation can target the particular dangers of concealed weapons and gun violence in urban areas.

## B. Expansions Of Right To Carry Laws Increase Violent Crime

Where firearm licensing laws are relaxed, a robust body of social science research shows persistent *increases* in rates of violent crimes—including

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[10] *See, e.g.*, RTC Laws and Violent Crime, *supra* note 3 at 200.

[11] Michael Siegel et al., *The Impact of State Firearm Laws on Homicide Rates in Suburban and Rural Areas Compared to Large Cities in the United States, 1991-2016*, 36 J. Rural Health 255, 261 (2020).

homicides, firearm homicides, robberies, and aggravated assaults.

Studies have consistently shown that RTC laws elevate violent crime in the decade following adoption. RTC Laws and Violent Crime, *amicus* John Donohue's 2019 study, showed persistent increases in rates of violent assaults and violent crimes in states with the most lenient licensing laws.[12] This study carefully examined the impact on violent crime from the adoption of state laws granting citizens a right to carry guns outside the home (either with or without a requirement to secure a permit to do so). The study controlled for numerous factors that influence crime—such as policing, incarceration, income, unemployment, and the influence of the crack cocaine epidemic—to gauge whether the results are likely to be a true causal effect of the RTC law.[13] RTC Laws and Violent Crime used two empirical approaches: (i) a panel data analysis that analyzed data from all fifty states and the District of Columbia from 1979-2014, and (ii) a synthetic controls analysis that generated estimates for thirty-three states that adopted RTC laws over that same time period.

Both approaches revealed a similar pattern: RTC adoption led to an immediate increase in and worsening pattern of violent crime that was

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[12] RTC Laws and Violent Crime, *supra* note 3, at 200.

[13] *Id.* at 215-16.

substantial and statistically significant. The panel data estimate of the average effect of RTC laws across the post-adoption period was nine percent and the synthetic control analysis indicated that the average increase in violent crime grew to thirteen to fifteen percent by the tenth year after adoption.[14]

### 1. Multi-Year Panel Data Analysis Shows Right-to-Carry Laws Increase Violent Crime

Figure 1 depicts the panel data estimates of how RTC laws influence crime for each year after adoption. The Figure shows the effectiveness of the RTC Laws and Violent Crime econometric model because *prior* to RTC law adoption, the model is predicting the law would have no effect—exactly what a researcher would want the model to predict for a law that is not yet passed. As soon as the law goes into effect, however, violent crime increases. This panel data model controls for a variety of criminal justice, socio-economic, and demographic factors that could also influence violent crime, such as the lagged incarceration rate, the lagged police employee rate, real per capita personal income, the unemployment rate, poverty rate, beer consumption, the percentage of the population living in metropolitan areas, and six demographic variables (based on different age-sex-race categories). The overall estimated nine percent

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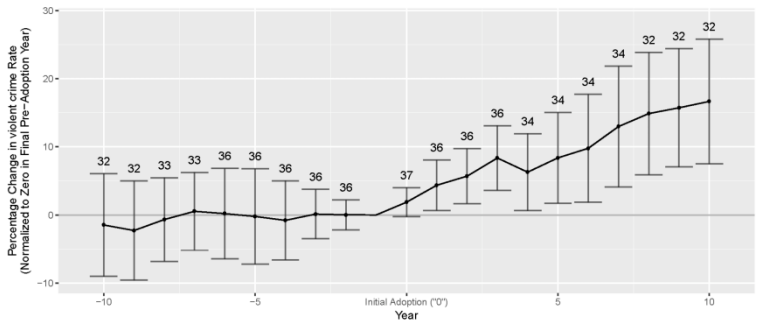
[14] *Id.* at 200.

increase in violent crime is highly statistically significant.

**Figure 1**: The Impact Of Right-to-Carry Laws On Violent Crime, RTC Laws and Violent Crime Model, 1979-2014.




### 2. Synthetic Controls Analysis Shows Right-to-Carry Laws Increase Violent Crime

For each state adopting RTC laws, the synthetic controls analysis is designed to select a group of states with no RTC laws that when appropriately weighted has a similar pattern of violent crime prior to the given state's adoption of a RTC law. This weighted group of states is the "synthetic control," which can then be used to generate a plausible counterfactual for the RTC adopting state in the ten years after adoption. Comparing the crime path of the RTC-adopting state with its synthetic control generates an estimate of the impact on violent crime of RTC adoption. Across every model, for thirty-three states, the results tightly

converged to a finding that RTC laws increase violent crime by thirteen to fifteen percent compared to what the rates otherwise would have been. This pernicious effect only increased over time: "[T]he longer the [right-to-carry] law is in effect . . . the greater the cost in terms of increased violent crime."[15] In other words, the social costs of allowing citizens to carry guns outside the home as a matter of right are substantial.

### 3. Recent Literature Strongly Supports The Conclusion That Right-to-Carry Laws Increase Violent Crime

The consensus among recent studies confirms the conclusion that RTC laws lead to higher rates of violent crime and/or homicide. These studies have the advantage of access to both updated data and improved empirical methodologies. While the supporters of RTC laws frequently cite early, outdated work suggesting RTC laws might have some beneficial impacts on violent crime, those studies were largely

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[15] RTC Laws and Violent Crime, *supra* note 3, at 232. *See also* John J. Donohue et al., *RTC Laws Increase Violent Crime: Moody and Marvell Have Missed the Target*, 16 Econ. J. Watch 97, 111 (2019) ("Policymakers and citizens should recognize that the best available empirical data to date supports the view that RTC [right-to-carry] laws have resulted in statistically significant increases in violent crime in the ten-year period after adoption.").

dismissed by a 2005 report of the National Research Council.[16]

The best modern research, which has benefitted from improvements in econometric methodology as well as an increase in the number of states adopting RTC laws and the longer period of years available for study, strongly supports the finding that RTC laws increase violent crime.

In addition to RTC Laws and Violent Crime, there are thirteen additional empirical papers from just the last few years linking RTC laws to higher violent crime. Eleven articles published in peer-reviewed journals in the last four years, including RTC Laws and Violent Crime, [17] and three additional

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[16] Nat'l Rsch. Council, *Firearms and Violence: A Critical Review* (Washington, D.C.: Nat'l Academies Press 2005).

[17] Mark Gius, *Using the Synthetic Control Method to Determine the Effects of Concealed Carry Laws on State-Level Murder Rates*, 57 Int'l Rev. L. & Econ. 1 (2019); Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 Am. J. Pub. Health 1923 (2017); Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991–2016: A Panel Study*, 34 J. Gen. Internal Med. 2021 (2019); Anita Knopov et al., *The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991–2016*, 44 Health & Soc. Work 232 (2019); John J. Donohue, *Laws Facilitating Gun Carrying and Homicide*, 107 Am. J. Pub. Health 1864 (2017); Emma E. Fridel, *Comparing The Impact of*

unpublished works by economists at Duke University,[18] the University of Colorado at Boulder,[19] and the University of Virginia and Texas A&M,[20] all find that RTC laws increase violent crime.

In particular, social scientists have observed a statistically significant increase in firearm homicides associated with the expansion of RTC laws. One 2019 study using a synthetic control method to examine the relationship between concealed carry laws and state-

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*Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide*, 38 Just. Q. 892 (2021); Emma E. Friedel, *The Futility of Shooting Down Strawmen: A Response to Kleck (2020)*, 38 J. Q. 925, 939 (2020); Cassandra K. Crifasi et al., *Association between Firearm Laws and Homicide in Urban Counties*, 95 J Urb. Health 383 (2018); Marjorie B. McElroy & Peichun Wang, *Do Concealed Gun Permits Deter Crime? Dynamic Insights from State Panel Data*, SSRN Elec. J., Jan. 2018; Stephen B. Billings, *Smoking Gun? Linking Gun Ownership to Neighborhood Crime*, SSRN Elec. J., Mar. 2021.

[18] Marjorie B. McElroy & Peichun Wang, *Do Concealed Gun Permits Deter Crime? Dynamic Insights from State Panel Data*, SSRN Elec. J., Jan. 2018.

[19] Stephen B. Billings, *Smoking Gun? Linking Gun Ownership to Neighborhood Crime*, SSRN Elec. J., Mar. 2021.

[20] Jonathan Colmer & Jennifer L. Doleac, *Access to Guns in the Heat of the Moment: The Effect of Gun Laws on Violent Crime* (Apr. 23, 2021) (submitted for revision and resubmission, Rev. Econ. & Stat.) https://secureservercdn.net/45.40.146.38/3c2.7cc.myftpupload.com/wp-content/uploads/2021/07/Colmer_Doleac_Apr2021.pdf.

level murder rates found that "states that changed from prohibiting open carry of guns to a 'shall issue' regime, where the state must issue a permit to any qualified applicant who requests one, experienced a 12.3% increase in gun-related murder rates and a 4.9% increase in overall murder rates."[21] A 2017 study from Boston University and Duke, led by *amicus* Dr. Michael Siegel, found that between 1991 and 2015, RTC laws were significantly associated with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates.[22] The increases in homicides were driven entirely by firearm homicides; nonfirearm homicide rates did not increase.[23] This result was corroborated by Dr. Siegel and co-authors in two subsequent papers using different methodologies and research designs.[24]

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[21] Mark Gius, *Using the Synthetic Control Method to Determine the Effects of Concealed Carry Laws on State-Level Murder Rates*, 57 Int'l Rev. L. & Econ. 1, 2 (2019).

[22] Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 Am. J. Pub. Health 1923, 1927-28 (2017).

[23] *Id.*

[24] Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991–2016: A Panel Study*, 34 J. Gen. Internal Med. 2021, 2024 (2019) ("After simultaneously controlling for . . . 10 firearm laws, . . . 'shall issue' laws were associated with 9.0% higher homicide rates."); Anita Knopov et al., *The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991–2016*, 44 Health & Soc. Work 232, 232, 237 (2019) (examining "the relationship between state firearm laws and

Another study reached a similar conclusion, finding that RTC laws increased firearm homicides by 9.5% during the 2000 to 2014 period.[25] An additional study found that "[m]ore permissive concealed carry legislation was associated with a 10.8% increase in firearms homicide incidence rate,"[26] and a study led by Dr. Cassandra Crifasi found that RTC laws were associated with a 7% increase in firearm homicide.[27]

Other research has documented an association between permissive public carry licensing laws and

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homicide victimization rates . . . in 39 states during the period between 1991 and 2016" and finding that "'shall issue' laws were associated with [5.7%] higher homicide rates among both white and black populations").

[25] John J. Donohue, *Laws Facilitating Gun Carrying and Homicide*, 107 Am. J. Pub. Health 1864, 1865 (2017).

[26] Emma E. 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). *See also* Emma E. Friedel, *The Futility of Shooting Down Strawmen: A Response to Kleck (2020)*, 38 Just. Q. 925, 939 (2020) (after showing the robustness of her findings that right-to-carry laws increase firearm homicides, she concludes "it is imperative that firearms research prioritizes the use of contemporary data and methods to shape policies for contemporary problems").

[27] Cassandra K. Crifasi, *Correction to: Association between Firearm Laws and Homicide in Urban Counties*, 95 J. Urban Health 773, 774 (2018); Cassandra K. Crifasi et al., *Association between Firearm Laws and Homicide in Urban Counties*, 95 J. Urban Health 383 (2018).

increased crime and gun violence,[28] including an increase in robberies and aggravated assaults,[29] an increase in workplace homicides,[30] and increases in unintentional gun injuries.[31]

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[28] *See* Marjorie B. McElroy & Peichun Wang, *Do Concealed Gun Permits Deter Crime? Dynamic Insights from State Panel Data*, SSRN Elec. J., Jan. 2018, at 30 (finding right-to-carry laws increase violent crime and "strongly rejects Lott and Mustard (1997)'s famous deterrence hypothesis"); Stephen B. Billings, *Smoking Gun? Linking Gun Ownership to Neighborhood* Crime, SSRN Elec. J., Mar. 2021, at 24, 25 (finding "strong evidence that increases in CHPs [Concealed Handgun Permits] coincide with large increases in stolen guns," and "[s]tolen guns increased immediately following increases in CHPs [followed by] an increase in violent crimes as well as an increase in the share of violent crime using guns").

[29] Paul R, Zimmerman, *The Deterrence of Crime Through Private Security Efforts: Theory and Evidence*, 37 Int'l Rev. L. & Econ. 66, 71 (2014) (finding statistically significant increases in murder, robbery, assault, burglary, and larceny in states that enacted RTC laws from 1999 to 2008).

[30] Mitchell L. Doucette et al., *Right-to-Carry Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992–2017)*, 109 Am. J. Pub. Health 1747, 1747, 1751 (2019) (finding "[f]rom 1992 to 2017, the average effect of having a right-to-carry law was significantly associated with 29% higher rates of firearm" workplace homicides); Erika L. Sabbath et al., *State-Level Changes in Firearm Laws and Workplace Homicide Rates: United States, 2011 to 2017*, 110 Am. J. Pub. Health 230, 234 (2020) (restricting the ability to carry concealed weapons "was associated with a 5.79% reduction" in workplace homicide rates).

[31] *See* Jeffrey DeSimone et al., *Child Access Prevention Laws and Nonfatal Gun Injuries*, 80 S. Econ. J. 5, 15 (2013)

While Petitioners and supporting *amici* contend that "[c]arry permit holders are so disproportionately law-abiding" that "any statistically significant link between growth in carry permits and increased violent crime is implausible,"[32] this claim is misleading and misguided.

*First*, although concealed carry permit holders should be free of serious or felony convictions and therefore show a lower overall rate of violence than a group that contains felons, a "law-abiding" history does not eliminate the risk for violent crime. As demonstrated by one study examining homicides in Illinois, while adults arrested for homicide were more likely than the population at large to have a criminal record, a majority of homicide offenders had *not* been convicted of a felony.[33] When evaluating convictions of permit holders, one study in Texas found that the proportion of deadly conduct offenses in convictions

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(unintentional firearm injuries may occur more frequently after states weaken licensing standards).

[32] *See* Brief Of Amici Curiae William English, Ph.D. and The Center For Human Liberty In Support Of Petitioners at 7-8, *NYSRPA v. Bruen*, No. 20-843 (July 19, 2021).

[33] *See* Philip J. Cook et al., *Criminal Records of Homicide Offenders*, 294 J. Am. Med. Ass'n 598, 599-600 (2005) (finding that "32.5% of homicide arrestees" from 1990 to 2001 in Illinois had been convicted of a felony in the previous five years); *see also* Philip J. Cook & Jens Ludwig, *Aiming For Evidence-Based Gun Policy*, 25 J. of Policy Analysis & Mgmt, 691, 697 (2006).

was five times higher for permit holders than for non-permit holders, indicating that these "law-abiding citizens" are disproportionately involved in gun-related violent crime.[34]

*Second*, RTC laws can lead to an increase in violent crime by increasing the likelihood a generally law-abiding citizen will commit a crime or increasing the criminal behavior of others.[35] To demonstrate, in a number of well-publicized cases, concealed carry permit holders have increased the homicide toll by killing someone with whom they became angry over an insignificant issue, ranging from merging on a highway and texting on a phone in a theater to playing loud music at a gas station.[36] In other words, the

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[34] *See* Charles D. Phillips et al., *When Concealed Handgun Licensees Break Bad: Criminal Convictions of Concealed Handgun Licensees in Texas, 2001–2009*, 103 Am. J. Pub. Health 86, 88-89 (2013).

[35] *See* RTC Laws and Violent Crime, *supra* note 3, at 203-05.

[36] *Id.* at 203-05; Alicia Victoria Lozano, *28-Year-Old David Desper Charged in Road Rage Killing of 18-Year-Old Bianca Roberson*, NBC Philadelphia (July 2, 2017) https://www.nbcphiladelphia.com/news/local/Police-Update-on-Road-Rage-Killing-of-18-Yr-Old-432100983.html; Steve Almasy, *Dad's texting to daughter sparks argument, fatal shooting in movie theater*, CNN (Jan. 13, 2014), https://www.cnn.com/2014/01/13/justice/florida-movie-theater-shooting/index.html; Jasper Scherer, *Fla. 'loud music' murder: Firing into car full of teens playing rap music not 'self-defense*, *court rules*, Wash. Post (Nov. 18, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/11/18/fla-loud-music-murder-firing.

presence of a firearm can turn a commonplace confrontation into a deadly one.[37] Thus, while reducing firearm access to individuals with a prior history of felonious crime improves outcomes, limiting gun regulation in this way "leave[s] a large portion of the problem untouched."[38]

*Third*, law-abiding citizens with firearms are the major suppliers of weapons to criminals.[39] Evidence shows that a significant number of guns carried

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[37] *See* Brian Wyant, *The Front Burner: Permissive concealed-carry laws invite lethal violence*, Orlando Sentinel (Sept. 20, 2013), https://www.orlandosentinel.com/opinion/os-xpm-2013-09-20-os-ed-front-burner-concealed-carry-con-20130919-story.html. A number of studies have found that the mere presence of a firearm can contribute to more aggressive and confrontational behavior, increasing the risk for violence. *See e.g.,* Joseph Blocher et al., *Pointing Guns*, 99 Tex. L. R. 1173, 1181-82 (2021); Arlin James Benjamin, Jr. & Brad J. Bushman, *The Weapons Priming Effect*, 19 Current Op. Psych. 45, 45-47 (2016) (describing multiple studies analyzing the "weapons effect"); Craig A. Anderson et al., *Does the Gun Pull the Trigger? Automatic Priming Effects Of Weapon Pictures And Weapon Names*, 9 Psych. Sci. 308, 312-13 (1998) (suggesting that the simple identification of weapons increases the accessibility of aggressive thoughts).

[38] Philip J. Cook et al., *Criminal Records of Homicide Offenders*, 294 J. Am. Med. Ass'n, 598, 599-600 (2005).

[39] *See generally Stephen B. Billings, Smoking Gun? Linking Gun Ownership to Neighborhood Crime,* SSRN Elec. J., 24-25, Mar. 2021 (describing the "mechanism of stolen guns being transferred to criminals that are using guns to commit violent crimes").

outside the home are lost and stolen—a figure estimated to be roughly 100,000 per year from permit holders carrying guns outside the home.[40] This in turn contextualizes the empirical evidence that when states pass laws giving citizens a "right to carry," criminals are more likely to carry weapons themselves, which is an obviously undesirable consequence. Figure 2 shows the results of a panel data model evaluating the impact of RTC laws, and it shows that the percentage of robberies committed with a firearm increases sharply after adoption of a RTC law.

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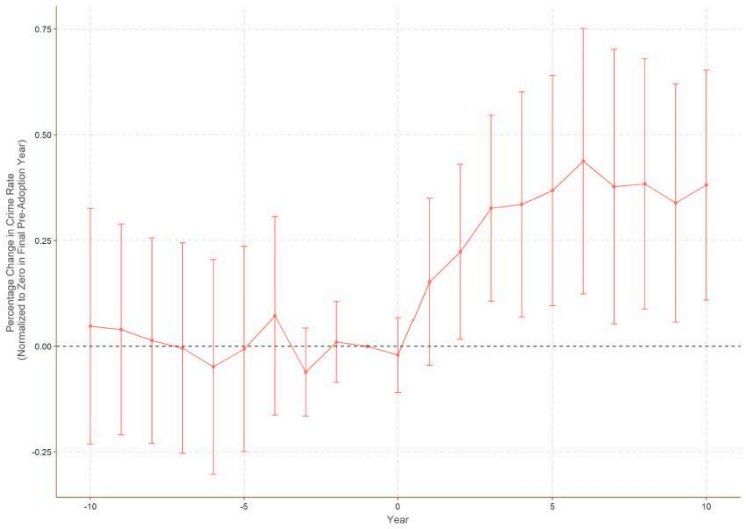
[40] RTC Laws and Violent Crime, *supra* note 3, at 207.

**Figure 2:** The Percentage Of Robberies Committed With A Firearm Rises With Right-to-Carry Adoption




In sum, the empirical evidence from studies using the most reliable methodologies demonstrates an increase in violent crime following the expansion of RTC laws.

## C. Expansions Of Right-to-Carry Laws Do Not Achieve Their Stated Goals Of Self-Defense Or Safety

The other principal policy contention made by proponents of RTC laws is that these laws promote self-defense and/or public safety.[41] But the leading

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[41] *See e.g.*, Brief of Amici Curiae Law Enforcement Groups and State and Local Firearms Rights Groups in Support of

social science and public health research strongly refutes the notion that adoption of RTC laws or repeal of stricter handgun licensing laws promotes either of these goals.

### 1. Potential Victims Use Guns Defensively Less Than 0.9% Of The Time They Are Confronted By a Criminal

Firearms are rarely used in self-defense.[42] The best evidence on the percentage of crimes in which a victim does use a gun defensively is less than 0.9% of the time that victims are confronted by criminals. As Figure 3 shows, this percentage remained the same in

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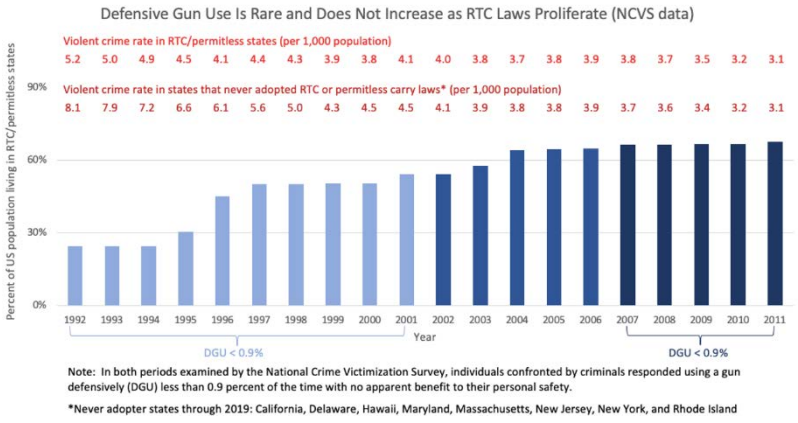
Petitioners, at 5-6, *NYSRPA v. Bruen*, No. 20-843 (July 20, 2021) (arguing that "[o]rdinary citizens frequently use firearms to protect themselves from criminal attack" and "citizens have realized that they must be their own first responders").

[42] *See* David Hemenway & Sara J. Solnick, *The epidemiology of self-defense gun use: Evidence from the National Crime Victimization Surveys 2007–2011*, 79 Preventive Med. 22, 23-25 (2015) (concluding that "[s]elf-defense gun use is a rare event" after demonstrating that guns are used by victims "in less than 1% of crimes in which there is personal contact between the perpetrator and victim, and about 1% in cases of robbery and (non-sexual) assault"); Mark Gius, *Self-Protective Behaviors in the United States: Results from a Recent Survey*, 16 Int'l J. of Applied Econ. 43, 47-58 (2019) (finding that only 1.25% of all crime victims defended themselves with a firearm); *see also* David Hemenway, *The Myth of Millions of Annual Self-Defense Gun Uses: A Case Study of Survey Overestimates of Rare Events,* 10 Chance 6, 9-10 (1997).

National Crime Victimization Surveys ("NCVS") for 1992-2001 and for 2007-2011. This figure underscores the low level of effectiveness of gun carrying for self defense because it shows that as RTC laws expanded greatly across the nation, there was no increase in the likelihood that a potential victim would defend against crime with a gun.

In the first period from 1992-2001, 41% of the population lived in states with RTC (or permitless carry) laws. By the second period, this percentage had jumped to 67%: a 63% increase in the proportion of the country living in RTC states. And yet this massive increase in gun carrying did nothing to elevate the likelihood of defensive gun use, which was at exactly the same low rate it had been in the earlier period.

**Figure 3:**




Note: In both periods examined by the National Crime Victimization Survey, individuals confronted by criminals responded using a gun defensively (DGU) less than 0.9 percent of the time with no apparent benefit to their personal safety.

*Never adopter states through 2019: California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island

While the period after 1992 was one of declining crime for a variety of reasons, the growth in RTC laws was not one of them. The first two rows of Figure 3 highlight that the 64.3% drop in violent crime in the nine states and the District of Columbia that had no RTC law at any time over this period was vastly greater than the crime drop in RTC states. Here the evidence suggests that defensive gun use does not provide added protection against violent crime.

Firearms are used to threaten and intimidate far more frequently than they are used in self-defense.[43] But even in the few instances when they are used in self-defense, firearms do not reduce the defender's risk of injury.[44] The best evidence on this comes from analysis of NCVS data by David Hemenway and Sara

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[43] *See generally* David Hemenway & Deborah Azrael, *The relative frequency of offensive and defensive gun use: Results of a national survey*, 15 Violence and Victims 257 (2000). Indeed, a number of studies conclude that gun owners may "overreact to perceived threats, perhaps pulling — or even using — a gun on a person who was simply minding his own business, or asking for directions, or happened to match the gun owner's mental image of a threatening person." Joseph Blocher & Bardia Vaseghi, *True Threats, Self-Defense, and the Second Amendment*, 48 J. of L., Med. & Ethics 112, 117 (2020); *see also* David Hemenway et al., *Gun use in the United States: results from two national surveys*, 6 Inj. Prevention 263, 266-67 (2000).

[44] *See* Hemenway & Solnick, *supra* note 42, at 25 (finding "no significant differences in the likelihood of being injured during or after a self-defense gun use compared to being injured during or after taking other forms of protective action").

Solnick, which finds that of the over 14,000 incidents in which the victim was present, 127 (0.9%) involved a gun used in self-defense. Victims who took any protective action were not benefitted by having used a gun: 4.2% of victims were injured after using a gun in self-defense, and 4.1% of victims were injured without using a gun.[45] Accordingly, the authors concluded that "[c]ompared to other protective actions, the National Crime Victimization Surveys provide little evidence that [self-defense gun use] is uniquely beneficial in reducing the likelihood of injury or property loss."[46]

In fact, one study demonstrated that in cases of assaults where the victim had some chance to resist (*i.e.,* act in self-defense), individuals who were in possession of a gun were nearly *three times* more likely to be shot in the encounter.[47]

Overall, studies indicate that more gun carrying leads to higher levels of violent crime and homicide, and increased gun carrying does not lead to higher levels of beneficial uses of guns in response to criminal threats.

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[45] *Id.*

[46] *Id.* at 22.

[47] Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034, 2037 (2009).

### 2. Expansions Of Right-to-Carry Laws Undermine Public Safety

Expansions of RTC laws undermine, rather than protect, public safety. As described above, there is no evidentiary support that RTC laws reduce violent crime; to the contrary, the decline in violent crime is greater in jurisdictions with strong licensing regimes.[48] Further, the increase in the number of guns being carried by U.S. civilians that results from the adoption of RTC laws poses a significant challenge for law enforcement and hinders police responses.[49]

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[48] *See supra* Section A. A number of studies document serious econometric shortcomings in claims of net benefits from gun carrying. *See e.g.*, RTC Laws and Violent Crime, *supra* note 3, at 200 (extensive discussion of flaws in models used in the "more guns, less crime" studies); Nat'l Rsch. Council, *Firearms & Violence: A Critical Review* (Washington, DC: Nat'l Academies Press 2005) 120-51 (reviewing critiques to research conducted by John Lott and concluding that evidence does not show that the adoption of right-to-carry laws reduce crime); *see also* Ian Ayres & John J. Donohue, *More Guns, Less Crime Fails Again: The Latest Evidence from 1977 – 2006*, 6 Econ. J. Watch 218, 229-31 (2009); Ian Ayres & John J. Donohue, *Shooting Down the 'More Guns, Less Crime' Hypothesis*, 55 Stan. L. Rev. 1193, 1270-71 (2003); Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086, 1107-12 (2001).

[49] For example, at a 2016 shooting in Dallas, crowds legally carrying long guns interfered with the law enforcement response. Five police officers were shot and killed. Molly Hennessy-Fiske, *Dallas police chief: open carry makes things confusing during mass shootings*, L.A. Times (July 11, 2016), http://www.latimes.com/nation/la-na-dallas-chief-20160711-snap-story.html. As another example of how the prevalence of

Police face graver danger and may be deterred from taking certain crime-fighting actions given the greater risks that widespread gun carrying poses to them, whether from "law-abiding" permit holders or criminals who steal their guns.[50] One recent study found that the occupational homicide rate for law enforcement officers was positively correlated with firearm ownership rate, and moreover, that there were "clear differences" in the homicide rates of law enforcement officers in states with low and high firearm ownership.[51] Specifically, in states where the

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firearms undermine public safety, the presence of guns at demonstrations increases the likelihood of violence. *See Armed Assembly: Guns, Demonstrations, and Political Violence in America*, ACLED (Aug. 2021), https://acleddata.com/2021/08/23/armed-assembly-guns-demonstrations-and-political-violence-in-america/ ("Armed demonstrations turn violent or destructive about 16% of the time, compared to less than 3% of the time for unarmed demonstrations, where demonstrators might engage in violence —through use of weapons other than firearms or unarmed physical violence—or destructive activity.").

[50] "Compared to other developed nations, the United States has more guns and significantly higher rates both of killings [of] police (nearly always by firearms) and killings [by] police." David Hemenway et al., *Variation in Rates of Fatal Police Shootings across US States: the Role of Firearm Availability*, 96 J. Urban Health 63, 72 (2019).

[51] *See* David I. Swedler et al., *Firearm Prevalence and Homicides of Law Enforcement Officers in the United States*, 105 Am. J. Pub. Health 2042, 2045-46 (2015) (concluding that "a 10% increase in firearm ownership correlated to ten additional officer

average firearm ownership level was 13.5%, the homicide rate per 10,000 law enforcement officers was 0.31, while in states where the average household firearm ownership level was 52%, the homicide rate was 0.95.[52] More than 90% of such homicides are committed by using a firearm.[53]

Furthermore, empirical evidence indicates that RTC laws endanger public safety because they contribute to accidental firearm injury and death. A forthcoming study by *amicus* John Donohue compares rates of accidental gun deaths and injuries over five years from 2016 to 2020 between Texas (which has RTC laws) and California (which has a licensing regime similar to New York's).[54] The study finds that the rates of accidental death in Texas are nearly *five times higher* than in California. Moreover, the victims of such gun accidents are unpredictable; seventy to seventy-five percent of the time, gun accidents kill or

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homicides" from 1996 to 2010, after controlling for factors like income, poverty, property crime, and alcohol consumption).

[52] *Id.* at 2045-46 (2015).

[53] Janet M. Blair et al., *Occupational Homicides of Law Enforcement Officers, 2003–2013: Data From the National Violent Death Reporting System*, 51 Am. J. Prev. Med. S188, S193 (2016).

[54] John J. Donohue, *Firearm Accidental Deaths and Injuries in California and Texas, 2016-2020*, (Sept. 6, 2021) (unpublished manuscript) (on file with author).

injure someone *other* than the person possessing the gun.[55]

Additionally, the repeal of licensing laws like New York's threatens public safety in communities most vulnerable to gun violence. Within the United States, gun violence is the leading cause of death for Black Americans aged thirteen to fourty-four.[56] These harms are disproportionately felt in cities, where violence is clustered in segregated, often disenfranchised neighborhoods.[57] Black boys and men ages fifteen to thirty-four are *six times* more likely to die from homicide than white boys and men of the same age.[58] In 2016, the rate of firearm homicide victimization among black individuals was *more than eight times higher* than among non-Hispanic white individuals.[59] From 2018 to 2019,

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[55] *Id.*

[56] *See About Underlying Cause of Death, 1999-2019,* Centers for Disease Control and Prevention, (2019), https://wonder.cdc.gov/ucd-icd10.html.

[57] For example, in Boston, 53% of the city's gun violence occurred in less than three percent of the city's intersections and streets. Anthony A. Braga et al., *The Concentration and Stability of Gun Violence at Micro Places in Boston, 1980–2008*, 26 J. Quantitative Criminology 33, 47 (2010).

[58] Anita Knopov et al., *The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991– 2016*, 44 Health & Social Work 232, 232 (2019).

[59] *Id.*

20,279 Black Americans died by firearm, and a greater proportion of Black Americans died by firearm than any other race.[60]

Stricter gun permit requirements and "may issue" laws, like New York's licensing regime, are associated with lower overall homicide rates.[61] But in the Black population the correlation is even stronger, with an approximately eleven percent lower homicide rate associated with "may issue" laws.[62] In New York, the Black victim homicide rate from 2015 to 2019 was less than half the national average.[63] The data clearly

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[60] *See About Underlying Cause of Death, 2018-2019, Single Race*, Centers for Disease Control and Prevention (2020), http://wonder.cdc.gov/ucd-icd10-expanded.html.

[61] *See generally* Michael Siegel, *The Impact of State-Level Firearms Laws on Homicide Rates by Race/Ethnicity*, Off. Just. Programs (Apr. 2020), https://www.ojp.gov/pdffiles1/nij/grants/254669.pdf; *see also* Elinore J. Kaufman et al., *Universal background checks for handgun purchases can reduce African American homicide rates*, 88 J. Trauma & Acute Care Surgery 825, 825 (2020) (explaining that while requiring universal background checks for handguns resulted in no significant difference in firearm homicides among white people, the passage of such laws was associated with a 19% decrease in Black firearm homicides).

[62] *See* Siegel, *supra* note 61, at 7.

[63] Of the 43 states for which the CDC has race-specific homicide data for these years, New York's Black victim homicide rate was the sixth lowest. *See* Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System

shows that "may issue" laws are of critical importance to addressing the disproportionate impact of gun violence on communities of color.

Finally, public safety concerns are not limited to physical injury or harm; the true toll of firearm prevalence and violence considers the "literally uncounted number of people traumatized by those shootings and the risks and harms they present."[64] As one striking example, consider how the number of "victims" in school shootings who are shot or killed[65] underrepresents the harm to millions every year who endure active shooter drills [66] or experience

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(WISQARS) *Fatal Injury Reports*, https://www.cdc.gov/injury/wisqars/fatal.html.

[64] *See* Joseph Blocher & Reva B. Siegel, *When Guns Threaten The Public Sphere: A New Account Of Public Safety Regulation Under* Heller, 116 Northwestern U. L. Rev. 139, 180-81 (2021) (forthcoming); *see also* Eugenio Weigend Vargas & Rukmani Bhatia, *No Shots Fired: Examining the Impact and Trauma Linked to the Threat of Gunfire Within the U.S.*, Ctr. For Am. Progress (Oct. 2020), https://www.americanprogress.org/issues/gunscrime/reports/2020/10/20/491823/no-shots-fired/ ("[I]n addition to the 103 victims killed and the 210 victims injured with a gun every day, at least another 1,100 victims are threatened with a gun during a violent crime.").

[65] *10 Years. 180 School Shootings. 356 Victims.*, CNN (2019), https://www.cnn.com/interactive/2019/07/us/ten-years-of-school-shootings-trnd/.

[66] *See, e.g.*, Nona Willis Aronowitz, *Fake Blood and Blanks: Schools Stage Active Shooter Drills*, NBC News (Feb. 14, 2014),

psychological harm from the threat of gun violence.[67] In short, the mere number of shooting victims vastly undercounts the number of Americans who are harmed by firearm intimidation or threats.[68]

## CONCLUSION

For the foregoing reasons and those set forth in Respondents' brief, the Second Circuit's decision should be affirmed.

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https://www.nbcnews.com/news/us-news/fake-blood-blanks schools-stage-activeshooter-drills-n28481.

[67] *See* Blocher & Siegel, *supra* note 64, at 180-81 (2021) (forthcoming); *see* Marco Ghiani, Summer Sherburne Hawkins & Christopher F. Baum, *Gun Laws and School Safety*, 73 J. Epidemiology & Cmty. Health 509, 510 (2019).

[68] *See* Blocher et al., *supra* note 37, at 1178-81 (2021).

Respectfully submitted,

Elizabeth Vicens
*Counsel of Record*
Samuel Levander
Rachel Polan
Katerina Wright
CLEARY GOTTLIEB STEEN
& HAMILTON LLP
*Counsel for Amici Curiae*
One Liberty Plaza
New York, New York 10006
212-225-2000
evicens@cgsh.com

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## APPENDIX A
## LIST OF AMICI CURIAE

**Ian Ayres, PhD**
William K. Townsend Professor at Yale Law School, Anne Urowsky Professorial Fellow in Law, and Professor at Yale's School of Management

**Charles Branas, PhD**
Gelman Professor and Department Chair of Epidemiology in the Mailman School of Public Health at Columbia University

**Philip J. Cook, PhD**
Sanford Professor Emeritus of Public Policy and Professor Emeritus of Economics at Duke University

**John J. Donohue III, PhD**
C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School

**Jeffrey Fagan, PhD**
Isidor and Seville Sulzbacher Professor of Law at Columbia Law School; Professor of Epidemiology at the Mailman School of Public Health at Columbia University; Senior Research Scholar at Yale Law School

**M.D.M. Fan**
Core Faculty Member at Harborview Injury Prevention and Research Center Firearm Research Program

**Mark Gius, PhD**
Professor of Economics at Quinnipiac University

**Bernard E. Harcourt, PhD**
Isidor and Seville Sulzbacher Professor of Law, Professor of Political Science, and Founding Director of the Columbia Center for Contemporary Critical Thought at Columbia University; Directeur d'études at the École des Hautes Études en Sciences Sociales

**Dr. Cheryl G. Healton**
Dean of the School of Global Public Health at New York University; Director of the Global Institute of Public Health and Professor of Public Health Policy and Management

**Peter T. Masiakos, MS, MD, FACS, FAAP**
Pediatric Surgeon and the Director of Pediatric Trauma Service at Massachusetts General Hospital (MGH); Co-Director and Co-Founder of the MGH Center for Gun Violence Prevention

**Jennifer L. Pomeranz, JD, MPH**
Assistant Professor in the School of Global Public Health at New York University

**Dr. Sonali Rajan**
Associate Professor of Health Education in the Department of Health and Behavior Studies at Teachers College, Columbia University; Secondary faculty appointment in the Department of Epidemiology at the Mailman School of Public Health

**Ali Rowhani-Rahbar, PhD**
Bartley Dobb Professor for the Study and Prevention of Violence, Professor of Epidemiology; Co-Director of Firearm Injury and Policy Research Program at the University of Washington

**Michael Siegel, MD, MPH**
Visiting Professor, Department of Public Health and Community Medicine
Tufts University School of Medicine