

No. 20-843

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

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NEW YORK STATE RIFLE & PISTOL ASS'N, ET AL.,  
*Petitioners,*

v.

KEVIN P. BRUEN, ET AL.,  
*Respondents.*

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

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**BRIEF OF CITIZENS COMMITTEE FOR THE  
RIGHT TO KEEP AND BEAR ARMS AS AMICUS  
CURIAE IN SUPPORT OF PETITIONERS**

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

The Citizens Committee for the Right to Keep and Bear Arms, a non-profit organization, seeks to preserve Second Amendment rights through education and advocacy. It strives to ensure that the Second Amendment is not misinterpreted in derogation of the people's right to keep and bear arms for self-defense and other constitutional purposes.

The Committee hears from its members the reasons why they feel the urgent need to keep and bear arms for their self-defense, particularly in the current climate of rising violence and chaos. The Committee has a vital interest in the outcome of this case.

## SUMMARY OF ARGUMENT

America is and always has been a place where violence and disorder lurk just below the surface of civilization. The American constitutional system, with all of its enduring genius, cannot change this fact of human nature.

Colonial America was extremely violent, as colonists faced threats from a variety of sources. Murder was common. Politics was frequently practiced through mob violence and riots. Colonists felt a pervasive fear of Indian raids. And colonists did not look to law enforcement as a source of protection or crime prevention. The sheriff had many other pressing duties, and citizens themselves were

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1. All parties have consented to the filing of this brief. No counsel for a party authored any part of this brief. And no one other than the amicus or its members or counsel financed the brief's preparation or submission.

expected to share the duty to patrol streets as part of the “watch.”

The term “first responder” would have struck colonists as odd, as law enforcement was not designed to “respond” quickly to violent situations: the people were their own first responders. While law enforcement has advanced in reach and technological capacity, the police are not organized to be on the scene at a moment’s notice to prevent violence. The people remain primarily responsible for preventing crime and protecting themselves.

The Founders comprehended from their observation of colonial life—and their understanding of mankind—that the veneer of civilization is thin. They reflected openly in The Federalist papers about man’s inherent tendencies toward conflict and violence. Indeed, a central project at the founding was organizing a government that preserved liberty while checking some of these tendencies. But they understood that government could not change human nature, so flareups of violence and chaos would be inevitable, particularly in a system of dual sovereignty; thus the Second Amendment’s preservation of the pre-existing right to keep and bear arms.

The fragility of civilization is on full display in America today. Violent riots erupted throughout the Nation in 2020, and violence has remained elevated as police—already strained and now under political assault—have retreated in major cities. Just as in periods of social and political unrest and conflict in prior centuries, a surge in violent crime has followed the breakdown of social order.

These trends are only being exacerbated as a political movement has, in some jurisdictions, targeted traditional law enforcement institutions with radical policies. Movements to “defund” the police have had predictably violent results. Meanwhile, prosecutors in some of these same jurisdictions announce that they simply are not going to enforce many criminal laws. The downward spiral is accelerating as police officers and prosecutors, appalled at the attacks on their roles, are leaving their jobs in droves.

The American people understand what is happening. They understand that they are responsible for their self-defense, so more of them are arming themselves in response to these conditions. This is an especially important time for the Court to re-affirm that the Second Amendment protects their right to carry firearms for their self-defense.

## ARGUMENT

### **I. In A Nation Whose Veneer Of Civilization Is Thin, Americans Have Been Their Own First Responders To Violent Situations Since The Founding.**

#### **A. Colonists Faced A Variety Of Threats That Necessitated Carrying Firearms.**

Colonial America was a violent place. Colonists faced a number of threats that necessitated carrying firearms separate and apart from the threats they faced from foreign invasions. Halbrook, *The Right to Bear Arms* 131–33 (2021). “Far from being prohibited from carrying firearms, colonial Americans were often required by law to

carry them” for purposes unrelated to militia service. *Id.* at 131. These other violent threats included:

### 1. Day-To-Day Violence From Fellow Colonists.

Throughout most of the seventeenth century, the “peacetime murder rate for adult colonists—that is, rates that include only killings that took place outside the bounds of warfare—ranged from 100 to 500 or more per year per 100,000 adults, ten to fifty times the rate in the United States” in 2009. Roth, *American Homicide* 27 (2009). “As soon as political stability was established on a contested frontier, . . . rates for all types of homicide fell. But by today’s standards the colonies remained homicidal for decades after the initial years of settlement.” *Id.* See also Hofstadter, *Reflections on Violence in the United States*, in Hofstadter & Wallace, *American Violence* (1970) (“Americans, it is true, had a considerable heritage of violent action in the colonial period. . . . [A]nd when Americans entered the Revolutionary era, they had a well-established habit of moving into forcible action.”).

After a period of relatively declining violence in the late seventeenth and early eighteenth centuries, violence spiked as revolutionary fervor—and its associated political instability—grew: “[C]itizens fell to squabbling among themselves over politics, questioning one another’s loyalties and refusing to obey laws or administrations they considered illegitimate. The three most important correlates of homicide were thus in place in much of the Western world during the Age of Revolution: political instability, a loss of government legitimacy, and a decline in fellow feeling among citizens.” Roth, at 145.

Throughout the colonies, “homicide rates reached seventeenth century levels as governments collapsed, law and order broke down, and neighbor turned against neighbor. . . . The criminal justice system disbanded or became the partisan tool of whoever was in power locally. Vigilante and revenge killings ensued . . . .” *Id.* at 146-47. “As in revolutionary France, the proliferation of politically charged homicides was matched by an increase in garden-variety homicides as individuals adopted the same hostile and predatory attitudes toward their neighbors that political partisans showed toward their opponents.” *Id.* 147.

## 2. Mob Violence And Riots.

Inherited from a European tradition of partisan activism, mob violence was a near-constant presence and threat to the general public in the years leading up to the Revolution. For instance, the Stamp Act’s passage in 1765 precipitated a series of riots. In August 1765, a mob pillaged and ransacked the home of Thomas Hutchinson, the Lieutenant Governor of Massachusetts, as described by John Adams in his diary. Schlesinger, *Political Mobs and the American Revolution, 1765-1776*, 99 Proceedings of the Am. Philosophical Soc’y 244, 244–50 (1955).

In Philadelphia, rumors swirled that Benjamin Franklin, then in London, supported the Stamp Act. In September 1765, a mob gathered to destroy the homes of Franklin and his supporters. Halbrook, at 139. Franklin’s wife implored her cousin to gather an armed group to confront the mob. Isaacson, *Benjamin Franklin: An American Life* 224–25 (2003). The mob only dispersed when the armed

defenders vowed that “[i]f Franklin’s house was destroyed, . . . so too would be the home of anyone involved.” *Id.* Mob violence in pursuit of political aims was hardly limited to the Stamp Act, as partisans resorted to mob violence as a political tool. *See, e.g.*, Roth, at 93 (describing violence pursued by supporters of Pennsylvania Governor William Keith against the merchant party: “Assemblymen who did not yield to Keith’s supporters were harassed and beaten in the streets.”).

And even after the colonies won their independence, mobs continued to roam the streets in large and small towns alike. The list of subjects over which Americans rioted in the post-revolutionary period is long and varied: slavery, ethnic hostilities, food, elections, labor disputes, and whiskey taxes. Hofstadter, *Reflections, supra* (summarizing history of American riots from revolution through reconstruction); Hofstadter & Wallace, *Political Violence – Whiskey Rebellion, 1794, in America Violence*; Walker & Katz, *The Police in America* 29 (2013) (“Frequently, mobs drove out of town or even killed people whom they did not like.”). Rioting has long been a fact of American life.

### 3. Conflicts With Indians.

Justice Kennedy observed that the colonial settler had “to defend himself and his family against hostile Indian tribes” in addition to “outlaws, wolves and bears . . . and things like that.” Tr. of Oral Arg. at 8, *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290) (Kennedy, J.). For those living on or near the expanding western frontier “[f]oremost among [their] worries were Indians, and for

very good reason.” Palmer, *The Way of the Fox: American Strategy in the War for America, 1775-1783* 87 (1975).

Of course, not all violent interactions with Indians were defensive in nature. *See, e.g.*, Feldman, *The Three Lives of James Madison: Genius, Partisan, President* 14–16 (2017) (describing series of Indian raids on settlers in retaliation for prior attacks as Virginians moved west). “From the Piedmont, 350 miles distant, Madison believed he was witnessing a war for survival,” observing that the Indians were “determined in the extirpation of the inhabitants, and no longer leave them the alternative of death or captivity.” *Id.* at 15.

In short, rural colonists—it was a largely agrarian society after all—faced a constant threat of violence from Indian neighbors that necessitated armed defense outside the home. Palmer, at 87 (“Quite beyond argument is the very real anxiety American leaders felt and the constantly tormenting sense of danger those citizens unfortunate enough to live within reach of marauding war parties experienced.”); Halbrook, at 132 (“It is difficult for modern Americans to appreciate the acute, consuming fear of ‘Indian raids’ held by early Americans.”).

## **B. Criminal Law Enforcement In The Founding Era Did Little To Prevent Or Deter Crime.**

Colonists could not pick up a phone and call the police (or anyone else) for help when they faced these violent threats. Even if they had means of communication, there was little semblance of organized law enforcement.

For a colonial sheriff—the “most important law enforcement official” in colonial America—law enforcement was just one of his jobs; he was also responsible for “collecting taxes, supervising elections, maintaining bridges and roads, and other miscellaneous duties.” Walker & Katz, at 28. Since sheriffs were paid by fees for their services, “they had greater incentive to work on their civil responsibilities, which offered more certain payment, than on criminal law enforcement.” *Id.*

Sheriffs’ law enforcement was supported by “the watch,” who “patrolled the city to guard against fires, crime, and disorder.” *Id.* “Following the English tradition, all adult males were expected to serve as watchmen,” but many “tried to avoid this duty, either by outright evasion or by paying others to serve in their place.” *Id.*

No wonder historians conclude that “Colonial law enforcement was inefficient, corrupt, and affected by political interference.” *Id.* They had “little capacity to prevent crime” and minimal resources to investigate the crimes that were actually reported. *Id.* As a result, the colonists were not only their own first responders, they were also largely responsible for maintaining social order. *Id.*

### C. Surrounded By This Violence, The Founders Understood The Fragility Of Civilization.

As the Founders surveyed the patina of civilization in colonial society—regularly being ruptured by violence and disorder—it was not far removed from a Hobbesian state of nature. Indeed, *The Federalist* is replete with Hobbesian reflections on man’s essential nature. *See generally* McDowell, *Private Conscience and Public Order: Hobbes & The Federalist*, 25 *Polity* 421 (1993).<sup>2</sup>

In his seminal *Federalist* No. 10, devoted to “The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection,” Madison wrote that “[t]he latent causes of faction are . . . sown into the nature of man”: “So strong is this propensity of mankind to fall into mutual animosities that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite

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<sup>2</sup> Professor McDowell notes that some Founders professed to disavow Hobbes, “[y]et there is evidence aplenty that Hobbes’s political philosophy entered the American constitutional calculus not directly but through the writings of others who, as they distanced themselves publicly from ‘Hobbism,’ were discreetly weaving strands of his philosophy into their less noxious fabrics of thought.” McDowell, *supra*, at 424. “The core problem Hobbes addressed was that of private conscience in a social order,” and the Founders’ “need to reconcile private conscience with the public good remained *the* problem in a popular form of government where an absolute monarch is conspicuously absent.” *Id.* at 426 (emphasis in original). “[N]ot only did the authors of *The Federalist* accept Hobbes’s assessment of the problem, they also ultimately accepted his solution”: “in America the written Constitution, duly ratified by the people, was the embodiment of their consent . . . .” *Id.* at 425, 426–27.

their most violent conflicts.” The Federalist No. 10; *cf.* Hofstadter & Wallace, Political Violence – Bloody Election in Philadelphia, 1742, *in* American Violence (“In eighteenth- and nineteenth-century American elections, one faction often tried violently to prevent another from voting.”). Hamilton warned that only a man “far gone in Utopian speculations [could] seriously doubt” that a disunited group of States could avoid war with each other given that “men are ambitious, vindictive, and rapacious.” The Federalist No. 6.<sup>3</sup>

The Founders understood that, even if the written Constitution delivered the benefits they hoped for, man’s essential nature meant that civilization was inherently fragile and prone to violent flareups. All the more so given the federal system of shared sovereignty: brief or prolonged episodes of violence and mayhem in response to local conditions were inevitable.

Thus “the right of the people to keep and bear Arms, shall not be infringed” by any sovereign. U.S. Const., Amend. II. With this backdrop, it is folly to even suggest that the Founders believed the people ceded to any government official—let alone a local sheriff<sup>4</sup>—the power to

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<sup>3</sup> Hamilton, it is worth noting here, perished in a duel with fellow Founder Aaron Burr in 1804.

<sup>4</sup> *Cf. Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021) (rejecting Second Amendment challenge to state law requiring citizens to demonstrate an “urgency or need” to the chief of police to carry a firearm); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017) (striking down District of Columbia law requiring citizens to show a “good reason” or “special need” to police chief to qualify for a concealed carry

condition the right to bear arms on some sort of heightened showing of “cause” or “need.”

**D. Americans Have Remained Their Own First Responders Despite The Evolution Of Policing Over The Past 200 Years.**

No local law enforcement regime has taken the place of the people as their own first responders. To be sure, the nature of policing has changed and taken on a more expansive and effective role in society than at the founding. But police forces are not—and have never been—designed or equipped to assume the primary role of preventing crime. In a Nation that values liberty, that role will always fall first to the people.

Many cities developed the so-called “modern police force” in partial response to waves of riots throughout the Nation in the 1830s. Walker & Katz, at 29 (describing violent clashes among ethnic groups, economic opponents, and competing sides of moral issues); Hofstadter, *Reflections, supra* (“American authorities discovered only in the frequent riots of the 1830’s how lightly policed their cities were”). These forces “were basically expanded versions of the existing watch system,” and officers generally did not even carry weapons until the late 1800s, in response to a

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license); *Peruta v. Cty. of San Diego*, 824 F.3d 919 (9th Cir. 2016) (upholding state law requiring “good cause” showing to county sheriff for issuance of a concealed carry permit); *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013) (upholding state law requiring citizens to demonstrate a “justifiable need” to chief police officer or state superintendent of police to carry a handgun).

new wave of crime and violence. Walker & Katz, at 30 (noting that “[p]olitics influenced every aspect of American policing” in the 1800s and “[i]nefficiency, corruption, and lack of professionalism were the chief results”).

This new brand of policing was utterly helpless to combat the wave of violence that exploded in the 1840s and 1850s. Professor Roth submits that this violence “occurred because Americans could not coalesce into a nation. . . . [T]he patriotic faith in government that most Americans had felt so strongly after the Revolution was undermined by anger and distrust. Disillusioned by the course the nation was taking, people felt increasingly alienated from both their government and their neighbors.” Roth, at 300.

And it hardly needs to be said that the Klan and other Southern whites perpetrated atrocities against blacks for decades after the Civil War, and the police did little to deter the violence. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742, 770–72 (2010). Disarming blacks was a central element of these violent schemes. *See generally* Johnson, *Negroes and the Gun: The Black Tradition of Arms* (2014).<sup>5</sup>

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<sup>5</sup> Professor Johnson identifies several incidents where law enforcement personnel played a role in Klan violence in the South. Johnson, *Negroes and the Gun*, at 21; 94; 96; 102; 223; 271; 277–78.

The era of “Professional policing” that began in the early 1900s ushered in a period of more effective patrol—including the use of automobiles and radio communications by the 1930s—all with the goal of “creating ‘an impression of omnipresence’” to deter crime and “maintain *feelings* of public safety.” Walker & Katz, at 200 (emphasis added).

But these advancements, while a positive social good, have created an “enduring myth[] that police are primarily crime fighters.” *Id.* at 4. “Only about one-third of a patrol officer’s activities are devoted to criminal law enforcement.” *Id.* For the roughly three percent of officers specifically assigned to “crime prevention” units, their primary duties include “meeting with citizens to explain how they can protect themselves against crime; working alongside neighborhood groups to establish and maintain neighborhood watch groups; and educating youth about drugs, crime, and gangs.” *Id.* at 271.

In short, police are not guarantors of safety.<sup>6</sup> Rather, they are a distant second to the people themselves when it comes to capacity for preventing crime. This reality surely underlies the Court’s consistent refusal to recognize a right to protection from law enforcement. *See, e.g., DeShaney v. Winnebago Cty. Dept. of Social Servs.*, 489

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<sup>6</sup> For example, police response times are not immediate; Bureau of Justice statistics reveal that, when violent crimes are reported, police are able to arrive on the scene within five minutes less than 30% of the time. U.S. Dept. of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States—Statistical Tables*, Table 107 (May 2011).

U.S. 189 (1989); *Castle Rock v. Gonzales*, 545 U.S. 748 (2005).<sup>7</sup>

It can be uncomfortable to confront the fragility of American civilization. *Cf.* Hofstadter, Reflections, *supra* (“What is most exceptional about the Americans [when it comes to violence] is not the voluminous record of their violence, but their extraordinary ability, in the face of that record, to persuade themselves that they are among the

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<sup>7</sup> International data provide no basis for thinking that the Second Amendment itself makes America particularly dangerous. Latin American countries, for example, have among the deadliest homicide and firearm homicide rates in the world, all while stringently restricting the ability of people to own or carry firearms. Luhnnow, *Latin America Is the Murder Capital of the World*, Wall. St. J., Sept. 20, 2018; Gacs, et al., *Explainer: Gun Laws in Latin America’s Six Largest Economies*, Americas Society/Council of the Americas, March 5, 2019. Before 2019, for example, Brazil had extremely restrictive gun control laws—alongside some of the highest homicide rates in the world. Marcello & Stargardter, *Bolsonaro loosens gun laws in murder-ridden Brazil*, Reuters, Jan. 15, 2019. Despite such gun control, Brazil’s rate of firearm homicide is 19.34 per 100,000 people (compared to the U.S. national average of 3.85), and its rate of general homicide is 30.5 per 100,000 people (compared to the U.S. national average of 5.0). *See* Luhnnow, *supra*; United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* 17 & 57 (2019). Likewise, “[t]he only gun shop in all of Mexico is behind a fortress-like wall on a heavily guarded military base,” yet its homicide rate is 29 per 100,000. Linthicum, *There is only one gun store in all of Mexico. So why is gun violence soaring?*, L.A. Times, May 24, 2018; The World Bank, *Intentional homicides (per 100,000 people) – Mexico*. Similarly, South Africa strictly regulates private gun ownership, and its murder rate of 36 exceeds Mexico and Brazil. Panchia, *Fire And Fury: The Debate Around Gun Ownership In South Africa*, Forbes, June 18, 2021; *see also* *Global Study on Homicide*, *supra*, at 25.

best-behaved and best-regulated of peoples.”). But just as the Founders reflected soberly about man’s essential nature, so should the Court.

## **II. The Need For Armed Self-Defense Remains Especially Acute Today.**

The fragility of American civilization has been on full display since the summer of 2020. The Nation is suffering a new period of violence and chaos. This time, however, a variety of radical political movements are advancing policies that seem designed to sow further violence and chaos. In response, Americans are relying on their firearms for self-defense—just as they have for centuries.

### **A. The Events And Aftermath Of 2020 Reinforce That The Veneer Of Civilization Remains Thin, And Violence Can Surge At A Moment’s Notice.**

During the late spring and early summer of 2020, protests erupted around the Nation, with many cities facing violent unrest. *See, e.g., Fiery Clashes Between Police and Protesters*, N.Y. Times, May 30, 2020; Scruggs, *Protests explode across the country, police declare riots in Seattle, Portland*, Wash. Post, July 26, 2020; Craig, *U.S. political divide becomes increasingly violent, rattling activists and police*, Wash. Post, Aug. 27, 2020. Throughout the country, demonstrations were punctuated by violent outbursts, with vandals targeting government buildings,<sup>8</sup>

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<sup>8</sup> *See, e.g., Peters, Weekend of Violent Protests Leaves Trail of Damage for Feds*, Gov. Exec., May 31, 2020; Ferrara, *5 charged with*

looters ransacking businesses,<sup>9</sup> and people confronting one another in escalating physical violence.<sup>10</sup>

Police forces are simply not constituted to deal with mass unrest. The point was punctuated in Seattle, for example, where organizers laid siege to several blocks and claimed to establish an “autonomous zone” free from governmental (and police) interference. Bush, *Welcome to the Capitol Hill Autonomous Zone, where Seattle protesters gather without police*, Seattle Times, June 10, 2020. Within weeks, the so-called Capitol Hill Autonomous Zone was the site of several shootings, including a fatal shooting of a 19-year-old, and a separate shooting that left a 16-year-old boy dead and a 14-year-old boy hospitalized. Brownstone et. al., *Shooting at Seattle’s CHOP protest site kills 16-year-old boy, leaves 14-year-old seriously injured*, Seattle Times, June 29, 2020. And in Portland, protests devolved into nightly violence and vandalism that stretched well over one hundred days, and that continues in 2021. Baker, *On Portland’s Streets, Chaotic Scenes Continue Tradition of Protest*, N.Y. Times, July 21, 2020;

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*damaging federal buildings during BLM protest*, Las Vegas Rev. J., Sept. 17, 2020.

<sup>9</sup> See, e.g., Zumbach, et al., *Downtown businesses on edge after looting, vandalism. ‘I feel like we are under attack.’*, Chicago Tribune, Aug. 10, 2020; Baxter & Vives, *A stunned downtown L.A. surveys damage from looting, vandalism*, L.A. Times, May 30, 2020; Kingson, *Exclusive: \$1 billion-plus riot damage is most expensive in insurance history*, Axios, Sept. 16, 2020.

<sup>10</sup> McEvoy, *14 Days Of Protests, 19 Dead*, Forbes, June 8, 2020.

Villegas, *Portland mayor urges residents to ‘unmask’ rioters after weeks of violence*, Wash. Post, Apr. 25, 2021. This has included multiple assaults on the federal courthouse. Bogel-Burroughs, *Portland Clashes Converge on Courthouse Named for an Antiwar Republican*, N.Y. Times, July 22, 2020; Batchelor, *Portland Protesters Smash Courthouse Doors, Set Fire to U.S. Flag*, Newsweek, March 12, 2021. And the violence and unrest were not confined to urban commercial areas—it spread to the suburbs, by design. Bowles, *Some Protests Against Police Brutality Take a More Confrontational Approach*, N.Y. Times, Sept. 21, 2020.

Amid this unrest there was a surge in violent crime around the nation, most notably an historic increase in homicide rates. While the FBI has not yet released its final crime data for 2020, expert analysis puts the year-over-year murder-rate increase somewhere between 25 and 34 percent—by far the largest increase in the past 60 years. Lopez, *2020’s Historic Surge in Murders, Explained*, Vox, March 25, 2021; Arthur & Asher, *What Drove the Historically Large Murder Spike in 2020?*, The Intercept, Feb. 21, 2021. As in prior periods in our history, a breakdown in social order begets violent crime.

And the data for the first quarter of 2021 confirm that this disturbing trend has not abated. Rosenfeld & Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities* 5 (Council on Crim. Just. May 2021) (“the number of homicides during the first quarter of 2021 was 24% greater than during the same period in 2020 and 49% greater than the same period in 2019”).

In late 2020, Professor Cassell analyzed the dramatic spike in homicides and shootings in major U.S. cities and concluded that the increases could be traced to two factors. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The “Minneapolis Effect” and the Decline in Proactive Policing*, 33 Fed. Sentencing Rep. 83 (2020) (“The Minneapolis Effect”). First, law enforcement agencies diverted (or “redeployed”) resources from normal policing to respond to demonstrations. Second, law enforcement reduced so-called “proactive” or preventative policing.<sup>11</sup> Professor Cassell explains:

Following George Floyd’s death on May 25, anti-police protests took place in more than 400 cities across the country. Indeed, the recent protests are some of the largest and most widespread in American history. An estimated 15 million to 26 million Americans have taken to the streets to protest police violence and advocate for Black lives. While details no doubt vary in particular cities, the overarching fact is that such extensive protests initially required police officers in many urban areas to significantly divert their attention to those protests. And in the aftermath of protests against aggressive police tactics, officers became increasingly hesitant to engage in proactive policing. The predictable result: gun violence has

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<sup>11</sup> Professor Cassell describes “proactive policing” as “self-initiated policing methods designed to reduce crime by using preventive strategies,” and provides as examples “street stops [and] anti-gun patrols.” Cassell, *The Minneapolis Effect*, *supra*, at 97.

abruptly and starkly increased across the country, particularly in urban areas where the protests were concentrated.

*Id.* at 113.

In 2021, just as in every period in which civilizations have attempted to organize themselves, the threat of violence and disorder lurks not far beneath the surface. Societal unrest can quickly overwhelm our expectations of modern civilization and upend the public peace. As the Founders understood, human nature is such that we will inevitably endure periods of violence and unrest.

**B. Violence Is Also Increasing In Natural Response To Political Movements Aimed At Dismantling Traditional Law Enforcement Systems.**

When a widespread group of elected and appointed officials charged with maintaining public safety choose to not enforce criminal law, crime of all sorts surges and a breakdown of law and order follows.

Widespread calls to “defund” the police spread across the country in 2020, and many cities did just that. The result has been rising crime rates with jurisdictions scrambling to backtrack and restore funding. Elinson, et al., *Cities Reverse Defunding the Police Amid Rising Crime*, Wall St. J., May 26, 2021; Nickeas, et al., *Defund the police encounters resistance as violent crime spikes*, May 25, 2021; Sullivan, et al., *Democrats pushed hard last year to rein in police. A rise in homicides is prompting a shift.*, Wash. Post, June 26, 2021.

Making matters worse, less support for—and outright hostility towards—police has caused officers to leave service in staggering numbers. According to a nationwide survey conducted by the New York Times, “retirements were up by 45 percent and resignations by 18 percent,” from April 2020 to April 2021. MacFarquhar, *Departures of Police Officers Accelerated During a Year of Protests*, N.Y. Times, June 11, 2021; *see also* McEvoy, *Historic Police Exodus In Cities Most Impacted By Racial Justice Unrest, New Data Shows*, Forbes, Apr. 29, 2021; MacFarquhar, *Why Police Have Been Quitting in Doves in the Last Year*, N.Y. Times, June 24, 2021.<sup>12</sup>

Local policies (and local politicians) have exacerbated rising crime in their jurisdiction by pledging not to prosecute certain crimes. The predictable result has been a surge in lawlessness. San Francisco, for example, has seen a substantial increase in home burglaries and car break-

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<sup>12</sup> Examples from around the country abound. In New York, a \$1 billion budget cut led to soaring retirement rates even before the pandemic, which was only exacerbated by the events of 2020. Parascandola, *‘Blue flight’ retirements thinning NYPD ranks to levels not seen in nearly a decade*, N.Y. Daily News, Oct. 8, 2020. In Chicago, 560 officers retired in 2020, a 15 percent increase over 2019 retirements—a year in which retirements had already risen by 30 percent. Main & Spielman, *In Chicago, other cities, more cops are calling it quits, retiring amid anti-police backlash*, Chicago Sun Times, Jan. 15, 2021. And in 2020, over 100 officers resigned or retired from the Seattle Police Department; according to exit interviews, fears for safety amid lack of support from the city’s “socialist” city council was the leading cause of departure. Nester, *Ex-Seattle Police Officers Cite ‘Socialist’ City Council as Reason for Resignation*, Wash. Free Beacon, Oct. 20, 2020.

ins. Simon, *San Francisco confronts surging crime, drugs and homelessness as it tries to bounce back from Covid-19*, CNN, June 23, 2021; Choi, *Fears Arise As Burglaries In San Francisco Soar*, CBS SF Bay Area, May 24, 2021; Cabanatuan, *Car break-ins are up as tourism returns to San Francisco*, S.F. Chronicle, June 27, 2021. In response to rampant organized theft, nationwide retailers have closed locations and reduced hours in stores that remain open. Levenson & Mossburg, *'This has been out of control.' San Francisco's chain drug stores have a shoplifting problem*, CNN, June 17, 2021<sup>13</sup>; Melendrez, *Target, Walgreens make drastic changes due to increase in San Francisco thefts*, ABC 7 News, July 2, 2021.<sup>14</sup>

San Francisco is not alone. In St. Louis, homicides have soared while the pace of prosecution has slowed to the point that the Governor proposed having the State's

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<sup>13</sup> In fact, one shoplifter was caught on video by a CNN reporter clearing out shelves at a Walgreens while several bystanders and a store security guard watched. Levenson & Mossburg, *This has been out of control.*, *supra*. This brings to mind former Baltimore Mayor Stephanie Rawlings-Blake who, during the 2015 demonstrations prompted by the death of Freddie Gray, endorsed protesters' destruction of property: "I . . . instructed [the police] to do everything that they could to make sure that the protesters were able to exercise their right to free speech," and "we . . . gave those who wished to destroy space to do that . . ." CBS Baltimore, *Baltimore Mayor: 'Gave Those Who Wished to Destroy Space to Do That'*, Apr. 25, 2015.

<sup>14</sup> Across the San Francisco Bay, a television news crew was held up by armed assailants outside of Oakland City Hall while interviewing the director of the city's violence prevention department. Hernandez, *Bay Area TV news crew held up in armed robbery attempt during interview*, L.A. Times, June 30, 2021.

attorney general's office step in to handle murder cases. Moore, *Gov. Parson introduces proposal allowing AG to prosecute murders in St. Louis*, Kansas City Star, Aug. 10, 2020. New York, too, has seen a surge in crime, and a significant decline in clearance rates. Chapman, *New York City Police Solve Fewer Crimes in Pandemic*, Wall St. J., Dec. 2, 2020; Gay, Opinion, *Why Did the N.Y.P.D. Solve Fewer Crimes Last Year?*, N.Y. Times, Jan. 29, 2021.

None of this is by accident. Radical prosecutors have usurped the rule of law by imposing a number of “reforms” that have added fuel to the fire, including “decriminalizing” certain crimes by refusing to prosecute them, and eliminating cash bail. Stimson & Smith, *“Progressive” Prosecutors Sabotage the Rule of Law, Raise Crime Rates, and Ignore Victims*, The Heritage Found., Oct. 29, 2020. These policy choices have had consequences separate and apart from increasing crime: Similar to police, there is evidence that prosecutors are now leaving in significant numbers. Hogan, *The Prosecutor Exodus*, City Journal, July 9, 2021.

Prosecutors across the United States are leaving their jobs. In the years since progressive prosecutor Kim Gardner took over as St. Louis Circuit Attorney, turnover in her office exceeded 100 percent: more prosecutors resigned or were fired during this time than were in the entire office when Gardner was elected. In cities, suburban counties, and rural jurisdictions, elected chief prosecutors and line attorneys alike are stepping away from jobs they once loved. This brain drain of experienced prosecutors has gone overlooked

but will have dire long-term effects on the administration of justice.

*Id.*

In short, Americans now observe key law enforcement institutions being weakened in a time of rising violence and disorder. They see for themselves that they are responsible for their own security.

**C. The People Are Responding To These Conditions By Exercising Their Second Amendment Rights To Keep And Bear Arms.**

Just as criminals respond to changing circumstances, so do the law-abiding. There has been a surge in gun ownership, particularly among first-time firearm purchasers, and among women and minorities. According to the New York Times,

Not only were people who already had guns buying more, but people who had never owned one were buying them too. . . . [A]bout a fifth of all Americans who bought guns last year [in 2020] were first-time gun owners. And the data, which has not been previously released, showed that new owners were less likely than usual to be male and white. Half were women, a fifth were Black and a fifth were Hispanic.

Tavernise, *An Arms Race in America: Gun Buying Spiked During the Pandemic. It's Still Up.*, N.Y. Times, May 29, 2021; see also Nieves & Waldrop, *America is on a gun-buying spree. Here's what is driving the surge*, CNN, June 4, 2021.

Included in the ranks of first-time firearm owners are many who previously considered themselves “anti-gun,” but who changed course while witnessing the recent chaos. Fisher, et al., *‘Fear on top of fear’: Why anti-gun Americans joined the wave of new gun owners*, Wash. Post, July 10, 2021. Americans seeking to exercise their Second Amendment rights confronted a reality—like the colonists, they realize they are their own first responders—that crossed political, racial, ethnic, and gender boundaries. The Washington Post profiled one first-time buyer, who was a social worker from Newark:

A lifelong Democrat, she got a gun permit early in the Trump administration but didn’t buy her first gun until last summer, when the killing of Floyd and the protests that spread across the nation made Thomas feel like the country was spiraling out of control, “like the world was in an apocalypse.”

*Id.*

This, of course, is precisely what the Second Amendment secures: The right of the people to keep and bear arms for self-defense in case of conflict or confrontation. And the security at the core of that right is particularly acute where the veneer of civilization gives way.

## CONCLUSION

The Court should reverse the judgment below and confirm that the Second Amendment protects the people’s right to carry firearms for their self-defense outside the home.

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Respectfully submitted.

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