

No. 18-824

IN THE
Supreme Court of the United States

THOMAS R. ROGERS AND ASSOCIATION OF NEW JERSEY
RIFLE & PISTOL CLUBS, INC.,

Petitioners,

v.

GURBIR GREWAL, PATRICK J. CALLAHAN, KENNETH J.
BROWN, JR., JOSEPH W. OXLEY, AND PETER CONFORTI,

Respondents.

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

BRIEF OF THE ATTORNEYS GENERAL OF ARIZONA,
ALABAMA, ALASKA, ARKANSAS, FLORIDA,
GEORGIA, IDAHO, INDIANA, KANSAS,
COMMONWEALTH OF KENTUCKY BY AND
THROUGH GOVERNOR BEVIN, LOUISIANA,
GOVERNOR PHIL BRYANT OF THE STATE OF
MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA,
OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH
DAKOTA, TEXAS, UTAH, WEST VIRGINIA, AND
WYOMING AS *AMICI CURIAE* IN SUPPORT OF
PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	3
I. THE QUESTIONS PRESENTED GO TO A CIRCUIT SPLIT ON THE REACH OF AN ENUMERATED RIGHT AND WARRANT THE COURT’S ATTENTION..	3
II. OBJECTIVE, OR “SHALL-ISSUE,” PERMIT REGIMES ARE THE NATIONWIDE STANDARD FOR PROMOTING PUBLIC SAFETY	4
A. Permit Holders Are Law-Abiding And Increase Public Safety	5
B. Objective Permitting Decreases Crime And Its Impact.....	8
1. Data shows that objective-issue regimes are linked with lower crime rates.....	8
2. Defensive gun use benefits victims...	12
C. Given This Data, It Is Unsurprising That States That Have Adopted An Objective-Issue Regime Have Not Reverted To A Subjective, May-Issue Regime	15
III. NEW JERSEY’S LICENSING REGIME IS NOT AN ALLOWABLE FIT FOR THE INTERESTS OF PUBLIC SAFETY IN LIGHT OF THE EMPIRICAL RESEARCH AND THE EXPERIENCE IN OTHER STATES THAT HEW TO THE NATIONAL STANDARD	18
CONCLUSION.....	19

TABLE OF AUTHORITIES

CASES

<i>District of Columbia v. Heller</i> 554 U.S. 570 (2008)	3
<i>Drake v. Filko</i> 724 F.3d 426 (3d Cir. 2013).....	4
<i>Gould v. Morgan</i> 907 F.3d 659 (1st Cir. 2018).....	4
<i>Kachalsky v. County of Westchester</i> 701 F.3d 81 (2d Cir. 2012).....	4
<i>McDonald v. City of Chicago, Ill.</i> 561 U.S. 742 (2010)	3
<i>Moore v. Madigan</i> 702 F.3d 933 (7th Cir. 2012)	4, 15
<i>Peterson v. Martinez</i> 707 F.3d 1197 (10th Cir. 2013)	4
<i>Piszczatoski v. Filko</i> 840 F.Supp. 2d 813 (D. N.J. 2012).....	18
<i>Woollard v. Gallagher</i> 712 F.3d 865 (4th Cir. 2013)	4
<i>Wrenn v. District of Columbia</i> 864 F.3d 650 (D.C. Cir. 2017).....	3, 4
<i>Young v. Hawaii</i> 896 F.3d 1044 (9th Cir. 2018)	3

OTHER AUTHORITIES

Carlisle E. Moody, et al., <i>The Impact of Right-to-Carry Laws on Crime: An Exercise in Replication</i> 4 Rev. of Econ. & Finance 33 (2014)	10
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TABLE OF AUTHORITIES—Continued

Charles C. Branas, et al., <i>Investigating the Link Between Gun Possession and Gun Assault</i> 99 Am. J. Pub. Health 2034 (2009).....	15
Clayton E. Cramer and David B. Kopel, “ <i>Shall Issue</i> ”: <i>The New Wave of Concealed Handgun Permit Laws</i> , 62 TENN. L. REV. 679 (1995).....	10, 17
Clayton E. Cramer, <i>Violence Policy Center’s Concealed Carry Killers: Less Than It Appears</i> , (June 2012)	6
David B. Kopel, <i>Pretend “Gun-Free” School Zones: A Deadly Legal Fiction</i> , 42 Conn. L. Rev. 515 (2009)	6
Federal Bureau of Investigation, <i>2008 Crime in the U.S.</i> , https://ucr.fbi.gov/crime-in-the-u.s/2008	5
Federal Bureau of Investigation, <i>Crime in the U.S.</i> , https://ucr.fbi.gov/crime-in-the-u.s	8
Gary Kleck & Marc Gertz, <i>Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun</i> 86 J. Crim. L. & Criminology 150 (1995).....	13
Gary Kleck, <i>Targeting Guns: Firearms and their Control</i> (1997).....	13, 14
Gary Kleck, <i>What Do CDC’s Surveys Say About the Frequency of Defensive Gun Uses?</i> (2018)	13
Geoff Ziezulewicz, <i>Uber driver, licensed to carry gun, shoots gunman in Logan Square</i> , CHI. TRIB., Apr. 20, 2015.....	14

TABLE OF AUTHORITIES—Continued

H. Sterling Burnett, <i>Texas Concealed Handgun Carriers: Law-abiding Public Benefactors</i> , Nat'l Center for Pol'y Analysis (June 2, 2000).....	16
Howard Fischer, <i>Brewer signs bill allowing concealed weapons without permit</i> ARIZ. DAILY SUN, Apr. 17, 2010	8
John J. Donohue et al., <i>Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis</i> (rev. 2018).....	10, 11
John R. Lott, Jr., <i>Concealed Carry Permit Holders Across the United States: 2017</i> (July 2017).....	11
John R. Lott, Jr., <i>More Guns Less Crime: Understanding Crime and Gun Control Laws</i> (3d ed. 2010)	12, 13
Kellan Howell, <i>Murder rates drop as concealed carry permits soar: report</i> , WASH. TIMES, July 14, 2015	8
Mark E. Hamill, et al., <i>State Level Firearm Concealed Carry Legislation and Rates of Homicide and Violent Crime</i> 228 J. of the Am. Coll. of Surgeons 1 (Jan. 2019).....	12
National Research Council, <i>Firearms and Violence: A Critical Review</i> (2005).....	14
NRA-ILA, <i>Concealed Carry / Right to Carry</i> , (2018), https://www.nraila.org/get-the-facts/right-to-carry-and-concealed-carry/	15

TABLE OF AUTHORITIES—Continued

Robert A. Hahn, Ph.D., et al., <i>First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws</i> (2003)	7
Shane P.D. Jack, Ph.D., et al., <i>Surveillance for Violent Deaths – National Violent Death Reporting System, 27 States, 2015</i> (2018)	7
Tom Skoch, The Editor’s Column: <i>Facts Top Feelings, Change Views On Gun Issues</i> The Morning J. (Feb. 10, 2011)	16
Tom W. Smith, <i>A Call for a Truce in the DGU War</i> 87 J. Crim. L. & Criminology 1462 (1997)	14
Violence Policy Center: Concealed Carry Killers, http://concealedcarrykillers.org/washington-dc/ (Sept. 16, 2013)	17

INTEREST OF AMICI CURIAE¹

This brief is filed on behalf of the states of Arizona, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming. The undersigned are their respective states' chief executive, law enforcement, or legal officers and have authority to file briefs on behalf of the states they represent.

The Amici States through their Attorneys General and Governors have a unique perspective that should aid the Court in weighing the value and importance of the questions presented by the petition here. The Amici States have experience advancing their substantial interests in promoting public safety, preventing crime, and reducing the harmful effects of firearm violence through objective-issue firearm permitting regimes that advance public safety without abridging citizens' enumerated constitutional rights. The Amici States offer this brief to highlight the empirical research in this area as well as the experience in the forty-two states that allow a permit to any individual applicant who meets a certain set of objective criteria, which represents the national standard in improving public safety.

¹ Pursuant to Rule 37.6, the undersigned certifies that no parties' counsel authored this brief, and only amici or their offices made a monetary contribution to the brief's preparation or submission. Counsel of record for all parties received notice of amici's intent to file at least ten days prior to this brief's due date and have given written consent.

SUMMARY OF ARGUMENT

This case provides the Court an opportunity to resolve a fracturing of precedent among the Courts of Appeal over the constitutionality of subjective-issue handgun permit regimes, particularly over “justifiable need” or “good reason” requirements such as New Jersey’s under N.J.S.A. § 2C:58-4.

While Amici States consider “good reason” and other subjective issue requirements to be *per se* unconstitutional, the extant empirical data and the experience of states with objective-issue regimes demonstrate why such laws cannot be upheld even under sliding-scale scrutiny, since these laws undermine public safety, making such regimes antithetical to their own justification. Permit-holders are significantly more law-abiding than the state populations as a whole, and studies link objective-issue regimes with decreased murder rates and no rise in other violent crimes. Public safety is also increased at the individual level when citizens who carry for self-defense respond to a criminal attack with a firearm; these defensive gun uses leave the intended victim unharmed more frequently than any other option, and almost never require firing a shot.

Given the positive impact of objective-issue handgun regimes, it is unsurprising that every state that has adopted objective-issue has maintained it, establishing a national standard for public safety. In light of this public-safety consensus, the nature of the current circuit split, and the importance of the enumerated right at issue, the Court should grant certiorari on the questions presented.

ARGUMENT

I. THE QUESTIONS PRESENTED GO TO A CIRCUIT SPLIT ON THE REACH OF AN ENUMERATED RIGHT AND WARRANT THE COURT'S ATTENTION

“Self-defense is a basic right ... and ‘the *central component*’ of the Second Amendment right.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 767 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)). This Court has held that the Second Amendment guarantees “the individual right ... to carry weapons in case of confrontation”—that is, to “wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in case of conflict with another person.” *Heller*, 554 U.S. at 592, 584. And in *McDonald*, this Court found the Second Amendment’s protections were incorporated by the Fourteenth Amendment and binding on the States as “a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States.” 561 U.S. at 791.

Nevertheless, the Courts of Appeal are divided in their application of the right to carry weapons for self-defense outside the home. The D.C. Circuit has confirmed a right to carry outside the home, *Wrenn v. District of Columbia*, 864 F.3d 650, 665 (D.C. Cir. 2017), and the Ninth Circuit has stated that “the right to bear arms must guarantee *some* right to self-defense in public.” *Young v. Hawaii*, 896 F.3d 1044, 1068 (9th Cir. 2018). But, in weighing laws similar to the New Jersey scheme at issue here, the Seventh and D.C. Circuits have overturned the laws as *per se*

unconstitutional (or effectively so), while the First, Second, Third, Fourth, and Tenth Circuits have upheld such laws.²

It is in this atmosphere that *Amici* encourage the Court to grant certiorari here. The petition presents an appropriate vehicle for clarifying the proper reach of an enumerated right, and the questions presented are of particular import because (as explained below) New Jersey’s state law denies individuals the means to potentially preserve their own lives and runs counter to the nationwide consensus on how to improve public safety through firearm regulation.

II. OBJECTIVE, OR “SHALL-ISSUE,” PERMIT REGIMES ARE THE NATIONWIDE STANDARD FOR PROMOTING PUBLIC SAFETY

Empirical research has demonstrated that objective (or “shall-issue”) permit regimes are equal-to or better-than subjective (or “may-issue”) regimes in reducing overall crime within the relevant jurisdiction. Forty-two states employ objective permit regimes that allow a permit to any individual who meets a certain set of objective criteria, which can include fingerprinting, a background check, a mental health records check, and training in firearms handling and/or laws regarding the use of force; such regimes are also known as “shall-issue,” as the laws typically mandate the relevant authority’s issuance

² Compare *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) and *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), with *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018), *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012), *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), and *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013).

of a permit to those who meet the established criteria. These regimes have set the national standard in improving public safety while also respecting individuals' rights.

A. Permit Holders Are Law-Abiding And Increase Public Safety

Those who obtain firearms-carry permits are, and remain, overwhelmingly more law abiding than the general population. This is an intuitive point, as permit holders must typically pass fingerprint, background, and mental health record checks prior to being issued a license under state regimes. And data from the States bears out the intuition. David Kopel conducted an expansive study in 2009 examining just how law-abiding permit holders are. And despite each state having slightly different reporting methods, the outcomes are clear: low rates of crime among licensees. Minnesota reports one handgun crime per 1,423 licensees. Michigan reported 161 charges involving handguns out of approximately 190,000 licensees in 2007-08 (from an estimated 25 to 35 criminal incidents), while the general population produced 1,018 violent crimes per 190,000 people.³ Ohio reported 639 license revocations, including licensees who moved from Ohio, out of 142,732 permanent licenses issued from 2004 to 2009. Louisiana reported a firearm misuse rate of slightly more than 1 in 1,000 licensees. Florida reported 27 firearm crimes per 100,000 licenses. And Texas reported that concealed handgun licen-

³ General population data calculated based on the FBI's reported rate for Michigan in 2008. Federal Bureau of Investigation, *2008 Crime in the U.S.*, available at <https://ucr.fbi.gov/crime-in-the-u.s/2008>.

sees are 79% less likely to be convicted of crimes than non-licensees. David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 Conn. L. Rev. 515, 564-69 (2009) (providing state-level data).

Indeed, the data cited by proponents of subjective regimes is not to the contrary when properly analyzed for the effects of having lawful permit holders carrying *outside the home* (e.g., by looking past data on suicide).⁴

For instance, the Violence Policy Center’s “Concealed Carry Killers” database inflates its numbers by counting deaths, nearly half of which are suicides, that are wholly irrelevant to an individual’s right to carry a firearm outside the home. Professor Clayton Cramer’s 2012 study examined this list and found that, in addition to suicides, the list included deaths in the licensee’s home or business, where no permit is required; deaths in subjective-issue states where objective-issue permitting played no part; incidents involving rifles or other long guns, not handguns; and incidents where no firearm was used.⁵ Professor Cramer’s data shows that concealed weapon license holders were responsible for less than 1 murder per 400,000 licenses per year during the pertinent study period, while the national average in 2011 was 18.8 per 400,000.

⁴ Suicide, though tragic, is not the focus of carry-permit laws; suicide does not require (or typically entail) bringing a firearm into a public space, and is a self-inflicted act that does not generally imperil the public at large.

⁵ Clayton E. Cramer, *Violence Policy Center’s Concealed Carry Killers: Less Than It Appears*, (June 2012).

Similarly, the Brady Campaign often relies on “violent deaths” data from the Centers for Disease Control and Prevention (“CDC”), but a quick review of CDC data shows that it includes suicides and other causes of death with no bearing on public handgun carry: “The majority (65.1%) of deaths were suicides, followed by homicides (23.5%), deaths of undetermined intent (9.5%), legal intervention deaths (1.3%) (i.e., deaths caused by law enforcement and other persons with legal authority to use deadly force ...).” Shane P.D. Jack, Ph.D., et al., *Surveillance for Violent Deaths – National Violent Death Reporting System, 27 States, 2015* (2018). With roughly two-thirds of all deaths in these studies identified as *not* homicide, it is no wonder that a CDC study concluded that there was “insufficient evidence to determine the effectiveness of any of the firearms laws or combinations of laws ... on violent outcomes.” Robert A. Hahn, Ph.D., et al., *First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws* (2003).

The numbers directly refute the idea that the public bears some heightened risk when lawful permit holders carry guns outside their homes. When inapposite data is properly accounted for, it becomes apparent that those who choose to subject themselves to, and subsequently pass, the scrutiny of an objective carry permit regime obey the law and keep the peace. Such a population is a boon, not a threat, to public safety.

B. Objective Permitting Decreases Crime And Its Impact

1. Data shows that objective-issue regimes are linked with lower crime rates

The empirical data on licensed carry is extensive, and the weight of the evidence confirms that objective, non-discriminatory licensed-carry laws have two results: (1) statistically significant reductions in some types of violent crime, or (2) no statistically significant effect on violent crime. This has held true despite the overwhelming increase in the number of concealed handgun permits issued in the past decade. “Since 2007, the number of concealed handgun permits has soared from 4.6 million to over 12.8 million, and murder rates have fallen from 5.6 killings per 100,000 people to just 4.2, about a 25 percent drop.” Kellan Howell, *Murder rates drop as concealed carry permits soar: report*, WASH. TIMES, July 14, 2015.

Arizona’s experience with an objective-issue regime is telling. Arizona implemented a licensed concealed carry regime in 1994 and then a right-to-carry for all law-abiding citizens, even without a license, in 2010.⁶ 1994 is also the earliest year for which the FBI has made its Uniform Crime Reports (“UCR”) data available on its website.⁷ In 1994, Arizona experienced 10.5 murders per 100,000 people, while

⁶ Howard Fischer, *Brewer signs bill allowing concealed weapons without permit*, ARIZ. DAILY SUN, Apr. 17, 2010.

⁷ Federal Bureau of Investigation, *Crime in the U.S.* (1995 through 2016), available at <https://ucr.fbi.gov/crime-in-the-u.s>. All data referenced in the following comparative discussion of Arizona’s murder rates is from this source unless otherwise specified.

the nationwide rate was 9 murders per 100,000, ranking Arizona 37th among the states. By 2016, Arizona's murder rate was 5.5 per 100,000, nearly matching the national rate of 5.3 (placing Arizona 29th in the country). What's more, while Arizona's relative rank fluctuated, the steady drop in murder rates was never interrupted by an increase of more than 1 incident per 100,000 people.

Similarly, from the beginning of Arizona's "constitutional carry" regime (allowing permitless concealed carry for law-abiding citizens), the UCR again shows a reduction in murder rates even as the nationwide rate increased. Arizona's murder rate of 6.4 per 100,000 people in 2010 dropped 14.1% to 5.5 in 2016. Nationwide, the murder rate *rose* 10.4% from 4.8 to 5.3 per 100,000 in the same period. Overall, after adopting an objective-issue carry regime, Arizona achieved a reduction in its murder rate at a slightly quicker pace than the national average, experiencing a 47.6% reduction from 1994 to 2016 while the nationwide rate dropped 41.1%. During this same period of 1994 to 2016, New Jersey experienced only a 16% reduction.

While reduction in murder rates in any jurisdiction is multifactorial, the UCR data demonstrates that Arizona's public safety improved alongside the implementation of two increasingly permissive objective-issue concealed carry regimes, and at a faster rate than both New Jersey and the national average. And these results are echoed by more sophisticated research capable of controlling for multiple variables. "The most significant, certain conclusion to be drawn is that neither large nor small states evidence obvious long-term increases in murder rates after passage of these laws. The expe-

rience of the carry reform states plainly shows that homicide rates will not *increase* as a result of crimes committed by persons with carry permits.” Clayton E. Cramer and David B. Kopel, “*Shall Issue*”: *The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 709 (1995).

One outlier to this evidence is the work of John Donohue, but scholars have called the validity of his results into question, and “[Aneja, Donohue, and Zhang] have admitted that they estimated the wrong model” in *The Impact of Right to Carry Laws and the NRC Report* (2014). Carlisle E. Moody, et al., *The Impact of Right-to-Carry Laws on Crime: An Exercise in Replication*, 4 Rev. of Econ. & Finance 33, 35 (2014). These flaws were underscored by Moody et al.’s research, which determined that “[t]he most robust result,” confirmed even by Donohue’s “county and state data sets is that the net effect of [right-to-carry] laws is to decrease murder.” *Id.* at 42. Further, analysis of Donohue’s own data showed that objective-issue permit regimes, referred to by Moody as “right-to-carry” laws, statistically “decrease rape” and “reduce the victim costs of crime.” *Id.*

Donohue’s latest model-based research is no less questionable, this time using synthetic models based on his own research assumptions to estimate what crime rates would have looked like in objective-issue states had they retained restrictive regimes. 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* (rev. 2018). While Donohue’s models predict that, absent objective-issue laws, crime would have fallen in some states and risen in others, the common theme seems to be a scattered inaccuracy. One state

highlighted by the study, Texas, provides an example: Donohue says his model's prediction "suggests that Texas would have experienced a more sizable violent crime decline if it had not passed [a right-to-carry] law," but his model failed to predict a rise in crime (by a difference of roughly the same magnitude) that occurred *before* Texas adopted its law. *Id.* at 30. It is perhaps unsurprising that, starting from this peak, the model that started at a lower value than reality ended at a lower value than reality where the model and reality both show a decrease in violent crime at roughly the same rate.

As Professor John Lott says about these synthetic findings:

[T]he bottom line is pretty clear: Since permit holders commit virtually no crimes, right-to-carry laws can't increase violent crime rates. You can't get the increases in violent crime rates that a few of their estimates claim with only thousandths of one percent of permit holders committing violent crimes ... To get their results, state police agencies would have to be missing around 99.4% to 99.83% of violent crimes committed by permit holders.

John R. Lott, Jr., *Concealed Carry Permit Holders Across the United States: 2017*, at 23, (July 2017). And "[i]f large numbers of violent crimes really were committed by carry permit holders, it would be fairly easy to document this, since carry permit holders who are convicted of violent crimes have their permits revoked, and states maintain records of permit revocations." Gary Kleck, *A Critique of Donohue et al. (2018) Analysis of RTC Laws*, *supra*, at 6.

Indeed, a new study manuscript recently accepted by the Journal of the American College of Surgeons contradicts Donohue's findings after analyzing data from both the Department of Justice and the Centers for Disease Control:

This study demonstrates no statistical association between the liberalization of state level firearm carry legislation over 3 decades and the rates of homicides, firearm homicides, or other violent crime, using a rigorous statistical model ... Based on our data, policy efforts aimed at injury prevention and the reduction of firearm-related violence should likely investigate other targets for potential intervention.

Mark E. Hamill, et al., *State Level Firearm Concealed Carry Legislation and Rates of Homicide and Violent Crime*, 228 J. of the Am. Coll. of Surgeons 1, 7 (Jan. 2019).

2. Defensive gun use benefits victims

Justice Department statistics reveal that the victims of crime who resist with a gun are less likely to suffer serious injury than victims who either resist in other ways or offer no resistance at all. See John R. Lott, Jr., *More Guns Less Crime: Understanding Crime and Gun Control Laws* 4-5 (3d ed. 2010). The safety advantage of carrying a firearm is even more pronounced for women: Women are 2.5 times more likely to suffer a serious injury if they offer no resistance to a criminal attacker (as compared to women who resist with a gun), and 4 times more likely to suffer injury if they resist without a gun. *Id.*

Numerous studies have found that robbery victims who resist with firearms are significantly less likely to have their property taken or be injured. Gary Kleck, *Targeting Guns: Firearms and their Control* 170 (1997). “Robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all.” *Id.* at 171. Moreover, “victim resistance with a gun almost never provokes the criminal into inflicting either fatal or nonfatal violence.” *Id.* at 174. Similarly, “rape victims using armed resistance were less likely to have the rape attempt completed against them than victims using any other mode of resistance,” and defensive gun use did not increase the victim’s risk of “additional injury beyond the rape itself.” *Id.* at 175.

Indeed, it is typically necessary only to display a firearm, rather than pull the trigger, to prevent completion of a crime. A national survey “indicates that about 95 percent of the time that people use guns defensively, they merely have to brandish a weapon to break off an attack.” Lott, *More Guns Less Crime*, at 3. Fewer than one in a thousand defensive gun uses results in the death of a criminal. *See* Kleck, *Targeting Guns*, at 178.

There have been at least 20 major surveys regarding the frequency of defensive gun use in the modern United States. These surveys estimate the number of annual defensive gun uses to be between 1 million and 3 million, with the more recent studies, which are more methodologically sophisticated and reliable, affirming the higher end of the estimate. *Id.* at 149-64, 187-89; Gary Kleck, *What Do CDC's Surveys Say About the Frequency of Defensive Gun Uses?* 3

(2018).⁸ Gary Kleck and Marc Gertz conducted an especially thorough survey in 1993, with stringent safeguards to parse out respondents who might misdescribe or misdate a defensive gun use incident. Kleck and Gertz identified between 2.2 and 2.5 million defensive gun uses annually, with the majority of these uses involving handguns. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 164 (1995). And even conservative estimates place annual defensive gun use numbers at between 256,500 and 1,210,000. Tom W. Smith, *A Call for a Truce in the DGU War*, 87 J. Crim. L. & Criminology 1462, 1468 (1997).⁹

Empirical data also refute the misperception that citizens licensed to carry firearms are likely to have the weapon used against them in a violent encounter. U.S. Bureau of Justice Statistics figures indicate that, in confrontations with criminals, 99% of victims who are licensed to carry maintain control of their firearms. See Kleck, *Targeting Guns*, at 168-69. Some critics of defensive gun uses cite a statistical association between gun possession by “urban

⁸ “At least 19 other surveys have resulted in estimated numbers of defensive gun uses that are similar (i.e., statistically indistinguishable) to the results founds by Kleck and Gertz.” National Research Council, *Firearms and Violence: A Critical Review*, ch. 5 (2005).

⁹ Some of these defensive uses save more than the licensee’s life. For example, on April 17, 2015, an Uber driver with a carry permit—only recently obtainable in Illinois following state and federal legal rulings—neutralized a criminal illegally in possession of a firearm who opened fire on a Logan Square crowd. Geoff Ziezulewicz, *Uber driver, licensed to carry gun, shoots gunman in Logan Square*, CHI. TRIB., Apr. 20, 2015.

adults” and the risk of being shot as victims of a crime, but this cannot be established as a causal link due to “the potential of reverse causation.” See Charles C. Branas, et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034, 2037, 2039 (2009). Regardless of the effectiveness of defensive gun use, one would expect a positive statistical correlation between victim gun possession and victim injury because those urban residents most at risk of victimization (e.g., those residing in a dangerous neighborhood) are also most likely to arm themselves for protection.¹⁰ This is known as reverse causation—going to the doctor has an extremely high positive association with being ill, but that hardly proves that going to the doctor causes illness.

C. Given This Data, It Is Unsurprising That States That Have Adopted An Objective-Issue Regime Have Not Reverted To A Subjective, May-Issue Regime

It is telling that of the 42 states that have objective permit regimes, not one has reverted to a subjective-issue or no-issue system. These regimes began with New Hampshire in 1923, and by 1995 half of all states had adopted one.¹¹ If the alarmist public-safety predictions held true, it seems that at least

¹⁰ “It’s a dangerous business ... going out of your door.” J.R.R. Tolkien, *The Fellowship of the Ring*; “[A] Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower.” *Moore*, 702 F.3d at 937.

¹¹ See NRA-ILA, *Concealed Carry / Right to Carry*, fn 9 (2018), <https://www.nraila.org/get-the-facts/right-to-carry-and-concealed-carry/>.

one such state would have gone back to a more restrictive regime. But instead objective-issue has become the national standard with an increasing number of states adopting “shall-issue” language, the number of overall permits increasing, and some states even adopting more permissive regimes.

Within these states, even initial detractors, including elected officials who vehemently opposed objective carry laws before they were enacted, are admitting that reality has changed their minds.

John B. Holmes, then-District Attorney of Harris County (containing Houston) and Glenn White, former President of the Dallas Police Association, were strong opponents of licensed carry in Texas. Both changed their minds after observing the results and seeing that their fears were incorrect. “I ... [felt] that such legislation ... present[ed] a clear and present danger to law-abiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my initial fears absolutely groundless.” “All the horror stories I thought would come to pass didn’t happen. ... I think it’s worked out well, and that says good things about the citizens who have permits. I’m a convert.”¹²

When Ohio’s “shall issue” licensing system went into effect in 2004, Tom Skoch, former editor of *The Morning Journal*, expressed fears that the law “would make public shoot-outs common and fill the streets with blood,” but he has since admitted his error. Tom Skoch, *The Editor’s Column: Facts Top*

¹² H. Sterling Burnett, *Texas Concealed Handgun Carriers: Law-abiding Public Benefactors*, Nat’l Center for Pol’y Analysis (June 2, 2000).

Feelings, Change Views On Gun Issues, The Morning J. (Feb. 10, 2011). And Florida state legislator Ron Silver, “the leading opponent” of that state’s groundbreaking “shall issue” law in 1987, said in November 1990, “There are lots of people, including myself, who thought things would be a lot worse as far as that particular situation [carry reform] is concerned. I’m happy to say they’re not.” John Fuller, general counsel for the Florida Sheriffs Association, stated: “I haven’t seen any instance of persons with permits causing violent crimes, and I’m constantly on the lookout.” Cramer & Kopel, *“Shall Issue”: The New Wave of Concealed Handgun Permit Laws*, at 693.

The simple truth is that, as shown above, permit holders are less likely than members of the general public to commit violent crimes, and neither Washington, D.C., nor any state that has a permissive permit regime has experienced widespread trouble from those who go through the licensing process. Indeed, over a year after the decision in *Wrenn*, even the Violence Policy Center has failed to identify a single permit holder responsible for an unlawful lethal incident despite concealed carry permits now being available without a “good reason” requirement.¹³

These results have established objective-issue permit regimes as the national standard for public safety with respect to citizen-carry. This standard is

¹³ Violence Policy Center: Concealed Carry Killers, <http://concealedcarrykillers.org/washington-dc/> (Sept. 16, 2013) (identifying zero killings since the 2017 ruling in *Wrenn*, but listing the 2013 D.C. Navy Yard Shooter, a former Navy sailor who had a concealed carry permit in Texas as well as a federal security clearance).

tailored to the states' interests in public safety through objective permit application criteria, provides enhanced citizen safety, and at the same time protects individuals' right to carry a weapon for self-defense in public.

III. NEW JERSEY'S LICENSING REGIME IS NOT AN ALLOWABLE FIT FOR THE INTERESTS OF PUBLIC SAFETY IN LIGHT OF THE EMPIRICAL RESEARCH AND THE EXPERIENCE IN OTHER STATES THAT HEW TO THE NATIONAL STANDARD

New Jersey's subjective-issue regime for handgun carry permits infringes upon and restricts an individual's ability to lawfully carry a firearm outside the home. In addition to requiring the above-mentioned objective criteria (*e.g.* background check, mental health records check, etc.), New Jersey denies the carry right to any citizen who cannot provide a sworn statement detailing evidence of a surprise attack that the citizen will face in the proximate future—that is, the applicant must be able to predict and yet be unable to avoid such attack. And such a statement may still not be accepted if it does not meet the subjective satisfaction of the chief police officer of the applicant's locality. *See, e.g.*, Complaint at 6-13, *Piszczatoski v. Filko*, 840 F.Supp. 2d 813 (D. N.J. 2012) (Dkt. 10-06110); and Pet'rs' App 56a-60a.

The question is, if not *per se* unconstitutional, whether the infringement is properly justified under the appropriate level of scrutiny; but, as demonstrated by the empirical studies discussed above, as well as the experience of the forty-two states with an objective-issue regime, New Jersey's licensing scheme is not tailored to the cited public safety interest—it undermines it. New Jersey's regime,

which fails to decrease crime while also putting law-abiding citizens at a personal disadvantage when faced with a criminal attack, is not just a poor fit for, but completely antithetical to, New Jersey's stated justification of promoting public safety. In other words, with 42 states' objective-issue systems demonstrating more success on every front including personal liberty, public safety, and individual security, if subjective- or may-issue were a medical standard of care, it would be obsolete and any legislature employing it guilty of malpractice.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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