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THE INCOMPLETE RECORD IN NEW YORK STATE RIFLE & PISTOL ASSOCIATION V. CITY OF NEW YORK

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ABSTRACT

A Second Amendment case now pending at the Supreme Court, *New York State Rifle & Pistol Ass'n v. City of New York*, tests the extent to which New York City may limit the movement of guns along city streets. The briefing in that case is, however, incomplete. Second Amendment jurisprudence calls for an examination of historical analogues to the firearms regulation at issue. Here, the New York State Rifle and Pistol Association asserted that there are none. This Article identifies numerous historical analogues to the City's transportation restrictions, most of which were not identified in the briefing before the Court.

INTRODUCTION

The Supreme Court heard oral argument in *New York State Rifle & Pistol Ass'n v. City of New York* on December 2, 2019. The case tests the extent to which New York City may limit the movement of guns along city streets.

As the oral argument indicates, if the Supreme Court reaches the merits of the Second Amendment challenge,¹ the Court will look at whether there are

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1. New York argued that the case is moot because the City has repealed the relevant provisions of law and the state has enacted a law preventing localities from enacting similar regulations. See Suggestion of Mootness at 1, *N.Y. State Rifle & Pistol Ass'n v. City of New York (NYSRPA)*, No. 18-280 (U.S. July 22, 2019), 2019 WL 3451573, at *1. Five Democratic Senators filed an amicus brief arguing that the matter is moot and that public confidence in the Court would be eroded if the Court reached the merits. See Brief of Senators Sheldon Whitehouse et al. as Amici Curiae in Support of Respondents at 1-3, *NYSRPA*, No. 18-280 (U.S. Aug. 12, 2019), 2019 WL 3814388, at *1-3. The New York State Rifle & Pistol Association (NYSRPA) responded that the case is not moot because the City acted to "frustrate this Court's review" and because a change in the law is not equivalent to an injunction prohibiting enforcement of any future transportation ban. See Response to

historical antecedents to the firearms transportation regulation at issue.² Justice Kavanaugh has written that “history and tradition show that a variety of gun regulations have coexisted with the Second Amendment right and are consistent with that right.”³ Similarly, in *District of Columbia v. Heller*, the Supreme Court said that “longstanding” firearms regulations—those with a significant historical pedigree—are “presumptively lawful” and generally fall beyond the scope of the Second Amendment.⁴ As examples of regulations with a strong historical pedigree, the *Heller* Court mentioned prohibitions on carrying concealed weapons and restrictions on the possession of firearms by felons.⁵

Before the Court, the New York State Rifle and Pistol Association (NYSRPA) strenuously denied that any “history and tradition” support New York City’s firearms transportation restrictions. NYSRPA asserted in its briefing that “there is no historical analog to the City’s [regulatory] regime” and that “while a few jurisdictions required a license to use designated ranges for target practice at the founding, none appears to have had restrictions on transporting a firearm either outside city limits for target practice or within the city for other purposes.”⁶ NYSRPA repeated its same “no historical analog” assertion at oral argument⁷—and so did the Office of the Solicitor General, participating in the argument as *amicus curiae*.⁸

In response, New York City identified a robust tradition of “regulating the possession and use of firearms,” including historical restrictions on the discharge of firearms in public areas.⁹ The City also noted various restrictions on the “storage and transport of gunpowder.”¹⁰ But the City did not provide a full accounting of the extent to which jurisdictions have historically restricted the transportation of firearms.¹¹

Respondents’ Suggestion of Mootness at 1, NYSRPA, No. 18-280 (U.S. Aug. 1, 2019), 2019 WL 3545853, at *1. The U.S. Solicitor General, weighing in at the Court’s request, disagreed with NYSRPA’s mootness arguments but contended that a live controversy still exists because NYSRPA could amend its complaint and seek damages. See Letter from Noel J. Francisco, Solicitor Gen., Office of the Solicitor Gen., to Scott S. Harris, Clerk, Supreme Court of the U.S. (Nov. 15, 2019), https://www.supremecourt.gov/DocketPDF/18/18-280/122653/20191115171839625_Letter%2018-280%20%20views.pdf [<https://perma.cc/YCN9-DWZG>].

2. Transcript of Oral Argument at 57, NYSRPA, No. 18-280 (U.S. Dec. 2, 2019), 2019 WL 6467836, at *57 (Justice Alito question about historical record); *id.* at 60 (Justice Breyer question about historical record).

3. *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

4. *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008).

5. See *id.* at 626–28.

6. Brief for Petitioners at 27–28, NYSRPA, No. 18-280 (U.S. May 7, 2019), 2019 WL 2068598, at *27–28 (citation omitted).

7. Transcript of Oral Argument, *supra* note 2, at 19.

8. *Id.* at 33.

9. Brief of Respondents at 4, NYSRPA, No. 18-280 (U.S. Aug. 5, 2019), 2019 WL 3713689, at *4 (emphasis added) (quoting *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 84 (2d Cir. 2012)); see *id.* at 20–23, 41 n.35.

10. *Id.* at 4, 34 n.28.

11. Cf. *id.* at 28 (“Petitioners object that the City has not identified an exact historical analogue for its law. But . . . *Heller* does not require such a direct line from historical precedent.” (citations omitted)). The City also pointed to laws in effect in 1986 as well as a handful of other twentieth-

This Article demonstrates the surprising degree to which the historical record undermines the assertions of NYSRPA and the Office of the Solicitor General. As Part I demonstrates, there is a robust tradition within the United States of restricting the transportation of firearms. Throughout the nineteenth century, numerous jurisdictions placed stringent limits on firearms transportation, and others, like New York City, permitted firearms transportation for some purposes but restricted it for others. Part II discusses New York City's firearms transportation restrictions in more detail and demonstrates that they are in step with this long-standing tradition.

I. NUMEROUS JURISDICTIONS HAVE HISTORICALLY RESTRICTED THE TRANSPORTATION OF FIREARMS

Numerous enactments disprove NYSRPA's assertions that "there is no historical analog to the City's regime" and that no jurisdiction "appears to have had restrictions on transporting a firearm . . . within the city."¹² In truth, states and cities alike have protected public safety by preventing or limiting firearms transportation. Many of these restrictions were enacted shortly after the ratification of the Fourteenth Amendment, which is particularly notable for those interested in Americans' understanding of the Second Amendment at or near the time it began to apply to the states.¹³

These historical transportation restrictions may have been overlooked because most used the verb "carry" rather than "transport." But as the Supreme Court itself has explained, the very "origin of the word 'carries'" makes it clear that "'carry' includes conveyance in a vehicle"; thus, "one may . . . 'carry a weapon' tied to the saddle of a horse or placed in a bag in a car."¹⁴ The language and structure of the statutes and ordinances collected below indicate that the provisions used "carry" in precisely this sense—to include carrying in a vehicle as well as about one's person. Indeed, jurisdictions with more limited goals would expressly restrict only the carrying of firearms "on or about one's person."¹⁵

century restrictions, but not the historical materials identified in this Article. See *id.* at 34–35 & nn.29–30.

12. Brief for Petitioners, *supra* note 6, at 27–28.

13. See, e.g., Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 87 n.18 (2013) ("[T]he focus of the original-meaning inquiry [should be] carried forward' to the Reconstruction era" as "it was the Fourteenth Amendment that made the Second applicable against states and cities." (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 702 (7th Cir. 2011))); Eric M. Ruben & Saul Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 YALE L.J. F. 121, 123 n.11, 134 (2015) (analyzing enactments during "the era of the Fourteenth Amendment" in alignment with scholars who view Americans' "understanding of the Second Amendment at the time of adoption of the Fourteenth Amendment" as a key interpretive issue).

14. *Muscarello v. United States*, 524 U.S. 125, 128, 130 (1998) (first citing BARNHART DICTIONARY OF ETYMOLOGY 146 (1988) (tracing the word from Latin "carum," which means "cart"); then citing 2 OXFORD ENGLISH DICTIONARY 919 (2d ed. 1989) (tracing the word from Old French "carier" and the late Latin "carricare," which meant to convey in a cart or other wheeled vehicle); and then citing OXFORD DICTIONARY OF ENGLISH ETYMOLOGY 148 (C.T. Onions ed., 1966) (same as Oxford English Dictionary)).

15. See, e.g., Deadly Weapons Act of 1869, ch. 32, § 1, 1869 N.M. Laws 312, 312 (declaring it "unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory" (emphasis added)); see also Brief of Respondents

As an initial example, the State of Texas began restricting the transportation of firearms in 1871, generally forbidding “any person in this state [from] carrying on or about his person, *saddle, or in his saddle bags*, any pistol.”¹⁶ In addition to paying a fine, violators had to “forfeit . . . the weapon or weapons” so carried.¹⁷ To soften this general prohibition, Texas made exceptions for “the carrying of arms on one’s own premises or place of business,” for “persons traveling,” and for those with a “reasonable ground for fearing an unlawful attack upon his person . . . so imminent and threatening as not to admit the arrest of the party about to make such attack.”¹⁸ The “traveling” exception was largely intended for persons journeying into or leaving Texas jurisdictions, not merely transporting firearms within a jurisdiction.¹⁹

Four Texas cities soon followed the state in enacting their own transportation restrictions. In 1887, Dallas barred “any person in the City of Dallas [from] carry[ing] on or about his person, *saddle, or in his saddle bags*, any pistol,” excepting only persons permitted by the 1871 state law to carry weapons.²⁰ Austin passed an identical ordinance in 1880,²¹ as did San Antonio²² and McKinney²³ in 1889.

Nashville, Tennessee, crafted its own regulatory regime in 1873, generally

Andrew Lipson & William G. Gross at 18–26, *Gould v. Lipson*, No. 18-1272 (U.S. May 6, 2019), 2019 WL 2068011, at *18–26 (collecting additional examples).

16. An Act to Regulate the Keeping and Bearing of Deadly Weapons, 12th Leg., R.S., ch. 34, § 1, 1871 Tex. Gen. Laws 25, 25 (emphasis added). Most historical transportation bans used the verb “carry,” raising the question of whether they reached the transportation of guns. However, that question was resolved by the Supreme Court in *Muscarello v. United States*, which, relying on the etymology of the word “carries,” concluded that the plain meaning of the word embraces transportation in a car, cart, or other wheeled vehicle. See sources cited *supra* note 14 and accompanying text.

17. § 1, 1871 Tex. Gen. Laws at 25. Later amendments also proscribed carrying a firearm in a “portfolio or purse.” See *Christian v. State*, 686 S.W.2d 930, 933 (Tex. Crim. App. 1985) (en banc). For the purposes of the statute, it made no “difference whether the pistol . . . was loaded or unloaded”; “[t]he law merely sa[id] that it is unlawful to carry a pistol.” *Steele v. State*, 166 S.W. 511, 511 (Tex. Crim. App. 1914); see also *English v. State*, 35 Tex. 473, 473 (1871) (affirming defendant’s conviction after he carried defunct pistol with the intent to “have it mended” prior to “go[ing] to a neighboring county”).

18. § 2, 1871 Tex. Gen. Laws at 25. Additional exceptions—e.g., for law enforcement officers—were either explicit or implicit in the Texas statute and other statutes (and are not detailed here).

19. See, e.g., *George v. State*, 234 S.W. 87, 89 (Tex. Crim. App. 1921) (“We do not believe one going with a crowd on an excursion and coming back the same day . . . could buckle on a pistol and hide himself from prosecution by claiming he was a traveler.”); *Irvin v. State*, 100 S.W. 779, 780 (Tex. Crim. App. 1907) (explaining that journeying between Roby, Texas, and Hamlin, Texas, would be a defense, but “if [the defendant] went about some business or pursuit disconnected with his journey, he would cease to be a traveler”). Texas courts thus recognized that a broader reading of “traveling” would render the general prohibition on “carrying” a nullity. See *Bain v. State*, 44 S.W. 518, 518 (Tex. Crim. App. 1898) (“If the liberal definition is given to the word ‘traveler,’ almost every person who goes from one place to another may be considered a traveler”; “[w]e do not understand . . . that it was the object of the lawmakers to place this liberal construction on the statute by the use of this term.”). The canons of interpretation militate against reading such an “exception [to] swallow” the general rule. *Warger v. Shauers*, 574 U.S. 40, 52 (2014); see also *Nyquist v. Mauclet*, 432 U.S. 1, 11 (1977) (same).

20. *Dall., Tex., An Ordinance Prohibiting and Punishing the Unlawful Carrying of Arms*, §§ 1–2 (July 18, 1887) (emphasis added).

21. *Austin, Tex., An Ordinance Prohibiting the Unlawful Carrying of Arms*, §§ 1–2 (May 4, 1880).

22. *SAN ANTONIO, TEX., REV. CRIM ORDINANCES* ch. 10, §§ 1–2 (1889).

23. *MCKINNEY, TEX., REV. CODE OF ORDINANCES* no. 20 (1899).

prohibiting persons from “carrying a pistol . . . or other deadly weapon” within the city.²⁴ But the Nashville ordinance clarified “that the provisions of th[e] act relating to carrying such deadly weapons . . . [do not] extend to the act of handling or moving such deadly weapons in any ordinary business way.”²⁵ The structure of this ordinance—namely, the exception for those “moving” weapons “in any ordinary business way”—demonstrates that the Nashville City Council thought “carrying” a weapon embraced moving or transporting it.

Shelby County, Tennessee, followed Nashville’s lead in 1881. An existing Shelby ordinance already prohibited “carry[ing] concealed *on or about the person* any pistol . . . or other deadly weapon.”²⁶ Then, on May 5, 1881, the following prohibition was added: “Or to carry any pistol . . . or any other deadly weapon of like character *at all or in any manner*.”²⁷ For this new and unqualified transportation prohibition, Shelby County carved out exceptions for those carrying weapons “in self-defense or while executing some law.”²⁸

Arizona municipalities similarly restricted the intra-jurisdictional transportation of firearms during the nineteenth century. In 1873, Tucson made it unlawful for any person to “wear or carry any . . . gun, pistol, . . . or other dangerous or deadly weapon . . . within the inhabited portions of the corporate limits of the Village of Tucson.”²⁹ And given the locution “wear *or carry*,”³⁰ the Tucson ban evidently proscribed transportation in a saddle, wagon, or other vehicle—not just wearing a gun on one’s hip.³¹

The most famous (or infamous) of these enactments was an 1881 Tombstone, Arizona ordinance that made it “unlawful to carry in the hand or upon the person, *or otherwise*, any deadly weapon within the limits of [the] city of Tombstone, without first obtaining a permit in writing for such purpose (and upon good cause shown by affidavit).”³² The Tombstone ordinance—which was the jurisdiction’s response to frequent outbursts of gun violence—required anyone arriving in Tombstone to immediately check a firearm at their “primary destination,” typically a hotel or a stable.³³ Once checked, a gun could be retrieved and carried away only “while leaving town.”³⁴ On October 16, 1881, Tombstone Police Chief

24. NASHVILLE, TENN., ORDINANCES ch. 108, § 1 (1881).

25. *Id.* § 5.

26. MEMPHIS, SHELBY COUNTY, TENN., ORDINANCES ch. XII, art. II, § 364-9 (1898) (emphasis added).

27. *Id.* (emphasis added).

28. *Id.*

29. Tucson, Ariz., Ordinance no. 9, § 1 (Jan. 28, 1873).

30. *Id.* (emphasis added).

31. *See, e.g., Corley v. United States*, 556 U.S. 303, 314 (2009) (“[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant” (internal quotation marks omitted) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004))).

32. JEFF GUINN, *THE LAST GUNFIGHT: THE REAL STORY OF THE SHOOTOUT AT THE O.K. CORRAL—AND HOW IT CHANGED THE AMERICAN WEST* 162 (2011) (emphasis added) (excerpting Tombstone, Ariz., Ordinance no. 9 (Apr. 19, 1881)).

33. *Id.*

34. *Id.* at 162–63; *see id.* at 198 (explaining that two cowboys later involved in the Shootout at the O.K. Corral, Tom McLaurry and Ike Clanton, “took a wagon into Tombstone” while “armed with pistols and Winchester rifles” and, at least initially, “obeyed Town Ordinance Number Nine by

Virgil Earp and Doc Holliday enforced this ordinance against the cowboys Frank McLaurry, Billy Claiborne, and Ike and Billy Clanton. When the officials noticed the cowboys' horses "had rifles hanging from their saddles," it precipitated the confrontation now known as the Shootout at the O.K. Corral.³⁵

In the wake of that shootout, the Territory of Arizona enacted its own prohibition on firearms transportation. The legislature made it unlawful for "any person within any settlement, town, village or city within this Territory [to] carry on or about his person, *saddle, or in his saddlebags*, any pistol," and violators had to both pay a fine and "forfeit . . . the weapon or weapons so carried."³⁶ Exceptions were made for "the carrying of arms on one's own premises or place of business," for "persons traveling," and for "one who has reasonable ground for fearing an unlawful attack . . . so imminent and threatening as not to admit of the arrest" of the would-be assailant.³⁷ Arizona, much like Tombstone, still "permitted [travelers] to carry arms within settlements or towns" for a short amount of time—the statute allotted "one-half hour" "after arriving . . . and while going out" of a given jurisdiction.³⁸ Outside of those time limits, however, persons in Arizona had "to divest themselves of their weapons."³⁹

Los Angeles, California, crafted its own transportation regime in 1878, decreeing that "no persons . . . shall wear *or carry* any . . . pistol . . . or other dangerous or deadly weapon, concealed or otherwise, within the corporate limits of [the] city."⁴⁰ As in Arizona, all such firearms had to instead be "deposit[ed] . . . in a place of safety."⁴¹ Exceptions were made for "persons actually traveling, and immediately passing through Los Angeles" and for "stranger[s]" who had entered the jurisdiction "wearing or carrying weapons" but who had yet to receive "warning of this ordinance."⁴²

In 1881, the State of Arkansas also made it illegal to "wear or carry in any manner whatever . . . any pistol of any kind."⁴³ Consistent with this broad prohibition, the Supreme Court of Arkansas would later uphold convictions on multiple occasions for those "carrying" firearms in a vehicle.⁴⁴ Outside of the

checking their guns, either [by leaving them at the stable] or the hotel").

35. *Id.* at 226.

36. An Act Defining and Punishing Certain Offenses Against the Public Peace, § 1, 1889 Ariz. Sess. Laws 30, 30 (emphasis added).

37. *Id.* § 2.

38. *Id.* § 6, 1889 Ariz. Sess. Laws at 31.

39. *Id.* § 7.

40. L.A., CAL., ORDINANCES AND RESOLUTIONS no. 36 (1878) (emphasis added).

41. *Id.*

42. *Id.* A decade later, Los Angeles explored a new ordinance that would have given the Board of Police Commissioners authority to grant armed carriage permits. See *The Election of Various Officers Deferred: The Salary of Chief of Police and Mounted Officers Raised—Good Citizens Will Soon Be Permitted to Carry Concealed Weapons*, L.A. TIMES, Dec. 28, 1887, at 2.

43. Act of Apr. 1, 1881, ch. XLV, § 1907, 1884 Ark. Acts 490, 490; see also *Lemmons v. State*, 20 S.W. 404, 405 n.1 (Ark. 1892).

44. See *Rowland v. State*, 499 S.W.2d 623, 623–24 (Ark. 1973) (affirming defendant's conviction for carrying a pistol after he "was arrested . . . for a traffic violation[,] [and] [i]n his truck the officers found two shotguns . . . and a loaded .38 caliber pistol"; it mattered not that "[a] chain was wrapped around the shotguns, passed through the trigger guard of the pistol, and secured with a padlock"); see also *Stephens v. City of Fort Smith*, 300 S.W.2d 14, 15 (Ark. 1957) (affirming conviction where defendant "carried the pistol in the glove compartment of his car" and noting:

general ban, statutory exceptions existed for persons “upon a journey or upon his own premises”⁴⁵ or for those carrying “any such pistol as is used in the army or navy of the United States” so long as such pistols were carried “uncovered and in [one’s] hand.”⁴⁶

Kansas jurisdictions enacted similar transportation restrictions during the 1880s. In 1881, the State of Kansas instructed city councils to “prohibit and punish the carrying of firearms, or other dangerous or deadly weapons, concealed or otherwise.”⁴⁷ Ordinances by various Kansas municipalities followed. For example, Galena, Kansas, decreed that same year that no person “shall carry a pistol . . . or other deadly weapon within the limits of this city.”⁴⁸ Similarly, in 1887, the City of Lakin, Kansas, banned travelers from “com[ing] inside” the city with a weapon in their possession without permission from the marshal.⁴⁹ Lakin also forbade individuals within city limits from having “in [their] possession or about [their] premises any gun, pistol or weapon of any kind” without “a permit to carry or keep said gun,” minor exceptions aside (e.g., for law enforcement officers or firearms salesmen).⁵⁰ Any “gun, pistol or other weapon found in the city limits contrary to . . . th[e] ordinance” would be confiscated.⁵¹

II. NEW YORK’S REGIME MIRRORS THESE HISTORICAL TRANSPORTATION RESTRICTIONS

The State of New York currently prohibits the transportation of firearms as part of a statute banning firearm “possession.”⁵² State law and city regulations

while some state statutes only prohibit carrying “on or about [one’s] person,” (quoting KY. REV. STAT. ANN. § 435.230 (repealed 1974)), “[Arkansas’s] statute prohibits carrying a pistol in any manner whatever” (internal quotation marks omitted in second quotation)).

45. § 1907, 1884 Ark. Acts at 490.

46. § 1908, 1884 Ark. Acts at 490; *see also, e.g.*, *Haile v. State*, 38 Ark. 564, 564–65 (1882) (upholding defendant’s conviction for “carry[ing] uncovered . . . but not uncovered and in his hand, . . . [an] army pistol”). The army-pistol exception was intended to accommodate what the Supreme Court of Arkansas conceived of as the “constitutional right to keep and bear arms for the[] common defense.” *Id.* at 565–66 (emphasis added); *see id.* at 566 (“The Legislature, by the law in question, has sought to steer between” (1) “afford[ing] citizens the means of prosecuting . . . their private broils . . . [by] inflict[ing] death upon his fellow-citizens, upon the occasion of any real or imaginary wrong”; and (2) “an infringement of [the citizenry’s] constitutional rights” which prevent “governments [from] disarming the subjects, so as to render them powerless against oppression.”).

47. An Act to Incorporate and Regulate Cities of the First Class, and to Repeal All Prior Acts Relating Thereto, ch. 18, art. 3, § 23, 1881 Kan. Sess. Laws 146, 146. This statutory “shall” was changed to “may” in 1901, at which point the statute simply “authorized a city council to prohibit and punish the carrying of firearms . . . within the city.” *State v. Bolin*, 436 P.2d 978, 979 (Kan. 1968) (emphasis added); *see also City of Salina v. Blaksley*, 83 P. 619, 620 (Kan. 1905).

48. Galena, Kan., Ordinance no. 2, § 6 (June 27, 1881). The Galena ordinance was an expansion of an 1877 enactment which only prohibited carrying “any concealed pistol” within city limits. *See Galena, Kan., Ordinance no. 3, § 6* (July 6, 1877).

49. Lakin, Kan., Ordinance no. 10: An Ordinance Relating to Guns, Pistols, and Other Weapons, § 1 (June 8, 1887).

50. *Id.* § 2.

51. *Id.* § 3.

52. *See N.Y. PENAL LAW* § 265.01(1) (McKinney 2019) (proscribing “possess[ing] any firearm”); *People v. Carney*, 795 N.Y.S.2d 10, 11 (N.Y. App. Div. 2005) (holding that defendant unlawfully “possessed” firearms “by transporting the weapons” in a vehicle).

then interact to create a number of exceptions to this general prohibition.⁵³

The State of New York has established two primary types of handgun licenses: a “premises” license (which permits firearms possession in a home) and a “carry” license (which more broadly allows firearms transportation outside the home).⁵⁴ Consistent with state law, New York City’s rules generally prohibit a “premises” licensee from removing a firearm from his or her residence and transporting it throughout the city.⁵⁵ This prohibition applies regardless of whether a gun is on or about the premises-licensee’s person or in a locked trunk in his or her vehicle.⁵⁶

Within New York City, there are various exceptions to the state’s general transportation prohibition. One exception broadly permits firearms transportation by persons with a state-issued “carry” license who also request and obtain a special permit from the city’s police commissioner.⁵⁷ Additional exceptions allow those with state-issued “premises” licenses to transport their firearms to: (1) an authorized small arms range or shooting club, or (2) a designated hunting area.⁵⁸ And, as of July 21, 2019, the city also permits premises licensees to transport their firearms to and from any “residence, or place of business, of the licensee where the licensee is authorized to possess such handgun.”⁵⁹ Similarly, by virtue of a state law that took effect on July 16, 2019, the city must permit premises licensees to transport their weapons from any location where they may lawfully possess firearms to “any other location where [they are] lawfully authorized to have and possess” them.⁶⁰

This kind of regime—a general ban on firearms possession and transportation coupled with carefully drawn exceptions—is firmly within the United States’ “history and tradition.”⁶¹ Part I described fourteen jurisdictions that had established a general ban on firearms transportation more than a century ago. Many of these bans, like New York City’s today, had carefully drawn exceptions.⁶² For example, Tombstone, Arizona, and Lakin, Kansas, both had exceptions akin to those found in New York law, which allowed firearms transportation with the permission of law enforcement officials. And many other jurisdictions—Los Angeles, California; the States of Arkansas and Texas; numerous cities within Texas; and the Territory of Arizona—carved out analogous exceptions for hunters or for those traveling or journeying to other jurisdictions where they could lawfully possess firearms.

The assertions made by NYSRPA and the Office of the Solicitor General before

53. See N.Y. PENAL LAW § 265.20; N.Y.C., N.Y., RULES OF THE CITY OF N.Y. tit. 38, § 5-23(a) (2019) (amended 2019).

54. See N.Y. PENAL LAW § 400.00(2)(a), (f).

55. N.Y.C., N.Y., RULES OF THE CITY OF N.Y. tit. 38, § 5-23(a)(1).

56. See *id.* § 5-23(a).

57. See N.Y. PENAL LAW § 400.00(6).

58. N.Y.C., N.Y., RULES OF THE CITY OF N.Y. tit. 38, § 5-23(a)(3)–(4).

59. Suggestion of Mootness, *supra* note 1, at app. 8a–9a (excerpting updated version of N.Y.C., N.Y., RULES OF THE CITY OF N.Y. tit. 38, § 5-23(a)(3)(i)).

60. *Id.* at app. 14a (excerpting recent amendment to N.Y. PENAL LAW § 400.00(6)).

61. See *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

62. See *supra* Part I.

the Supreme Court that there is “no historical analog” to New York City’s firearms rules are mistaken. The restrictions on the movement of firearms within city limits find ample precedent in historical state and city efforts to regulate weapons transportation. While it is beyond the scope of this Article to identify all such precedents, the foregoing examples demonstrate that the historical record presented in the briefing by NYSRPA and the City of New York is significantly incomplete.