

# 19-156

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United States Court of Appeals  
for the Second Circuit

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NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC.,  
ROBERT NASH, and BRANDON KOCH,

*Plaintiffs-Appellants,*

v.

GEORGE P. BEACH II, in his official capacity as Superintendent  
of the New York State Police, and RICHARD J. MCNALLY, JR., in his  
official capacity as Justice of the New York Supreme Court, Third  
Judicial District, and Licensing Officer for Rensselaer County,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK (No. 1:18-cv-134-BKS-ATB)

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**BRIEF OF *AMICUS CURIAE*, GIFFORDS LAW CENTER TO PREVENT  
GUN VIOLENCE, SUPPORTING DEFENDANTS-APPELLEES**

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Simon J. Frankel  
COVINGTON & BURLING LLP  
415 Mission Street  
San Francisco, CA 94105  
(415) 591-7052

Michelle Coquelin  
COVINGTON & BURLING LLP  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
(424) 332-4783

Hannah Shearer  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
268 Bush St. #555  
San Francisco, CA 94104  
(415) 433-2062

J. Adam Skaggs  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
223 West 38th St. #90  
New York, NY 10018  
(917) 680-3473

*Attorneys for Amicus Curiae*

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 29(a)(4)(A) and Fed. R. App. P. 26.1, Giffords Law Center to Prevent Gun Violence states that it has no parent corporations, it has no stock, and it is unaware of any publicly held corporation that has a direct financial interest in the outcome of the litigation.

*s/ Simon J. Frankel*  
Simon J. Frankel  
COVINGTON & BURLING LLP  
415 Mission Street  
San Francisco, CA 94105  
(415) 591-7052

DATED: May 1, 2019

*Attorney for Amicus Curiae*

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. The organization was founded in 1993 after a gun massacre at a San Francisco law firm and was renamed Giffords Law Center to Prevent Gun Violence in October 2017 after partnering with the gun-safety organization founded by former Congresswoman Gabrielle Giffords.<sup>1</sup>

Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to make their communities safer from gun violence. Its attorneys track and analyze firearm legislation, evaluate gun-violence-prevention research and policy proposals, and participate in Second Amendment litigation nationwide. Giffords Law Center has provided informed analysis as an *amicus curiae* in numerous important firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *New York State Rifle & Pistol Association v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), and *Libertarian*

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<sup>1</sup> This brief was neither authored nor funded by any party or person other than *amicus* and its counsel. See Fed. R. App. 29(a)(4)(E); 2d Cir. Local R. 29.1. All parties to this appeal have consented to the filing of this amicus brief.

*Party of Erie County v. Cuomo*, No. 18-386 (2d Cir. 2018).

## INTRODUCTION AND SUMMARY OF ARGUMENT

Firearms cause many hundreds of deaths and injuries in New York every year, and the ripple effect of each gunshot leaves many more people grieving and afraid to go about their daily lives. In recent years, New York experienced an annual average of 370 gun homicides, 454 gun suicides, and hundreds more non-fatal shootings.<sup>2</sup> These all-too-frequent incidents harm communities, leave survivors traumatized, and exact an enormous economic toll, costing New York taxpayers an estimated \$433 million per year.<sup>3</sup>

Appellants challenge New York's settled authority to address devastating firearm violence within the State's borders through enforcement of meaningful licensing standards for the carrying of handguns in public. They recycle the same challenge to New York's proper cause requirement for obtaining a handgun carry permit that this Court rejected in *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012). *See also*, N.Y. PENAL LAW § 400.00(2)(f). Indeed, Appellants

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<sup>2</sup> Fatal firearm injury data is from the Centers for Disease Control and Prevention's WISQARS Fatal Injury Reports (<https://www.cdc.gov/injury/wisqars/fatal.html>). Nonfatal firearm injury data is from the Agency for Healthcare Research and Quality's HCUPnet Query System (<https://hcupnet.ahrq.gov/#setup>).

<sup>3</sup> Giffords Law Center, *The Economic Cost of Gun Violence in New York*, Jan. 22, 2018, <http://lawcenter.giffords.org/wp-content/uploads/2018/01/Cost-of-Gun-Violence-in-New-York-1.22.18.pdf>.

concede their appeal must fail because *Kachalsky* controls. Appellants' Br. at 2. This Court should follow *Kachalsky*, as thoroughly argued by the State. *See* State's Br. at 15-18.

Even were this Court not bound by *Kachalsky*, though, it should affirm. Nothing has changed in the seven years since that decision that would justify departing from this Court's well-reasoned conclusion that New York's public carry laws satisfy intermediate scrutiny. *Kachalsky*, 701 F.3d at 96-97. What's more, since *Kachalsky* was decided in 2012, compelling new empirical evidence, presented in this *amicus* brief, has only confirmed the challenged law's constitutionality under intermediate scrutiny. The social science studies referenced in *Kachalsky* and the additional recent evidence demonstrates that § 400.00(2)(f) "is in the best interest of public safety and outweighs the need to have a handgun for an unexpected confrontation." *Kachalsky*, 701 F.3d at 100. Recent and reliable social science research confirms that New York's regulations are not only constitutional, but also the most informed policy choice the State could make to protect its citizens from violent crimes.

## ARGUMENT

### **I. Compelling New Empirical Evidence Confirms the Constitutionality of the Proper Cause Requirement Under Intermediate Scrutiny.**

*Kachalsky* held that intermediate scrutiny applies to state regulation of the carrying of firearms in public and the proper cause requirement “passes constitutional muster if it is substantially related to the achievement of an important governmental interest.” 701 F.3d at 96. There is no doubt that New York’s “substantial, indeed compelling, governmental interest[] in public safety and crime prevention,” *id.* at 97, remains as important today as it was when this Court decided *Kachalsky*. The key issue is whether the proper cause requirement is substantially related to those interests; compelling evidence establishes it is.

#### **A. New Evidence Bolsters *Kachalsky*’s Holding that New York’s Regulations Are Substantially Related to Important State Interests.**

New and compelling evidence demonstrates that states that allow public concealed carry without imposing meaningful standards suffer increased rates of violent crime and homicide. This growing body of evidence further justifies New York’s regulatory regime.

##### **1. Lax Concealed Carry Laws Are Associated with Higher Levels of Violent Crime.**

Empirical evidence confirms the common-sense idea that carrying firearms in public increases the risk of injury for the carrier and others. Persuasive new social

science evidence shows that lax “shall-issue” concealed carry laws fuel violent crime and homicide.<sup>4</sup> With the benefit of the latest and most robust evidence, it is more clear than ever that New York’s proper cause requirement is substantially related to reducing armed violence.

A June 2017 study (revised in November 2018) by Stanford professor John Donohue and colleagues shows persistent increases in rates of violent assaults and other violent crimes in states with more lenient “shall-issue” concealed carry permitting systems (referred to as “right-to-carry” laws by the study’s authors).<sup>5</sup> The study examines 33 states that adopted right-to-carry laws between 1981 and 2007 and concludes that “the net effect of state adoption of RTC [right-to-carry] laws is a substantial increase in violent crime.”<sup>6</sup> In particular, the study finds that passage of lax concealed carry laws increased violent crime rates in right-to-carry states by 13

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<sup>4</sup> “Shall-issue” states require officials to grant handgun carry permits if applicants satisfy basic criteria (*e.g.*, no felony convictions). In contrast, “may-issue” regimes, like the one at issue here, afford officials greater discretion. 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, 1923 (Dec. 2017), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304057>.

<sup>5</sup> 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* (Nat’l Bureau of Econ. Research, Working Paper No. 23510, revised Nov. 2018), <http://www.nber.org/papers/w23510>.

<sup>6</sup> *Id.* at 43.

to 15 percent compared to what the rates otherwise would have been, and that this pernicious effect increased over time: “the longer the [right-to-carry] law is in effect,” the study notes, “the greater the cost in terms of increased violent crime.”<sup>7</sup> Conversely, “[t]here is not even the slightest hint in the data that [right-to-carry] laws reduce violent crime,” the study finds.<sup>8</sup>

Researchers at Duke University and the University of Pennsylvania similarly concluded, in a 2017 analysis, that violent crime rates would be about one-third lower if states that had implemented permissive “shall-issue” concealed carry laws had not done so.<sup>9</sup>

Also in 2017, researchers at Boston University and Duke University released the first-ever analysis of the impact of concealed carry laws on handgun and long-gun homicide rates.<sup>10</sup> It concluded that shall-issue concealed carry laws were significantly associated with higher crime rates—in particular, 6.5 percent higher total homicide rates, 8.6 percent higher firearm-related homicide rates, and 10.6 percent higher handgun-specific homicide rates, compared to states with stronger

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<sup>7</sup> *Id.* at 36.

<sup>8</sup> *Id.* at 42.

<sup>9</sup> Marjorie B. McElroy & Peichun Wang, *Seemingly Inextricable Dynamic Differences: The Case of Concealed Gun Permit, Violent Crime and State Panel Data 1*, 32 (June 24, 2017), <https://ssrn.com/abstract=2992058>.

<sup>10</sup> Siegel et al., *supra* note 4.

regulations.<sup>11</sup> In addition to supporting the Stanford study, the Boston University-Duke analysis debunks the notion that more permissive concealed carry regimes deter would-be criminals from engaging in crime, as suggested by Appellants here. *See* Appellants' Br. at 45-46.

These are only a handful of the most recent studies. In the years since the *Kachalsky* decision, other researchers also have found a strong connection between lax concealed carry licensing laws and increased gun violence.<sup>12</sup> This robust body of empirical evidence confirms that New York's handgun carry licensing laws promote public safety by protecting New York citizens from violent crime and firearm homicide. The new evidence also underscores why this Court should confirm its determination in *Kachalsky* that New York's proper cause requirement survives intermediate scrutiny.

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<sup>11</sup> *Id.* at 1927-28.

<sup>12</sup> *See, e.g.,* Rashna Ginwalla et al., *Repeal of the Concealed Weapons Law and Its Impact on Gun-Related Injuries and Deaths*, 76 J. TRAUMA ACUTE CARE SURG. 569, 569, 573 (2014) (lax concealed carry permitting laws are associated with increased gun fatalities); Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications* 8 (Oct. 15, 2016) (in the 41 states with RTC laws or no concealed carry regulations, the average death toll in high-fatality mass shootings increased following the implementation of an RTC law), [https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/\\_pdfs/GunsOnCampus.pdf](https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_pdfs/GunsOnCampus.pdf).

## **2. Firearms Are Rarely Used in Self-Defense and Do Not Increase Safety.**

While recent research confirms the link between lax concealed carry laws and increased crime, experts also increasingly agree that carrying a gun for self-defense produces no safety benefits for the gun carrier and likely even exposes such carriers to greater risk of harm.

As an initial matter, crime victims rarely use guns in self-defense. According to data provided by the federal Bureau of Justice Statistics (analyzed in 2015 by researchers from Harvard and the University of Vermont), victims of violent crimes use firearms to threaten or attack the perpetrator in less than one percent of all criminal incidents.<sup>13</sup> And in those rare instances when victims use a gun in self-defense, doing so does not make them safer. As the 2015 analysis notes, although some responses to criminal encounters—such as “[r]unning away and calling the police”—are associated with a reduced likelihood of injury, use of a gun in self-defense is not.<sup>14</sup>

In fact, carrying a firearm may increase a victim’s risk of injury during the commission of a crime. An influential study published in 2009 in the *American*

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<sup>13</sup> 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 (2015).

<sup>14</sup> *Id.* at 23-24.

Journal of Public Health analyzed 677 shootings in Philadelphia over a two-and-a-half-year period. After adjusting for confounding factors, the researchers concluded that individuals carrying a gun were 4.46 times more likely to be shot in an assault than those not carrying a gun, and were 4.23 times more likely to be fatally shot.<sup>15</sup> The figures were even higher for assaults where the victim had some opportunity to resist; in those cases, individuals carrying guns were 5.45 times more likely to be shot.<sup>16</sup> The researchers posited several potential explanations, including that “[a] gun may falsely empower its possessor to overreact, instigating and losing otherwise tractable conflicts with similarly armed persons.”<sup>17</sup>

Attempted use of a firearm in self-defense also threatens the safety of innocent bystanders. As a 2016 report from public health experts at Johns Hopkins University notes, most people do not have the tactical ability to successfully use a gun in self-defense, and tactical challenges may be exacerbated in populated public areas. After all, “[s]hooting accurately and making appropriate judgements about when and how to shoot in chaotic, high-stress situations requires a high level of familiarity with

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<sup>15</sup> See Charles C. Branas et al., Investigating the Link Between Gun Possession and Gun Assault, 99 AM. J. PUB. HEALTH 2034, 2037 (2009), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2008.143099>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

tactics and the ability to manage stress under intense pressure.”<sup>18</sup> For that reason, gun owners with good intentions may end up “wounding or killing innocent victims.”<sup>19</sup>

Moreover, regardless of the degree of tactical training, recent examples demonstrate that when individuals carry guns in public, there is an increased risk that they will wield their firearms in situations that actually place themselves and others in greater danger. Gun carriers, even those with training, have injured innocent people after mistakenly perceiving a threat.<sup>20</sup> The presence of a gun can escalate everyday disputes into lethal confrontations. In recent years, reported “road rage” incidents involving gun carriers have more than doubled.<sup>21</sup>

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<sup>18</sup> Webster et al., *supra* note 12, at 10.

<sup>19</sup> *Id.*

<sup>20</sup> *Police: Man Arrested for Shooting Uber Driver Thought He Was Helping*, FOX 4 NEWS, May 16, 2017, <http://www.fox4news.com/news/man-spots-gun-inadvertently-shoots-uber-driver> (army veteran shot a driver mistakenly believing he was stopping a robbery); William Saletan, *Friendly Firearms: How an Armed Hero Nearly Shot the Wrong Man*, SLATE, Jan. 11, 2011, <https://slate.com/technology/2011/01/joe-zamudio-and-the-gabrielle-giffords-shooting-how-an-armed-hero-nearly-shot-the-wrong-man.html> (during the 2011 mass shooting in Tucson perpetrated by a gunman targeting U.S. Congresswoman Gabrielle Giffords, a bystander with a concealed gun assaulted and nearly shot the man who had grabbed the shooter’s weapon).

<sup>21</sup> Christopher Mele, *Road Rage Cases With Guns More Than Double in 3 Years, Report Says*, N.Y. TIMES, Apr. 25, 2017, <https://www.nytimes.com/2017/04/25/us/road-rage-guns.html>. Even law enforcement officers have drawn guns in road-rage incidents, suggesting the presence of a gun can dangerously escalate disputes no matter how well-trained the

Especially in light of the new social science research, Appellants' claim that "there is no persuasive evidence" associating permissive gun carry regulations with increased crime rates, Appellants' Br. at 40, is simply incorrect.

**3. Appellants Ignore Compelling New Evidence and Rely on Older, Inconclusive Studies.**

In an effort to dispute *Kachalsky's* conclusion that New York's licensing law passes muster under intermediate scrutiny, Appellants point to alternative, older empirical studies. They argue that there is no reliable evidence on concealed carry licensing laws either way, because although "laws that more freely grant permits have not been shown to decrease crime," "the most persuasive studies" cited by Appellants also fail to find a significant causal link between more permissive gun carry laws and higher violent crime rates. Appellants' Br. at 40-41.

This argument does not reflect the current state of empirical research into concealed carry laws. First, Appellants have simply ignored the compelling new evidence described above. For instance, Appellants rely on a 2005 National Academy of Sciences' National Research Council ("NRC") report concluding that, based on data through the year 2000, researchers could not establish a causal link

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carrier is. *See, e.g.,* Christina Carrega, *Off-Duty NYPD Cop Who Pistol-Whipped Driver in Brooklyn Road-Rage Incident Indicted*, N.Y. DAILY NEWS, May 9, 2018, <http://www.nydailynews.com/new-york/nyc-crime/fuming-off-duty-nypd-pistolwhipped-driver-indicted-article-1.3980768>.

between permissive gun laws and crime rates. To determine if such a link does, in fact, exist, the NRC report urged researchers to use “new analytical approaches and data sets.”<sup>22</sup> This is precisely what Stanford professor John Donohue and his colleagues undertook in the 2017 study, using new data and a method—state-level synthetic control analysis—that is now recognized as the gold standard for assessing policy choices that cannot be evaluated in a randomized trial.<sup>23</sup> And, as discussed, Professor Donohue’s study concludes that permissive concealed carry regulations do lead to increased violent crime rates.

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<sup>22</sup> NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 151 (Charles F. Wellford, John V. Pepper, & Carol V. Petrie eds., 2005), <http://goo.gl/WO1ZNZ>. Appellants also cite a 2003 report by a task force convened by the Centers for Disease Control and Prevention (“CDC”), which, like the NRC report, concluded that data then available was insufficient to establish a causal link between permissive gun carry regulations and violent crime. Appellants’ Br. at 39-40. Like the NRC report, the CDC report stressed that “[f]urther high-quality research is required to establish the relationship between firearms laws and violent outcomes.” CENTERS FOR DISEASE CONTROL AND PREVENTION, MORBIDITY & MORTALITY WEEKLY REPORT VOL. 52, FIRST REPORTS EVALUATING THE EFFECTIVENESS OF STRATEGIES FOR PREVENTING VIOLENCE: FIREARMS LAWS 11 (Oct. 3, 2003), <http://goo.gl/VqWAVM>.

<sup>23</sup> Donohue, *supra* note 5, at 2 (“This paper answers the call of the NRC report for more and better data and new statistical techniques...”); see Susan Athey & Guido W. Imbens, *The State of Applied Econometrics: Causality and Policy Evaluation*, 31 J. ECON. PERSPECTIVES 3, 9 (2017), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.31.2.3> (synthetic control method “is arguably the most important innovation in the policy evaluation literature in the last 15 years”).

Second, Appellants’ attempt to discount the new evidence by arguing that careful regulations like New York’s “may well harm” public safety because permit holders are law-abiding, and depriving them of the right to carry “may embolden criminals to commit additional crimes.” Appellants’ Br. at 45. This argument is not convincing because, as discussed above, guns are rarely used defensively to thwart crime. Although Appellants contend that there are up to 2.5 million defensive gun uses each year, that exaggerated figure has been widely discredited.<sup>24</sup> And analyses from states that keep comprehensive records of crimes committed by concealed license holders indicate that licensees are arrested for weapons-related offenses at *higher* rates than the general public—refuting Appellants’ assertion that licensees pose no threat to society.<sup>25</sup>

**B. New York’s Firearm Policy Choices Are Entitled to Deference.**

The older and discredited research Appellants cite fails to meaningfully refute the strong evidentiary basis for New York’s concealed carry licensing law. But even accepting their empirical arguments as true, at most, Appellants have suggested there

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<sup>24</sup> See, e.g., David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. CRIM. L. & CRIMINOLOGY 1430, 1430-31 (1997), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6936&context=jclc>.

<sup>25</sup> See, e.g., Karen Brock et al., VIOLENCE POLICY CENTER, LICENSE TO KILL IV—MORE GUNS, MORE CRIME 5-6 (2002), <http://www.vpc.org/graphics/ltk4.pdf>.

is some room for debate regarding the extent to which lax licensing laws are associated with increased crime. New York's licensing regime still survives intermediate scrutiny because the legislature had ample evidence from which to conclude that its licensing law protects public safety and prevents crime.

As this Court stated in *Kachalsky*: “It is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments. Indeed, assessing the risks and benefits of handgun possession and shaping a licensing scheme to maximize the competing public-policy objectives, as New York did, is precisely the type of discretionary judgment that officials in the legislative and executive branches of state government regularly make.” 701 F.3d at 99. *See also Woollard v. Gallagher*, 712 F.3d 865, 881 (4th Cir. 2013); *Gould v. Morgan*, 907 F.3d 659, 673 (1st Cir. 2018) (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997)). Further, the Court said, “the legislature is ‘far better equipped than the judiciary’ to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks. Thus, our role is only ‘to assure that, in formulating its judgments, [New York] has drawn reasonable inferences based on substantial evidence.” *Kachalsky*, 701 F.3d at 97 (quoting *Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, at 665-66 (1994)). As demonstrated, the proper cause requirement is reasonably supported by substantial evidence.

Deference to legislative judgment is an established principle of constitutional jurisprudence not limited to the Second Amendment. The Supreme Court repeatedly has explained that heightened means-end scrutiny, including intermediate scrutiny, does not require legislatures to provide exact empirical justifications for regulations. For example, the Court has “permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and ‘simple common sense.’” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)); see also *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973) (“We do not demand of legislatures ‘scientifically certain criteria of legislation.’”) (internal citation omitted). And, in a First Amendment case involving a crime-reduction measure that targeted secondary effects of protected speech, the Court credited city officials’ evidence-informed judgment, even where the city did not furnish specific “empirical data” showing “that its ordinance will successfully lower crime.” *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 439 (2002) (plurality opinion).

In sum, *Kachalsky* continues to stand on empirically firm ground. It is more apparent than ever that New York’s licensing regime is substantially related to the state’s crucial interest in protecting the public from firearm violence—especially in

light of the deference due to New York's legislature to make reasoned policy choices in the face of conflicting evidence.

## **II. Appellants' First Amendment Analogy Cannot Sustain Their Complaint.**

Faced with binding precedent that forecloses their claims and a growing body of empirical evidence concluding that lenient concealed carry laws endanger the public, Appellants turn to First Amendment law and grasp for support by analogy. They suggest that New York's proper cause requirement for handgun carry permits is an "ask-permission-first" regime akin to "prior restraint" that impinge upon First Amendment free speech rights. Appellants' Br. at 33.

The substantive differences between the First and Second Amendments render this analogy inapposite. Under *Heller*, governments have significant leeway to limit the public carrying of guns. *See* 554 U.S. at 626 (noting that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues"). Of course, governments have far less leeway to restrict speech. Because the rights differ in important ways, it makes little sense to apply substantive First Amendment doctrines in Second Amendment cases. *See Kachalsky*, 701 F.3d at 92 ("[T]here are salient differences between the state's ability to regulate each of these rights...Plaintiffs' attempts to equate this case with *Heller* or to draw analogies to First Amendment concerns come up short."); *Teixeira v. County of Alameda*, 873

F.3d 670, 688-90 (9th Cir. 2017) (cataloging salient differences between the First and Second Amendments); *Berron v. Ill. Concealed Carry Licensing Review Bd.*, 825 F.3d 843, 847 (7th Cir. 2016) (“[E]veryone is entitled to speak and write, but not everyone is entitled to carry a concealed firearm in public.”).

Appellants’ effort to import First Amendment principles wholesale into this Second Amendment case is illogical for the additional reason that, unlike First Amendment-protected expressive content, firearms can physically injure and kill people; indeed, this is their express purpose. *See, e.g., Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (“The risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights” that “can be exercised without creating a direct risk to others.”). This distinction further underscores that governments may regulate the lethal effects of firearms in ways that might be impermissible in the context of purely expressive activity.

### **CONCLUSION**

Appellants offer no sound basis for why New York’s proper cause requirement violates the Second Amendment and offer no reason to depart from well-reasoned, binding precedent now supported by even more evidence. The growing empirical consensus that laws like New York’s save lives confirms the proper cause requirement is constitutional. This Court should affirm.

Respectfully submitted,

s/ Simon J. Frankel

Simon J. Frankel  
COVINGTON & BURLING LLP  
415 Mission Street  
San Francisco, CA 94105  
(415) 591-7052

Michelle Coquelin  
COVINGTON & BURLING LLP  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
(424) 332-4783

J. Adam Skaggs  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
223 West 38th St. #90  
New York, NY 10018  
(917) 680-3473

Hannah Shearer  
GIFFORDS LAW CENTER TO  
PREVENT GUN VIOLENCE  
268 Bush St. #555  
San Francisco, CA 94104  
(415) 433-2062

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Attorneys for *Amicus Curiae*

**CERTIFICATE OF COMPLIANCE**

In compliance with Federal Rules of Appellate Procedure 29(a)(4)(G), 29(a)(5), 32(a)(5)(A), 32(a)(7)(B)(i) and 2d. Cir. Local Rules 29.1(c) and 32.1(a)(4)(A), this amicus brief uses a proportionally spaced typeface, 14-point Times New Roman font, and contains 3,783 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned relied on the word count feature of Microsoft Word in preparing this certificate.

*s/ Simon J. Frankel*  
Simon J. Frankel  
COVINGTON & BURLING LLP  
415 Mission Street  
San Francisco, CA 94105  
(415) 591-7052

DATED: May 1, 2019

*Attorney for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of May 2019, I served a true and correct copy of the foregoing BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF DEFENDANTS-APPELLEES on all counsel of record in this appeal via CM/ECF pursuant to Local Rule 25.1(h).

*s/ Simon J. Frankel*  
Simon J. Frankel  
COVINGTON & BURLING LLP  
415 Mission Street  
San Francisco, CA 94105  
(415) 591-7052

DATED: May 1, 2019

*Attorney for Amicus Curiae*