No. 12-17808

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

BRIEF OF NEW JERSEY, CONNECTICUT, ILLINOIS, MARYLAND, MASSACHUSETTS, NEW YORK, OREGON, RHODE ISLAND, VIRGINIA, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF APPELLEES AND AFFIRMANCE

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IDENTITY OF AMICI CURIAE

Amici States New Jersey, Connecticut, Illinois, Maryland, Massachusetts, New York, Oregon, Rhode Island, Virginia, and the District of Columbia have an interest in defending their ability to protect their residents from gun violence, and the Second Amendment gives them ample latitude to do so. In light of the available evidence showing that "right-to-carry" laws—which permit the public carrying of firearms without a license—substantially increase gun-related violence in the public sphere, many of the amici have required applicants for public-carry licenses in their States to show an individualized safety need to carry such a weapon in public. The panel's decision in this case second-guessed those careful legislative judgments on public safety questions that are at the core of States' police powers. Whether this Court overrides the predictive judgments of State legislatures thus affects each State.

States also have an interest in defending their longstanding laws. As the U.S. Supreme Court has held, the longstanding nature of a statute can be a sufficient, but not necessary, basis on which to uphold it against a Second Amendment challenge. It is thus well-accepted that laws with a particularly impressive historical pedigree are presumptively lawful. So amici have an interest in explaining why this enduring approach to public carry withstands constitutional scrutiny.

SUMMARY OF ARGUMENT

Hawaii's careful scheme to govern the public carrying of firearms, like laws in other States, is plainly constitutional. Statutes like the one enacted by Hawaii reflect a centuries-old approach to advancing States' interests in public safety.

I. States have an obligation to protect their residents from the scourge of gun violence. To advance that compelling interest, States have a variety of tools at their disposal. One approach is to limit the situations in which a person can carry a firearm in public, whether concealed or carried openly. Hawaii chose that approach in light of the evidence confirming that public carry undermines public safety, and its law does not offend the Second Amendment. While the Constitution prevents States from adopting certain laws, it affords States significant leeway within those boundaries to place limits on public carry. As Judge Clifton explained in dissent at the panel stage, legislatures—not courts—are best suited to decide how to keep their residents safe. That is why the majority of this Court's sister circuits have upheld similar laws, and why a majority of this Court reached that conclusion in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta II*).

II. The historical pedigree of Hawaii's law is an independently sufficient basis to uphold it. Longstanding restrictions on firearm possession, this Court has held, are presumptively lawful under the Second Amendment. State laws limiting public carry—including outright bans—were common in the nineteenth century, and

Hawaii's regime itself dates back over a century. Such public carry laws thus boast a lineage even more impressive than those the Court identified as "longstanding" and "presumptively lawful" in *District of Columbia v. Heller*, 554 U.S. 570 (2008). Other circuits have upheld analogous laws on this ground, and the reasoning of *Peruta II* compels that result here.

ARGUMENT

I. HAWAII'S LAW PROMOTES PUBLIC SAFETY WITHOUT CONTRAVENING SECOND AMENDMENT RIGHTS.

One of a State's primary obligations, and thus one of its most compelling interests, is to ensure the public safety of its residents. Indeed, "[i]t is 'self-evident' that [a State's] interests in promoting public safety and reducing violent crime are substantial and important government interests," as are its "interests in reducing the harm and lethality of gun injuries in general … and in particular as against law enforcement officers." *Fyock v. City of Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015); *see also Gould v. Morgan*, 907 F.3d 659, 673 (1st Cir. 2018) (finding that "Massachusetts has compelling governmental interests in both public safety and crime prevention"), *petition for cert. filed*, No. 18-1272 (U.S. Apr. 1, 2019); *Drake v. Filko*, 724 F.3d 426, 437 (3d Cir. 2013) (explaining that a State has "a significant, substantial and important interest in protecting its citizens' safety"), *cert. denied*, 572 U.S. 1100 (2014); *Woollard v. Gallagher*, 712 F.3d 865, 877 (4th Cir.) (finding

that "protecting public safety and preventing crime … are substantial governmental interests"), *cert. denied*, 571 U.S. 952 (2013).

The legislature's chosen solution to this problem must, of course, still fit the problem States are trying to solve—as Hawaii's law does. As other courts of appeals found, "studies and data demonstrat[e] that widespread access to handguns in public increases the likelihood that felonies will result in death and fundamentally alters the safety and character of public spaces." *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 99 (2d Cir. 2012), *cert. denied*, 569 U.S. 918 (2013); *see also Woollard*, 712 F.3d at 879 (agreeing that "limiting the public carrying of handguns protects citizens and inhibits crime by, *inter alia*: [d]ecreasing the availability of handguns to criminals via theft [and] [l]essening the likelihood that basic confrontations between individuals would turn deadly"). This is unsurprising: "[i]ncidents such as bar fights and road rage that now often end with people upset, but not lethally wounded, take on deadly implications when handguns are involved." *Woollard*, 712 F.3d at 879 (citation omitted); *see also* Add. 74 (Clifton, J., dissenting) ("That limiting public carry of firearms may have a positive effect on public safety is hardly a [sic] illogical proposition. Many other states appear to have reached similar conclusions, and so have most other nations."). These courts also recognized that right-to-carry regimes add to the risks law enforcement officers face: "[i]f the number of legal handguns on the streets increased significantly, officers would have no choice but to take extra

precautions … effectively treating encounters between police and the community that now are routine, friendly, and trusting, as high-risk stops." *Woollard*, 712 F.3d at 880 (citation omitted).

Recent studies only confirm these courts' assessments of the evidence. As a 2018 study concluded, "the weight of the evidence … best supports the view that the adoption of [right-to-carry] laws substantially raises overall violent crime in the ten years after adoption." John Donohue et al., *Right-to-Carry Laws & Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, & a State-Level Synthetic Controls Analysis* 42 (Nat'l Bureau of Econ. Research, Working Paper No. 23510, Jan. 2018);[1] *see also, e.g.*, Abhay Aneja et al., *The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy* 80-82 (Nat'l Bureau of Econ. Research Working Paper No. 18294, 2014) (determining that right-to-carry laws lead to an increase in aggravated assaults, rapes, and robberies).[2] "There is not even the slightest hint in the data that [right-to-carry] laws reduce violent crime." Donohue, *Right-to-Carry Laws*, *supra*, at 42.

To be sure, not every State has balanced these interests in the same way, and not every State has chosen to adopt this licensing scheme. But that is the whole point

[1] Available at https://www.nber.org/papers/w23510.pdf.

[2] Available at https://www.nber.org/papers/w18294.pdf.

of federalism. As the Seventh Circuit explained, while *McDonald v. City of Chicago,* 561 U.S. 742 (2010), established that the Second Amendment "creates individual rights that can be asserted against state and local governments," *McDonald* did not "define the entire scope of the Second Amendment—to take all questions about which weapons are appropriate for self-defense out of the people's hands." *Friedman v. Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015). Instead, "[t]he central role of representative democracy is no less part of the Constitution than is the Second Amendment: when there is no definitive constitutional rule, matters are left to the legislative process." *Id.* That is because "the Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity." *Id.* Although no State may unjustifiably infringe on Second Amendment rights, *McDonald* "does not foreclose all possibility of experimentation. Within the limits [it] establishe[s] … federalism and diversity still have a claim." *Id.*; *see also New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (describing as one of the "happy incidents of the federal system" that States may "serve as a laboratory" for policies that fit local needs, and concluding that the "[d]enial [by the courts] of the right to experiment may be fraught with serious consequences to the nation").

That means States remain free to canvass the evidence and make legislative judgments about how to protect residents from gun violence. As Judge Wilkinson

put the point, it is not possible "to draw from the profound ambiguities of the Second Amendment an invitation to courts to preempt this most volatile of political subjects and arrogate to themselves decisions that have been historically assigned to other, more democratic, actors." *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (en banc) (Wilkinson, J., concurring); *see also District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) ("We are aware of the problem of handgun violence in this country, [and] [t]he Constitution leaves … a variety of tools for combating that problem.…"). That concern has never mattered more than it does today.

Said another way, this Court should not "substitute its own judgment about the efficacy" of Hawaii's open-carry law for the legislature's conclusions. Add. 76 (Clifton, J., dissenting). The "Supreme Court has long granted deference to legislative findings regarding matters that are beyond the competence of courts," *Kachalsky*, 701 F.3d at 97, and has made clear that in those areas, courts must accord "substantial deference to the predictive judgments" of legislatures, *Peruta II*, 824 F.3d at 945 (quoting *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 195 (1997)). That makes sense: "In the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky*, 701 F.3d at 97. Indeed, "assessing the risks and benefits of handgun possession and shaping a licensing scheme to maximize the

competing public-policy objectives … is precisely the type of discretionary judgment that officials in the legislative and executive branches of state government regularly make." *Id.* at 99; *see also Gould*, 907 F.3d at 676 (noting "this case falls into an area in which it is the legislature's prerogative—not ours—to weigh the evidence, choose among conflicting inferences, and make the necessary policy judgments"). As Judge Clifton noted, whatever any judge thinks of "outcomes of [the] studies" on which Hawaii has relied, the court has no authority "to dismiss statutes based on [its] own policy views or disagreements with aspects of the analyses cited." Add. 74. No matter whether a judge would come to the same conclusions as Hawaii, the State's choice was plainly lawful.[3]

In sum, no State is *required* to protect residents from the dangers of public carry, but every State is *permitted* to do so under the Second Amendment. And that

[3] The panel's suggestion that deference to a legislature's weighing of conflicting evidence is inappropriate when the court is "determining the scope and application of a *constitutional right*" is out of step with precedent. Add. 57 (majority op.). Courts regularly afford legislatures deference when evaluating constitutional challenges to laws, including First Amendment challenges. *See, e.g., Turner Broadcasting*, 520 U.S. at 195. Granting this deference to legislatures' predictive judgments is equally important in the context of firearm safety provisions. When "dealing with a complex societal problem like gun violence," it "would be foolhardy—and wrong—to demand that the legislature support its policy choices with an impregnable wall of unanimous empirical studies." *Gould*, 907 F.3d at 676. And it would impair legislatures' ability to "act prophylactically," instead requiring states to "bide [their] time until another tragedy is inflicted or irretrievable human damage has once more been done." *Kolbe*, 849 F.3d at 150 (Wilkinson, J., concurring).

is precisely what most other circuits have found when upholding public-carry laws. *See, e.g., Gould*, 907 F.3d at 674 (upholding public-carry regulations based on the "substantial link between the restrictions imposed on the public carriage of firearms and the indisputable governmental interests in public safety and crime prevention"); *Kachalsky*, 701 F.3d at 98 ("Restricting handgun possession in public to those who have a reason to possess the weapon for a lawful purpose is substantially related to New York's interests in public safety and crime prevention."); *Drake*, 724 F.3d at 437 (upholding state law given legislature's "predictive judgment … that limiting the issuance of permits to carry a handgun in public to only those who can show a 'justifiable need' will further its substantial interest in public safety"); *Woollard*, 712 F.3d at 880 ("We are convinced by the State's evidence that there is a reasonable fit between the good-and-substantial-reason requirement and Maryland's objectives of protecting public safety and preventing crime."); *see also* Add. 72 (Clifton, J., dissenting) (finding that "there is a reasonable fit between Hawaii's public-carry regulations and its unquestionably legitimate goal of promoting public safety").

This Court's analysis in *Peruta II* confirms this approach. Though the en banc majority focused on the history of concealed-carry regulation, Judge Graber wrote a concurrence discussing whether a public-carry regime could survive intermediate scrutiny. Speaking for three judges, she explained such statutes are constitutional because they "strike a permissible balance between 'granting handgun permits to

those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets.'" *Peruta II*, 824 F.3d at 942 (Graber, J., concurring) (citation omitted). Critically, "[t]he other four judges on the panel who made up the majority stated that 'if we were to reach that question, we would entirely agree with the answer the concurrence provides.'" Add. 61 (Clifton, J., dissenting) (quoting *Peruta II*, 824 F.3d at 942 (majority op.)). In other words, "seven of the eleven members of that en banc panel expressed views that" dictate the result in this case—to affirm the district court and uphold Hawaii's law. *Id.*; *see also* Add. 75 ("[A]s a majority of the judges on our en banc panel indicated in *Peruta II*, there is a reasonable fit between good cause limitations on public carry licenses and public safety."). If it reaches a contrary conclusion, this Court would be disregarding its own prior conclusions, notwithstanding the important role of stare decisis.

As most circuits to consider the question have rightly held, and as this Court previously held, states are free to enact public carry laws based on their reasonable assessments that such laws will promote the safety of their residents. This Court should not prevent Hawaii from doing the same.

II. HAWAII'S LAW PASSES CONSTITUTIONAL MUSTER IN LIGHT OF ITS HISTORICAL PEDIGREE.

Under *Heller*, a law's historical pedigree offers an independently sufficient reason to uphold it against a Second Amendment challenge. That leads inexorably to one result here—Hawaii's longstanding law is constitutional.

There is little doubt that the historical pedigree of the law matters. Indeed, as *Heller* established, the longstanding nature of a law can be a sufficient (though not necessary) reason to find that it withstands Second Amendment scrutiny. *Heller* held that "the right secured by the Second Amendment is not unlimited," 554 U.S. at 626; to the contrary, the Court found that "longstanding prohibitions" on carrying and possessing firearms are "presumptively lawful." *Id.* at 626, 627 n.26. Put simply, these "longstanding prohibitions" are "traditionally understood to be outside the scope of the Second Amendment." *Fyock*, 779 F.3d at 996.

That analysis does not stop at the ratification of the Second Amendment, as *Heller* itself cited as the leading examples of "longstanding" regulations prohibited-person laws that "states did not start to enact … until the early 20th century." *Drake*, 724 F.3d at 434. This Court has therefore joined other circuits in recognizing that "early twentieth century" laws are considered "longstanding" so long as their "historical prevalence and significance is properly developed in the record." *Fyock*, 779 F.3d at 997; *see also, e.g., Drake*, 724 F.3d at 434 (citing laws dating to 1913

and 1924 as "longstanding"); *Nat'l Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosions*, 700 F.3d 185, 196 (5th Cir. 2012) ("*Heller* demonstrates that a regulation can be deemed 'longstanding' even if it cannot boast a precise founding-era analogue.").

To understand why that historical inquiry calls for upholding Hawaii's law, start with the long history of such laws. This Court is not writing on a blank slate—as Judge Clifton noted, and as Hawaii explains in its brief, *Peruta II* walked through the history of laws regulating the public carrying of weapons. *See* Add. 63 (Clifton, J., dissenting) ("Much of the analysis offered in the majority opinion repeats what was said in *Peruta I*, despite the en banc rejection of that opinion in *Peruta II*.").[4] *Peruta II* explained that, "[d]ating back to the thirteenth century, England regulated public carry of firearms, including both concealed *and concealable* weapons." Add. 65 (emphasis added) (citing *Peruta II*, 824 F.3d at 929-32). To borrow a few examples from *Peruta II*'s analysis, in 1328, under Edward III, Parliament enacted the Statute of Northampton, stating that no one could "go nor ride armed by night

[4] *Peruta II* hardly stands alone in its conclusions. As other circuits have explained, "[f]irearms have always been more heavily regulated in the public sphere." *Drake*, 724 F.3d at 430 n.5; *see also, e.g.*, *Kachalsky*, 701 F.3d at 96 (concluding that "our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public"); *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011) (explaining that "outside the home, firearms rights have always been more limited because public safety interests often outweigh individual interests").

nor by day." 824 F.3d at 929-30. This statute, which *Peruta II* called "the foundation for firearms regulation in England for the next several centuries," *id.* at 930, was in no way limited to concealed carry; it banned the public carrying of firearms more generally. Indeed, in 1594, Elizabeth I issued a proclamation confirming that the Statute of Northampton prohibited the "open carrying" of weapons. *Id.* at 931; *see also* Add. 65 (Clifton, J., dissenting) (agreeing that "subsequent laws emphasiz[ed] that the Statute prohibited the carrying of concealable weapons"). It was not the only English law to do so; in 1541, Parliament enacted a statute forbidding "owning or carrying concealable (not merely concealed) weapons." *Peruta II*, 824 F.3d at 931.

There is also a long history of public-carry regulations in the United States, dating back to the seventeenth and eighteenth centuries. *See Peruta II*, 824 F.3d at 933-37; *see also, e.g.*, Eric M. Ruben & Saul Cornell, *Firearm Regionalism & Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121, 129 n.43 (2015). Notably, many states still limited public carry after passage of the Second and Fourteenth Amendments. During the nineteenth century, the Second Circuit has explained, "several states banned concealable weapons … whether carried openly or concealed." *Kachalsky*, 701 F.3d at 96. *Heller* likewise acknowledged that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." 554 U.S. at 626. And, as this Court demonstrated

in *Peruta II*, multiple state courts had "upheld prohibitions against carrying concealable (not just concealed) weapons in the years following the adoption of the Fourteenth Amendment." 824 F.3d at 937.[5]

The same is true for the particular licensing standards on which Hawaii and other States now rely. These laws "do[] not go as far as some of the historical bans on public carrying; rather, [they] limit[] the opportunity for public carrying to those who can demonstrate" a need to do so. *Drake*, 724 F.3d at 433. Yet they boast an impressive pedigree—"[n]umerous states adopted good cause limitations on public carry in the early 20th century." Add. 68 (Clifton, J., dissenting). Hawaii is a perfect example. In 1852, Hawaii enacted a statute that made it a crime for "[a]ny person not authorized by law" to "carry, or be found armed with, any … pistol … or other deadly weapon … unless good cause be shown for having such dangerous weapons."

[5] Although some judges have focused entirely on the laws and decisions during that period from the antebellum South, *Peruta II* rejected the idea that "the approach of the antebellum South reflected a national consensus about the Second Amendment's implications." Add. 64 (Clifton, J., dissenting). Instead, as this Court has explained, the "more balanced historical analysis" in *Peruta II* confirms "that states have long regulated and limited public carry of firearms and, indeed, have frequently limited public carry to individuals with specific self-defense needs." *Id.*; *see also Gould*, 907 F.3d at 669 ("[W]e find it unconvincing to argue that practices in one region of the country reflect the existence of a national consensus about the implications of the Second Amendment for public carriage of firearms. After all, our nation is built upon its diversity—and there is no principled way that we can assume that practices in one region are representative of all regions."). Additionally, the focus on antebellum South cases is misplaced because none of these reviewed "good cause" statutes; these cases instead generally found that complete *bans* on public carry were invalid. *See* Add. 19-23 (majority op.).

Act of May 25, 1852, § 1. In 1927, Hawaii's territorial legislature enacted a licensing regime for public carry. *See* 1927 Haw. Sess. Laws Act 206, §§ 5-7. In 1934, Hawaii barred public carrying of firearms except in an "exceptional case, when the applicant shows good reason to fear injury to his person or property." 1933 (Special Sess.) Haw. Sess. Laws Act 26, §§ 6 & 8 (Jan. 9, 1934). And in 1961, just two years after its admission to the Union, Hawaii adopted an open-carry regime that permitted an applicant to receive a permit to carry a firearm only if he could show the "urgency of the need" and that he "is engaged in the protection of life and property," 1961 Haw. Sess. Laws Act 163, § 1—essentially the same as the standard today. The same is true of other state licensing laws.[6] To take a few examples, Massachusetts "first adopted a good cause statute in 1836," *Gould*, 907 F.3d at 669; New York's own

[6] Hawaii's law followed a precedent set by other states in the nineteenth century of limiting public carry to individuals who had "reasonable cause" to fear assault. *See* Of Proceedings for Prevention of Crimes, ch. 169, § 16, Rev. State. Me. 709 (Oct. 22, 1840); 1836 Mass. Laws 748, 750, ch. 134, § 16; Of Proceedings to Prevent the Commission of Crime, ch. 193, § 16, reprinted in Thomas M. Cooley, Compiled Laws of the State of Michigan 1572 (1857); Of Proceedings to Prevent the Commission of Crimes, ch. 112, § 18, Rev. Stat. Minn. 528 (1851); Proceedings to Prevent Commission of Crimes, ch. 16, § 17, 1853 Or. Laws 220; Proceedings to Detect the Commission of Crimes, § 6 (1861), reprinted in A Digest of the Laws of Pennsylvania 248, 250 (John Purdon comp., 1862); An Act to Regulate the Keeping and Bearing of Deadly Weapons, ch. 35, §§ 1-2, 1871 Tex. Laws 25; Of Proceedings to Prevent the Commission of Crimes, 1847 Va. Laws 129, ch. 14, § 16; For Preventing the Commission of Crimes, § 8, in The Code of West Virginia 702, 703 (1870); Act to Prevent the Commission of Crimes, § 16, reprinted in The Statutes of the Territory of Wisconsin 379, 381 (1839). *See* Add. 65-68 (Clifton, J., dissenting) (citing, *inter alia*, *Kachalsky*, 701 F.3d at 90-93).

"legislative judgment concerning handgun possession in public was made" in 1913, when it "limit[ed] handgun possession in public to those showing proper cause," *Kachalsky*, 701 F.3d at 97; and New Jersey has maintained a similar "justifiable need" standard for public-carry applications since 1924, *see Drake*, 724 F.3d at 432. It is clear these statutes are of particularly longstanding provenance.

No wonder, then, that other circuits have relied on similar history to uphold analogous state laws. The Second Circuit was explicit on this, finding that "[t]here is a longstanding tradition of states regulating firearm possession and use in public because of the dangers posed to public safety." *Kachalsky*, 701 F.3d at 94-95. Given such an extensive "history and tradition of firearm regulation," the Second Circuit "decline[d] Plaintiffs' invitation to strike down New York's one-hundred-year-old law and call into question the state's traditional authority to extensively regulate handgun possession in public." *Id.* at 101. The Third Circuit was as direct, holding "the requirement that applicants demonstrate a 'justifiable need' to publicly carry a handgun for self-defense is a presumptively lawful, longstanding licensing provision" because it "has existed in New Jersey in some form for nearly 90 years." *Drake*, 724 F.3d at 432. And these decisions are no surprise given *Heller* itself, which described other laws dating to the early twentieth century as longstanding and presumptively lawful. *See* Add. 75-76 (Clifton, J., dissenting) (noting that any contrary holding by this Court would "disregard[] the fact that states and territories

in a variety of regions have long allowed for extensive regulations of and limitations on the public carry of firearms."). Since Hawaii's longstanding law is presumptively lawful under *Heller*, this Court should continue to follow its analysis in *Peruta II* and render a decision in line with the majority of circuits to consider the question.

CONCLUSION

Hawaii's law passes muster for two independently sufficient reasons: first, it reflects the careful balance struck by the legislature between Hawaii's substantial interest in preventing gun violence and the interest in granting licenses to those who have a need for a license; and second, its law is a longstanding limitation on public carry that is presumptively lawful. This Court should affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Circuit Rule 29-2, the foregoing amicus brief in support of Appellees and of affirmance:

1. Contains 4,306 words; and
2. Has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type, which complies with Fed. R. App. P. 32(a)(4)-(6).

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2020, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

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