No. 12-1150

In the

Morris Tyler Moot Court of Appeals at Yale

DRAKE, *et al.*,

Petitioners,

v.

JEREJIAN, *et al.*,

Respondents.

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

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the pre-existing right preserved by the Second Amendment includes an individual right to carry handguns outside of the home, subject to reasonable state restrictions; and
2. Whether the Second Amendment permits state officials to require that individuals wishing to carry a handgun for self-defense in public first prove a "justifiable need" for doing so.

PARTIES TO THE PROCEEDING

The Petitioners here and Plaintiffs-Appellants below are John M. Drake; Gregory C. Gallaher; Lenny S. Salerno; Finley Fenton; Second Amendment Foundation, Inc.; and the Association of New Jersey Rifle & Pistol Clubs, Inc.

The Respondents here and Defendants-Appellees below are Hon. Edward A. Jerejian, in his Official Capacity as Judge of the Superior Court of Bergen County; Hon. Rudolph A. Filko, in his Official Capacity as Judge of the Superior Court of Passaic County; The Hon. Thomas V. Manahan, in his Official Capacity as Judge of the Superior Court of Morris County; Superintendent New Jersey State Police; Chief Richard Cook, in his Official Capacity as Chief of the Montville, New Jersey Police Department; Attorney General of New Jersey; and Robert Jones, in his Official Capacity as Chief of the Hammonton, New Jersey Police Department.

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STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on July 31, 2013. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. II.

N.J. Stat. Ann. § 2C:58-4c (West 2013) provides, in relevant part, that

> No application shall be approved . . . unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.[1]

STATEMENT OF THE CASE

1. New Jersey generally restricts carrying a handgun in public, either openly or concealed, without a permit. *See* N.J. Admin. Code § 13:54-2.2 (2014). New Jersey statute restricts the granting of permits as follows:

> No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c,[2] that he is thoroughly familiar with the safe handling and use of handguns, and that he has a *justifiable need* to carry a handgun.

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[1] Appendix 2 contains a more detailed excerpt of New Jersey's handgun permit laws.

[2] Those excepted include convicts, drug dependents, those with defects that prevent safe handling of a firearm, those under 21, "any person where the issuance would not be in the interest of the public health, safety or welfare," those

N.J. Stat. Ann. § 2C:58-4 (West 2013) (emphasis supplied).

To establish justifiable need, "a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun." N.J. Admin. Code § 13:54-2.4 (2014). "Generalized fears for personal safety are inadequate, and a need to protect property alone does not suffice." *In re Preis*, 118 N.J. 564, 571 (1990) (citing *Siccardi v. State*, 59 N.J. 545, 557-68 (1971)).

The permit application process is subject to several layers of review and appeal. The applicant first submits an application to a designated police official, who makes a recommendation to the New Jersey Superior Court to evaluate whether the applicant meets the requirements. N.J. Stat. Ann. § 2C:58–4(c), (d), (e). An adverse determination for the applicant is subject to full appellate review. *Id.* § 2C:58–4(e). *See* generally *Piszczatoski v. Filko*, 840 F. Supp. 2d 813, 817 (D.N.J. 2012) (summarizing the application process in more detail).

New Jersey's permit requirement for publicly carrying a handgun exempts many persons, locations, and uses. Exempted individuals include members of the armed forces, law enforcement and corrections officers, federal civilian employees carrying weapons as required by their job, and licensed firearms dealers in the course of their work. *See* N.J. Stat. Ann. § 2C:39-6a-b (West 2013). Also exempted is possession on one's private property (including home, place of business, or "other land owned or possessed") and transporting between such properties. *Id*. § 2C:39-6e. Members of rifle and pistol clubs may engage in target practice, and licensed hunters may use firearms for hunting. *See id.* § 2C:39-6f.

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subject to a domestic violence restraining order, those whose firearms were seized pursuant to domestic violence laws, and those on the FBI's Terrorist Watchlist. N.J. Stat. Ann. § 2C:58-3c (West 2013).

2. This case involves a facial challenge to the constitutionality of New Jersey's justifiable need permit law for carrying handguns in public. Plaintiffs, individuals denied handgun permits and advocacy organizations, allege that New Jersey's law unconstitutionally restricts the Second Amendment right to bear arms. *Piszczatoski*, 840 F. Supp. 2d at 816.

3. On January 12, 2012, the United States District Court for the District of New Jersey held that plaintiffs had "failed to state a valid constitutional challenge to New Jersey's Handgun Permit Law under the Second Amendment." *Id.* at 837. Using a two-step analysis, the district court found that New Jersey's law "can be applied without creating a burden on protected conduct." *Id.* at 820. The district court interpreted *Heller* as "deliberately limit[ing] the scope of the right recognized to the home" and drew a "historical distinction between the constitutional right to carry for self-defense at home and any right to carry for self-defense in public." *Id.* at 829. Since New Jersey's permit law is an example of a "'longstanding' licensing provision of the kind that *Heller* identified as presumptively lawful," the district court determined it did not burden protected conduct. The law is part of the "exceptions to the right to bear arms so that the regulated conduct falls outside the scope of the Second Amendment." *Id.*

4. The district court further found that even if the Second Amendment "extended a right to carry handguns for self-defense outside the home, that right would still be subject to government regulation which does not unconstitutionally burden protected conduct." *Id.* at 831. The district court determined that the justifiable need requirement of New Jersey's Handgun Permit Law survives intermediate scrutiny—the same standard used in the First Amendment speech context. *Id.* at 835. The district court then denied the plaintiffs' motion for summary judgment and granted the defendants' motion to dismiss the action with prejudice. *Id.* at 837.

5. On appeal, the Third Circuit affirmed the decision below. Because the justifiable need permit requirement "qualifies as a 'presumptively lawful,' 'longstanding' regulation," the Third Circuit held that New Jersey's permit law "does not burden conduct within the scope of the Second Amendment." *Drake v. Filko*, 724 F.3d 426, 429 (3d Cir. 2013). Based on the court's interpretation of *Heller*, it determined that New Jersey's 90-year-old justifiable need standard, in combination with historical evidence of other such laws, qualified as a measure that "regulates conduct falling outside the scope of the Second Amendment's guarantee." *Id.* at 434. The court then found that New Jersey's law would also withstand intermediate scrutiny and concluded that intermediate scrutiny is the appropriate level of scrutiny under which to assess conduct not part of the "core" of the Second Amendment. *Id.* at 436. Finding a reasonable fit between New Jersey's permit law and the state's "interest in public safety," the court agreed with the district court that "even if the 'justifiable need' standard fails to qualify as such a regulation, it nonetheless withstands intermediate scrutiny and is therefore constitutional." *Id.* at 440.

SUMMARY OF ARGUMENT

The Second Amendment enshrined a pre-existing right to keep and bear arms—a right which "is not unlimited" and "most acute" in the home. *District of Columbia v. Heller*, 554 U.S. 570, 629, 595 (2008). In 2008, for the first time, this Court struck down a law for violating the Second Amendment. *Heller* held that the Second Amendment guarantees an individual the right to keep arms in one's home and found that D.C.'s "complete prohibition of an entire class of arms" was "invalid." *Id.* at 628-29. Two years later, that right was held to be incorporated against the states. *McDonald v. City of Chicago*, 130 U.S. 3020 (2010). Both cases were limited in their facts and holdings to the home, and this Court did "not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation." *Heller*, 554 U.S. at 595. The

text, history, and prior precedents demonstrate that the Second Amendment does not include an individual right to carry handguns outside of the home. Because that right does not exist, reasonable longstanding permit schemes such as New Jersey's Handgun Permit Law are presumptively lawful and do not violate the Second Amendment.

Similar to the First Amendment, the right to keep and bear arms was a pre-existing right and must be interpreted according to its historical meaning. The right to bear arms has always consisted of two separate and distinct rights, one individual and one collective. Throughout the early modern period in England, the scope of the individual right to carry weapons for personal defense was always narrower than the collective right to keep and use weapons as part of a militia. As early as 1328, persons other than the King's officers were prohibited from going "armed by night nor by day, in fairs, markets . . . nor in no part elsewhere." 2 Edw. 3, c. 3 (1328). Similar prohibitions were imported into colonial America. As opposed to the collective right, the individual right of self-defense has always been limited in public for purposes of public safety and general welfare.

Reasonable handgun permit schemes, such as New Jersey's Handgun Permit Law, are exactly the sort of "presumptively lawful regulatory measures" *Heller* identified as outside of the scope of the Second Amendment. *Heller*, 554 U.S. at 627 n.26. To determine whether a weapons regulation violates the Second Amendment, this Court should first use historical analysis to determine whether the conduct burdened by the regulation is protected by the Second Amendment. If the conduct is protected by the Second Amendment, this Court should then use a means-ends test to analyze whether the law is unconstitutional.

New Jersey's justifiable need requirement is one example of the many long-established state and local laws that impose a minimal burden on conduct not protected by the Second

Amendment. Even if New Jersey's law does burden some conduct within the scope of the Second Amendment, that burden is not substantial enough to violate the Second Amendment. Further, the justifiable need requirement meets both the states' traditional reasonableness standard for evaluating the constitutionality of firearms regulations and the intermediate scrutiny test used by this Court to evaluate other constitutional rights. Not only does a deferential standard of scrutiny comport with historical restrictions on carrying firearms in public, it follows from this Court's precedents in the First Amendment context.

Since the early republic, the scope of the individual right to carry firearms in public has never been unbridled. In challenging New Jersey's law, Petitioners ask this Court to dismiss over seven hundred years of history and this Court's own analysis of other rights. New Jersey's justifiable need requirement is lawful because it follows in a long tradition of public carry laws that are reasonably related to a compelling government interest and impose only a modest burden on an individual's right of self-defense.

ARGUMENT

I. AN INDIVIDUAL RIGHT TO CARRY HANDGUNS OUTSIDE OF THE HOME FOR SELF-DEFENSE IS BEYOND THE SCOPE OF THE SECOND AMENDMENT

A. The Text of the Constitution Protects Both the Collective and Individual Right of Persons to Carry Weapons for the Purpose of Self-Defense, as Allowed by Law

The text of the Second Amendment provides four rights: the individual and collective rights to keep arms within the home, as well as the individual and collective rights to carry weapons in public. Each of these four liberties has a different scope. The Second Amendment did not create new rights; rather it preserved individual and collective pre-existing rights of an armed populace and demanded they "not be infringed." U.S. Const. amend. II. In *District of Columbia v. Heller*, this Court held that the Amendment "guarantee[d] the individual right to

possess and carry weapons in case of confrontation." 554 U.S. at 592. *Heller*, while recognizing an individual right to keep handguns in the home for the purpose of self-defense, did not "undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment." *Id*. at 626.

The reach of the Second Amendment beyond the home is a matter of first impression for this Court. In interpreting the Constitution, we begin with the text. *See id.* (discussing the text of the Constitution before beginning an analysis of the merits). The Second Amendment provides, "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Although the primary focus of *Heller* was on the right of the people to "keep" arms in the home, this Court extensively discussed the meaning of the phrase to "bear arms." The Second Amendment was not produced by the Founders out of whole cloth but rather "codified a *pre-existing* right." *Heller*, 554 U.S. at 592. The words of the amendment, therefore, are imbued with the meaning that existed at the time and their historical import. Consequently, legislation that would not have disrupted the right to "bear arms" at the time of the Constitution's ratification cannot be said to violate the Second Amendment today. *Id.* ("The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.'").

Arms and handguns are not synonymous. The Constitution protects a right to keep and bear arms, and the eighteenth-century meaning of arms "is no different from the meaning today." *Id.* at 581. To be sure, handguns are included in the meaning of arms, but this Court has never understood the Second Amendment to mean that all weapons included in the definition of arms are protected. *See United States v. Miller*, 307 U.S. 174 (1939) (rejecting a claim to protect possession of a sawed off shotgun under the Second Amendment).

This Court has recognized an individual and collective right to arms in the home for the purpose of self-defense. Because the holding of *Heller* is limited to the home, the right established in that case refers principally to the keeping of arms, not the bearing. *Heller* defined to keep arms as to "have weapons." *Heller*, 554 U.S. at 582. To bear arms, however, means to "carry[] for a particular purpose—confrontation." *Id.* at 584. *Heller* endorsed as "the natural meaning of 'bear arms'" a prior definition indicating to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket for the purpose of being armed and ready for offensive or defensive in a case of conflict with another person." *Id.* (quoting *Muscarello v. United States*, 524 U.S. 125 (1998) (Ginsburg, J., dissenting)). While it is certainly possible for a person to "bear arms" within the home—as in moving about one's home with a weapon in the pocket—the most natural reading of to "keep and bear arms" is that the two verbs refer to two separate rights. One has a right to keep arms within the home and a right to carry arms outside of the home for the purpose of defending against confrontation. If the right to bear arms were synonymous with the right to keep, it would make little sense and would render one of the verbs a nullity.

In addition to the two separate locational rights—the right to keep arms in the home and the right to bear them—the Second Amendment also protects the individual and a collective right "to keep and bear arms" as two separate rights, each with a different scope. *Heller* pronounced an individual right to possess arms within the home but left the full range of the individual right outside of the home unexplored. The extent of the individual right to carry weapons in public turns on the subsequent clause "shall not be infringed." The individual right to bear arms in public is not absolute and is narrower than the scope of the right to keep them in one's home. The Second Amendment did not grant an unlimited right for every person to carry any weapon; it only provided that the scope of the right as it existed at the time of the founding not be infringed.

State laws restricting public carrying of weapons were a part of the pre-existing right codified in the Second Amendment. Because an unbridled right to carry firearms never existed before the Constitution, such state regulations cannot violate the Second Amendment.

B. The Pre-Existing Right Codified in the Second Amendment and Longstanding Practice Support a Substantial Role for State Regulation of Firearms in Public

The text of the Constitution must be interpreted with history in the background. *Heller*, 554 U.S. at 634-35 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them."); *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3056 (2010) (Scalia, J., concurring) ("[T]raditional restrictions [on arms] go to show the scope of the right."). Historical analysis of the English right, colonial and early American construction of the right to bear arms, and nineteenth century state laws further support states' prerogative to restrict weapons in public in ways that may be unconstitutional if applied to the home.

1. *The right to bear arms, as it existed in England, recognized the authority of the state to limit or prohibit certain weapons in public*

The pre-existing Anglo-American right to bear arms was never absolute. Since at least the thirteenth century, the monarchy and Parliament could, through the police power, determine the time, manner, type, and place where weapons could be used outside of the home. In 1285, Edward I proclaimed it unlawful to "go[] or wander[] about the streets of the city after curfew . . . with sword, or buckler, or other arms for doing mischief . . . nor in any other manner." 13 Edw. 1 (1285) (Statutes for the City of London) (Eng.). The law was a direct response to an increased incidence of robberies, murders, and arson. 2 *Chautauqua Library of English History and Literature* 78 (1881).

The 1328 Statute of Northampton, which became a model for early America firearm regulations, stated that no men other than the king's men may "ride armed by night nor by day,

in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere." 2 Edw. 3, c. 3 (1328). The Statute of Northampton itself was not a new or radical law but rather codified the pre-existing common law offense of going or riding armed. *See* 1 William Hawkins, *A Treatise of the Pleas of the Crown*, at 136, ch. 36, § 4 (1716). Although some historians suggest that the Statute of Northampton was meant only to prohibit persons from carrying arms "with the specific intent of terrorizing the public," subsequent statutes and proclamations by monarchs support the straightforward textual reading of the statute that the act of carrying arms in public was itself a breach of the peace. *Compare* David B. Kopel & Clayton Cramer, *State Standards of Review for the Right to Keep and Bear Arms*, 50 Santa Clara L. Rev. 1113, 1127 (2010) (supporting the intent based view), *with* 20 Rich. 2, c. 1 (1396-97) (Eng.) (prohibiting all persons except King's Officers from going or riding "by Night nor by Day armed"). An intent-based offense for carrying arms in public was not codified until 1350. 25 Edw. 3, st. 5, c. 2, § 13 (1350) (Eng.) (providing a separate felony for "any Man of this Realm [who rode] armed covertly or secretly with Men of Arms, against any other.").

Following the 1328 Statute of Northampton, the prohibition against publicly carrying arms was rearticulated by various monarchs well into the eighteenth century. *See, e.g.*, 3 Calendar of the Close Rolls, Henry IV, 1405-1409 485 (Jan. 30, 1409, Westminister) ("Forbidding any man of whatsoever estate or condition to go armed within the city and suburbs . . . ."); By the Queen Elizabeth I: A Proclamation Against the Common Use of Dagges, Handgunnes, Harquebuzes, Calliuers, and Cotes of Defence 1 (London, Christopher Barker 1579); *see generally*, Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 15-22 (2012) (compiling and discussing statutes and proclamations).

The 1689 English Bill of Rights provided a right to "have arms," but the Statute of Northampton continued as authority for state restriction on public carrying. Charles, *supra*, at 27 n.130. The English Bill of Rights states "[t]hat the subjects which are Protestants may have arms for their defence suitable to their conditions *and as allowed by law*." 1 W. & M., c.2, § 7, in 3 Eng. Stat. at Large 441 (1689) (emphasis supplied). This right to bear arms has always been understood to be subject to government regulation. William Hawkins, a preeminent English legal writer cited by many as the authority on the Statute of Northampton, wrote in 1716 that there may be times "where there is no actual violence; as where a man arms him[s]elf with a dangerous and unu[s]ual Weapons, in such a Manner as will naturally cau[s]e a Terror to the People, which is [s]aid to have been always" a common law offense prohibited by "many statutes" including the Statute of Northampton. 1 William Hawkins, *A Treatise of the Pleas of the Crown*, at 135, ch. 36, § 4 (1716); *see also State v. Huntly*, 25 N.C. 418, 420 (1843) ("We have been accustomed to believe that the [Northampton] statute did not *create* the offence, but provided only special penalties and modes of proceeding for its more effectual suppression and the correctness of this belief we can see no reason to doubt."). William Blackstone in his preeminent treatise on the common law of England also understood the right of subjects to have arms "for their defence, suitable to their conditions, and *such as are allowed by law*." 1 William Blackstone, Commentaries *143. It was thus always understood in England that the individual right to carry weapons in public could be circumscribed by the state to preserve the public order.

2. *At the founding and in the early republic, the scope of the individual right to bear arms was more narrowly defined than the collective right of the militia*

The new colonies imported many of the ideas and laws from England when creating their new society, including the state's prerogative to restrict the type and manner of arms allowed in public. As in England, the individual and collective rights to have weapons in the colonies were originally enmeshed within the context of a need for citizens to provide for their own individual and collective defense against public threats. Many early colonial laws required white men over a certain age to own a gun. In Rhode Island, every man was required to "come armed" to a public meeting every sixth day. *Records of the Colony of Rhode Island and Providence Plantations, in New England* 1:79-80 (John Russell Bartlett ed., 1856). Other colonies had similar laws. *See, e.g.*, *The Public Records of the Colony of Connecticut, Prior to the Union with New Haven Colony* 1:95, 96 (J. Hammond Trumbull ed., 1850). The fear of the colonists is epitomized in a series of Virginia statutes that prohibited blacks from carrying firearms unless to defend against Indian raids. *Statutes at Large: Being a Collection of all the Laws of Virginia* 1:226 (William Waller Hening ed., 1809). At the same time, Virginia had other laws requiring all persons to "bring their pieces, swords, powder, and shot" to church on Sunday, that "no man go or send abroad without a sufficient party well armed" and prohibiting anyone from going "to work in the fields unarmed." *Id.* at 1:127. White men were required to carry arms to ward off possible insurrection from slaves and Indians. Clayton E. Cramer, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* 10 (2006) ("Because of the danger of Indian attacks . . . a law ordered every person above eighteen years of age" to come to public assemblies armed); Clayton E. Cramer, *Concealed Weapon Laws of the Early Republic* 9 (1999) ("The slave states lived in dread of free blacks with weapons.").

In the context of early colonial America, the more restrictive individual right to bear arms was subsumed by the collective right to defend one's home and state in a time of constant threat.

See Robert E. Shalhope, *Armed Citizen in the Early Republic*, 49 L. & Contemporary Problems 137 (1986) ("While late eighteenth-century Americans distinguished between the individual's right to *possess* arms and the need for a militia in which to *bear* them, more often than not they considered these rights inseparable."). Age requirements for gun ownership were tied to the age men were to enter the militia. *See, e.g.*, An Act for Regulating the Militia of this Province and for the Security and Better Defence of the Same, 24 Jan. 1755, *in* XVIII *The Colonial Record of the State of Georgia* 16-18 (A.D. Candler ed., 1910).

These laws represented not an individual right to carry guns in public but the collective responsibility to protect the nascent colonies from attack. The different scope of the individual and collective rights to bear arms is demonstrated in the eventual inclusion of blacks in the militia at the same time that the laws of many states forbid freed blacks, slaves, or both from carrying guns outside of militia service. Oscar Reiss, *Blacks in Colonial America* 229 (1997). When the collective right of the Second Amendment was invoked—as in protecting land and country from Indians and British troops—blacks could carry guns in the service of the state. Blackstone's Commentaries 37 (S. Tucker ed. 1803) ("Free negroes and mulattoes . . . were formerly incapable of serving in the militia . . . but of late years I presume they were enrolled in the lists of those that bear arms . . . . Even slaves were not rejected from military service at that period."). But those persons were forbidden to bear arms in an individual capacity. *Id.*

As public order and society developed, however, public carrying of weapons became less necessary and common. *See* Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* 165 (2011) ("Guns were widespread on the frontier, but so was gun regulation. . . . In the frontier towns, however, where people lived and businesses operated, the law often forbade people from toting their guns around."). With a decrease in law-abiding citizens carrying

arms, public displays of weapons became synonymous with criminals, leading many states to ban public carrying of weapons, either concealed, open, or both. David T. Courtwright, *The Cowboy Subculture*, in *Guns in America: A Reader* 96 (1999) ("As the threat of Indians and outlaws receded and the regular police system gradually became more professional and efficient, it was harder to justify carrying weapons for self-defense."). In the early republic, many states saw a prohibition on public weapons as a way to prevent crimes and quarrels from escalation. *See, e.g.*, Mo. Rev. Stat. §1274 (1883) (prohibiting persons from going "into any church or place where people have assembled for religious worship . . . or any school . . . or any other public assemblage . . . for any lawful purpose other than for militia drill" with "any kind of fire arms, bowie knife, dirk, dagger, slung-shot, or other deadly weapon"). Thus, as America became more secure against external attack, the individual Second Amendment right became more easily distinguishable from the collective obligations of the militia.

3. *States in the nineteenth century understood the individual right to carry firearms as subject to state regulation*

The individual right to bear arms in public has historically been subject to state regulation that may be unconstitutional within the home. *Drake*, 724 F.3d at 430, n.5 ("Firearms have always been more heavily regulated in the public sphere so, undoubtedly, if the right articulated in *Heller* does 'extend beyond the home,' it most certainly operates in a different manner."). After the threat of constant attack was no longer present in early America, state laws distinguished the individual and collective right to bear arms in public. Detached from the militia, the individual right discussed in the early republic was considerably narrower, as it was in England. As opposed to the militia statutes of the colonial period and early republic, in the nineteenth century, more states and localities began to ban open or concealed carrying of guns. *See, e.g.*, Act of Jan. 27, 1838, ch. CXXXVII, Tenn. Pub. Acts 200 (prohibiting the sale of

concealable weapons); Dodge City, Kan. City Ordinances no. 16, § 11 (Sept. 22, 1876) (prohibiting anyone from carrying "concealed, or otherwise, about his or her person, any pistol, bowie knife, sling shot, or other dangerous or deadly weapon" within the city limits). Gun regulation in cities was stricter than in rural areas, which still resembled the frontier environment of early America. *See generally* Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82 (2013).

In the nineteenth century, several state courts considered the individual right to carry guns in public areas. Although most cases assessed the permissibility of challenged statutes under state constitutions, many such state constitutions employed similar language to the Second Amendment. It was not until *McDonald v. City of Chicago* that this Court held that the Second Amendment also applies to the states. 130 S. Ct. 3020 (2010). Nonetheless, the individual right in most state constitutions and the Constitution are similar. *Id.* at 3037.

Throughout history, it has been uncontroversial that the government may restrict the individual right to weapons in public. Most of the states to address the question upheld state restrictions of bearing arms as a necessary part of the "police powers of the legislature" to protect the "public security, quiet, and good order." *Commonwealth v. Murphy*, 44 N.E. 138 (Mass. 1896). This Court has recognized that states largely upheld laws banning concealed carrying of weapons. *Heller*, 554 U.S. at 613.

State courts in the nineteenth century also upheld complete bans on bearing arms in public. In 1871, the Supreme Court of Tennessee upheld a state law prohibiting any person from "publicly or privately carry[ing] a dirk, swordcane, Spanish stiletto, belt or pocket pistol or revolver." An act to preserve the peace and prevent homicide, June 11, 1870, Tenn. Laws 28-29 (2d Sess. 1869-1870). The Tennessee constitution provided that "the citizens of this State have a right to keep and bear arms for their common defense. But the Legislature shall have power by

law, to regulate the wearing of arms with a view to prevent crime." Tenn. Const. of 1870 art. 1, s. 24. This Tennessee provision is representative of many state constitutions in the nineteenth century. *See generally*, Mark Frassetto, *Firearms and Weapons Legislation up to the Early Twentieth Century* 6-7 (Georgetown U. L. Ctr., Working Paper, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200991 (compiling a list of twelve state constitutions preserving the Anglo-American right of the legislature to prescribe the manner in which arms may be worn).

Though the United States Constitution does not explicitly state the prerogative of the legislature to regulate individual weaponry, it is clear from the history above that state regulation was encompassed in the pre-existing right at the time of the founding and the extension of that right to the states through the Fourteenth Amendment. The Tennessee Supreme Court acknowledged as much, finding the "the same rights, and for similar reasons, . . . being provided for and protected in both the Federal and State Constitutions." *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 177 (1871). The court found that even the right to keep the weapons of soldiers—those the right to bear arms was most designed to protect—"can not be infringed or forbidden by the Legislature. Their use, however, to be subordinated to such regulations and limitations as are or may be authorized by the law of the land, passed to subserve the general good, so as not to infringe the right secured and the necessary incidents to the exercise of such right." *Id.* at 179-80. Tennessee's conclusion was not anomalous; states have upheld regulations on the types of weapons allowed in public in times of peace since the nineteenth century. *Strickland v. State*, 72 S.E. 260, (Ga. 1911) ("In several states other statutes, regulatory in their nature, or prohibiting the carrying of certain kinds of weapons, or the carrying of weapons under certain circumstances and at certain places, have been upheld."). States understood the individual right to carry

weapons outside of the home to be a right "not to bear arms upon all occasions and in all places, but merely 'in defence of himself and the State.'" *State v. Reid*, 1 Ala. 612, 616 (1840); *see also State v. Smith*, 11 La. Ann. 633, 633 (1856) (upholding a concealed weapon ban on the basis that the Second Amendment "was never intended to prevent the individual States form adopting such measures of police as might be necessary, in order to protect the orderly and well disposed citizens from the treacherous use of weapons not even designed for any purpose of public defence."). The individual right was understood to stem from the English right, which had always "refer[red] to Parliament to determine what arms shall be borne and how." *Reid*, at 616. Though the United States Constitution was "silent as to the action of the Legislature, [it] does not divest it of a power over the subject, which pertained to it independent of an express grant." *Id.* In nineteenth century America, many states recognized that the legislature's prerogative to exercise its police power "for the protection of society" was "not an infringement of the constitutional right to bear arms. It does not prohibit the right to bear arms, but provides that they shall not be worn in a manner dangerous to the welfare of society." *State v. Wilforth*, 74 Mo. 528, 528-29 (1881). For some states such as Missouri and Louisiana, protecting the public required a ban on concealed weapons. For others, all guns were prohibited to protect the public order. Early English law codified not simply the offense of armed men causing mischief but also recognized that the very presence of arms in public was a "crime against the public peace, by terrifying the good people of the land." 2 William Blackstone, Commentaries *148.

State and local statutes regulating the manner in which certain weapons may be carried in public do not take away from the individual right to keep arms announced in *Heller*. Different treatment of rights in home versus in public is not unusual. *Heller* and *McDonald* made clear that "Second Amendment guarantees are at their zenith within the home." *Kachalsky v. County of*

Westchester, 701 F.3d 81, 89 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1806 (2013); *see also Heller*, at 635 (The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.").

C. Like the First Amendment, the Individual Right to Bear Arms Preserved in the Second Amendment Is More Circumscribed in Public Areas Than in the Home

Recognizing a narrower individual right to carry weapons outside of the home is in line with this Court's analysis of other individual rights. In the First Amendment context, this Court has held that a person could not be prosecuted for keeping obscene material in the home though the public sale of such material was not protected under the First Amendment. *Compare Stanley v. Georgia*, 394 U.S. 557, 564 (1969), *with Roth v. United States*, 354 U.S. 476 (1957) (holding that obscenity was not constitutionally protected under the First Amendment). Inside of the home, obscene material featuring adults is fully protected; outside of the home, state and local authorities may regulate or even prohibit such material. *See Times Film Corp. v. City of Chicago*, 365 U.S. 43 (1961) (holding that the government may regulate and prohibit obscene material in public). Obscene materials are not the only type of speech given a more narrow scope of protections by the First Amendment outside of the home. *See, e.g.*, *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (finding that the First Amendment "[f]rom 1791 to the present . . . has permitted restrictions upon the content of speech . . . and has never included a freedom to disregard these traditional limitations . . . including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct." (internal citations omitted)). Like obscene materials and other speech that may have a deleterious effect on the welfare of the populace, the individual right to carry any sort of weapon "is a right that ends at the doorstep." Darrell A.H. Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 Colum. L. Rev. 1278, 1299 (2009). To be sure, a complete prohibition of all weapons in public would raise serious

constitutional concerns. The government can, however, regulate and restrict the type of weapons individuals may bear outside of the home and the conditions of such bearing. Just as "elected officials can regulate obscenity so as to protect the health and welfare of the populace," governments have wide latitude to regulate firearms in public for the public benefit—a prerogative that has been recognized in the United States for centuries.

This Court has endorsed both the close relationship of the First and Second Amendments and the state's ability to regulate the type of weapons used in public as within the constitutional bounds of the Second Amendment. In *Heller* this Court pointed to the First Amendment as an analogue to help demarcate the reach of the individual right to bear arms. 554 U.S. at 595. ("Of course the right was not unlimited, just as the First Amendment's right of free speech was not. Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*."). Just as the First Amendment's protection is more limited in public than in the home, the Second Amendment right to bear arms can be regulated by governments outside of the home in ways that might be constitutionally impermissible inside of the home.

D. Longstanding, Reasonable State Regulations of Handguns Outside of the Home Are Presumptively Lawful and Do Not Violate the Second Amendment

Though this is a case of first impression, the precedents of this Court support the textual and historical conclusion that the right to bear arms outside of the home may be limited by the legislature in ways that would be unconstitutional if applied to the home. This Court has long held that many of the individual freedoms enshrined in the Bill of Rights are subject to "certain well-recognized exceptions." *Robertson v. Baldwin*, 165 U.S. 275 (1897). *Heller* was clear to limit its holding to government regulations that prohibit "an entire class of 'arms'" in the "home, where the need for defense of self, family, and property is most acute." 554 U.S. at 628. The core

of the individual right is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Though a "complete prohibition" of handgun use in the home is "invalid," *Heller* was not meant to "cast doubt on longstanding prohibitions on the possession of firearms" by certain categories of people and in certain sensitive places. *Id.* at 627. *Heller* does not, therefore, recognize a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* For example, *Heller* endorsed laws banning concealed carrying of weapons as presumptively lawful. *Id*. at 626. ("Like most rights, the right secured by the Second Amendment is not unlimited. . . . For example, the majority of 19th-centiury courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."). Since *Heller* did not complete "an exhaustive historical analysis . . . of the full scope of the Second Amendment," concealed carry, felon and mentally ill bans, and prohibitions on carrying weapons in sensitive places cannot be the only state regulations outside the scope of the Second Amendment. *See McDonald*, 130 S. Ct. at 3047 ("[I]ncorporation does not imperil every law regulating firearms."). Restrictions on open carrying of firearms were also common in the nineteenth century, particularly in cities. *See generally* Frassetto, *supra*; Appendix 1, *infra*.

Longstanding state laws regulating the public bearing of firearms are presumptively lawful so long as they do not amount to a "destruction of the right, or . . . require[] arms to be borne as to render them wholly useless for the purpose of defence." *Heller*, 554 U.S. at 629 (quoting *Reid*, 1. Ala. at 616-17). Weapon restrictions certainly differ by state. Some states allowed all types and manner of weapons in public and some allowed none. Frasetto, *supra.* The diversity of arms restrictions is not surprising since it was understood that the legislature had a duty to enact laws "to promote personal security, and to put down lawless aggression and

violence." *Reid*, 1 Ala. at 616. A state or local legislature's determination as to what is necessary to protect the common welfare of its citizens "does not come in collision with the constitution" though it may "exert an unhappy influence upon the moral feelings of the wearer." *Id.* The need to defend oneself may overcome the public welfare in rural Pennsylvania in ways that would be unacceptable in urban Boston. It is thus completely consistent with federalism values and the Second Amendment to allow state and local elected officials the latitude to tailor laws regulating the carrying of handguns outside of the home to local concerns and needs. *See, e.g.*, 1876 Wyo. Compilation of Laws, ch. 52 § 1 (forbidding any person from "bearing upon his person, concealed or openly, any fire-arm or other deadly weapon, within the limit of any city, town or village"). The scope of the pre-existing liberties protected in the Bill of Rights is determined by history. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 95 (1990) (Scalia, J., dissenting) ("[W]hen a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down."). That history clearly demonstrates the legislature's lawful ability to regulate and restrict handguns in public.

II. THE SECOND AMENDMENT PERMITS NEW JERSEY TO REQUIRE THAT INDIVIDUALS PROVE A JUSTIFIABLE NEED TO CARRY HANDGUNS IN PUBLIC FOR SELF-DEFENSE

A. This Court Should Use Categorical Historical Analysis to Determine the Second Amendment's Scope and a Means-Ends Analysis to Evaluate Regulations that Do Restrict Conduct Protected by the Second Amendment

This is the first case before this Court that requires it to establish a framework for evaluating whether a state's firearms restriction impermissibly burdens rights secured by the Second Amendment. In ruling that the Amendment secures an individual right to keep and bear arms for self-defense, this Court explicitly declined to establish such a framework. *Heller*, 554

U.S. at 635 ("[S]ince this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field"). When this Court incorporated that right against the states, it merely held "that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller," without further elaboration of how to scrutinize firearms regulations. *McDonald*, 130 S. Ct. at 3050.

Fortunately, *Heller*, history, and precedents from other constitutional rights indicate the appropriate two-step method to evaluate whether arms regulations violate the Second Amendment. First, this Court must evaluate whether the Second Amendment protects the conduct burdened by the regulation. If not, the analysis is at an end—the regulation, no matter how onerous, falls outside the scope of constitutional prohibitions and is hence lawful. If the Second Amendment does protect the regulated conduct, then this Court must engage in some analysis comparing the state's interest in maintaining the regulation with the degree of the burden it places on the right to keep and bear arms. Every federal court of appeals that has evaluated firearms regulations after *Heller* has adopted this general two-step approach, even as they have differed in the specific method of application. *See Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1150 (9th Cir. 2014) (surveying the circuit courts that have taken this approach).

1. *This Court should first conduct a historical analysis to determine whether the Second Amendment's scope extends to the conduct affected by the regulation*

The first step of the analysis—evaluating the scope of the Second Amendment right—is informed by *Heller*, history, and analogous constitutional jurisprudence. The *Heller* Court clearly stated that "the right secured by the Second Amendment is not unlimited" and is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. In stating that "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment," this Court indicated that the scope of the Second

Amendment was subject to a threshold historical analysis. *Id*. As was developed at length above in Section I, the right to keep and bear arms was subject to significant regulation at the time of ratification of both the Second and Fourteenth Amendments, especially in contexts outside of the home. The history of the Amendments thus confirms that the right is circumscribed, and analysis of historical limitations is required to understand its scope.

Moreover, analogy to the First Amendment indicates that even rights as central to our republic as freedom of speech and assembly are limited to the scope they were understood to have when ratified. The "right to keep and bear arms . . . was not unlimited, just as the First Amendment's right of free speech was not . . . [W]e do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose." *Id*. at 595 (internal citation omitted). Indeed, the First Amendment "[f]rom 1791 to the present . . . has permitted restrictions upon the content of speech . . . and has never included a freedom to disregard these traditional limitations . . . including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct." *Stevens*, 559 U.S. at 468-69 (internal citations omitted).

2. *If a regulation does not impose a substantial burden on the right to keep and bear arms, this Court should uphold it without further means-ends inquiry*

Before embarking on a complex analysis of the relative strengths of state interests and individual burdens implicated by a firearms regulation, this Court should make a threshold inquiry into whether the regulation imposes a substantial burden on the right to keep and bear arms. The Ninth Circuit cogently articulated this standard when evaluating a gun show ban on public property, holding "that only regulations which substantially burden the right to keep and to bear arms trigger heightened scrutiny under the Second Amendment." *Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011) *on reh'g en banc*, 681 F.3d 1041 (9th Cir. 2012).

As the *Nordyke* court argued, considerations of precedent and judicial institutional competence counsel in favor of a substantial burden threshold test. That court correctly noted that *Heller* "suggested a distinction between remote and severe burdens on the right to keep and to bear arms" by contrasting the District of Columbia's complete handgun ban with colonial fire-safety regulations, which imposed relatively small burdens on arms use. *Id*. at 784. A substantial burden test is also used in evaluating regulations restricting other fundamental rights, most notably abortion. *Id.* at 785 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992), for the proposition that "pre-viability abortion regulations are unconstitutional if they impose an 'undue burden' on a women's right to terminate her pregnancy").

Finally, a substantial burden threshold test allows courts to avoid difficult policy analyses to which they are not well suited. Both the majorities and dissents in *Heller* and *McDonald* were concerned with courts having to make difficult empirical judgments about gun laws' efficacy. *See McDonald*, 130 S. Ct. at 3050 ("[A]ssess[ing] the costs and benefits of firearms restrictions" requires "difficult empirical judgments in an area in which [judges] lack expertise."); *Heller*, 554 U.S. at 702 (Breyer, J., dissenting) ("[E]mpirically based arguments . . . cannot prove either that handgun possession diminishes crime or that handgun bans are ineffective."). Indeed, "[s]orting gun-control regulations based on their likely effectiveness is a task better fit for the legislature." *Nordyke*, 644 F.3d at 785. Deferring to legislatures when their regulations do not impose substantial burdens on Second Amendment rights thus allows the court to safeguard the core of the rights without having to resolve complex questions of policy efficacy.

3. *When regulations do substantially burden conduct protected by the Second Amendment, this court should compare the burden to the state's interests*

Every court of appeals that has been asked to evaluate firearms regulations post-*Heller* and -*McDonald* has decided that, insofar as a regulation burdens the exercise of a right within the

scope of the Second Amendment, the regulation should be evaluated in some manner comparing the state's interest against the burden on the right. *See Kachalsky*, 701 F.3d at 93 n. 17 (surveying circuit courts' application of various forms of intermediate scrutiny).

This type of analysis is consistent with history, analogous constitutional law, and this Court's direction in *Heller* and *McDonald*. *Heller* did not apply a particular level of scrutiny in striking down the District of Columbia's total handgun ban because it was so extreme. 554 U.S. at 629 ("Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban."). *Heller* indicated, though, that a more complex analysis would be required were the case a closer call when it stated that "[u]nder any of the standards of scrutiny this Court has applied to enumerated constitutional rights, this prohibition . . . would fail constitutional muster." *Id.* at 571. *McDonald* reinforced this understanding in finding that the right to keep and bear arms "limits but by no means eliminates [states'] ability to devise solutions to social problems that suit local needs and values." 130 S. Ct. at 3046. The extensive regulation of public carrying documented in Section I indicates that England, the colonies, and states have always conditioned public carry rights on countervailing public safety restrictions.

This Court's First Amendment jurisprudence is also instructive since it incorporates both the categorical scope exceptions indicated above and then applies means-ends evaluations to regulations not resolved by that categorical analysis. As the Seventh Circuit observed in applying this First Amendment framework to the Second Amendment context, "the applicable standard of judicial review depends on the nature and degree of the governmental burden on the First Amendment right and sometimes also on the specific iteration of the right." *Ezell v. City of Chicago*, 651 F.3d 684, 707 (7th Cir. 2011).

History and precedent both urge this Court to adopt an analysis comparing the relative burden of a regulation with its state interest rationale. *Heller* left undetermined exactly what standard should be used, explicitly ruling out only rational basis review. *Heller*, 554 at 628 n.27. It established only that means-ends evaluation is unnecessary for regulations so extreme as to fail "[u]nder any standards of scrutiny." *Id.* at 571. This brief provides a proposed set of standards in Section II.C for conducting the means-ends analysis of the New Jersey regulation at issue.

4. *This Court ought not limit its evaluation of specific regulations to historical categorical analysis*

Where a regulation burdens conduct within the scope of the Second Amendment, this Court should not limit itself to evaluating the lawfulness of the regulation using only historically-derived categorical rules. Though this approach has not been adopted by any of the divided courts of appeals, it has been advocated in various forms by some jurists and academics. *See, e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) ("*Heller II*") (Kavanaugh, J., dissenting) ("[C]ourts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny"); Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. Rev. 1443 (2009). As indicated above in Section II.A.3, *Heller* and *McDonald*, along with First Amendment precedents, foreclose this style of analysis. Moreover, this form of analysis is unfeasible for courts, and the history of the Second Amendment suggests it to be improper.

This historical categorical approach can answer "what kind of gun regulations were accepted, or acceptable, in the late eighteenth century," but it is unclear how to "determine which laws that were never even considered would have been acceptable if they had been proposed." Nelson Lund, *The Second Amendment, Heller, and Originalist Jurisprudence*, 56 UCLA L. Rev.

1343, 1353-54 (2009). The dissent in *Heller II* suggested that for such laws totally outside the scope of consideration at the time of the founding that "the proper interpretive approach is to reason by analogy from history and tradition." 670 F.3d at 1275. It is terribly unclear how to reason from analogy, though, when the Second Amendment was ratified in a world so different from ours. The framers of both the Second and Fourteenth Amendments could not anticipate the modern weapons and urban conditions that now prevail. Indeed, the historical English and colonial right developed in a completely different world where self-defense was synonymous with law enforcement since standing armies and police forces were uncommon or nonexistent so that collective self-defense was the only method of public law enforcement. *See* Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of the Anglo-American Right* 2 (1994). Courts ought not guess at what arms regulations would have been considered acceptable to the framers if they were transplanted into in a highly urbanized society, with weapons far more dangerous than flintlock pistols and where professional police forces are tasked with assuring public safety.

Indeed, the historical right embraced limitations that were unavoidably contextual. Blackstone's formulation, cited in *Heller*, recognized that the "offence of riding or going armed, with *dangerous or unusual* weapons, is a crime against the public peace, by *terrifying* the good people of the land." William Blackstone, 4 Commentaries *148-49 (emphasis added). Also cited was an 1822 Kentucky treatise that "in this country the constitution guarranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner, as to terrify the people unnecessarily." Charles Humphreys, *A Compendium of the Common Law in Force in Kentucky* 482 (1822) (cited in *Heller*, 554 U.S. at 627). What is "dangerous" and "unusual" and what "terrifies the good people of the land" certainly depend on context. That nineteenth century courts saw concealed carry as pernicious while modern legislatures generally more heavily

restrict open carry is just one example of how cultural contexts evolve so that the permissibility of different regulations will change over time.

Furthermore, an overly literal historical categorical analysis may have the effect of permitting improperly burdensome regulations when their value has elapsed over time. In evaluating a general Chicago ban on firing ranges, the Seventh Circuit considered a series of laws from the early republic that banned any discharge of a firearm in city limits for fire-suppression purposes. *See Ezell*, 651 F.3d at 714. Instead of deciding that such laws gave Chicago the power to ban all discharges within its city limits, the court instead properly derived the underlying principle that "[i]n the instance of firearms ordinances which concerned themselves with fire safety, we must acknowledge that public safety was seen to supercede gun rights at times." *Id*. "Although fire is no longer the primary public safety concern when firearms are discharged within City limits, historical context tells us that cities may take public safety into account in setting reasonable time, place and manner restrictions on the discharge of firearms within City limits." *Id*. Applying the general principle rather than the specific law, the Seventh Circuit ultimately ruled against the state because its laws, no longer relevant to fire safety, were too burdensome compared to the asserted state interest. *See id.* at 689.

B. The Scope of the Second Amendment Does Not Extend to the Conduct Restricted by New Jersey's Justifiable Need Requirement

1. *New Jersey's justifiable need requirement is lawful because it does not burden a right within the scope of the Second Amendment*

As is established in detail in Section I.B, the right to keep and bear arms was never understood, either in England or early America, to prevent states from regulating the conditions of carrying weapons in public. Without reiterating these regulations, it is worth noting simply that many such regulations were far more restrictive than New Jersey's requirement that a person

show a justifiable need to carry a handgun in public. *E.g.*, Act of Dec. 25, 1837, 1837 Ga. Laws at 90 (criminalizing the sale of concealable weapons in Georgia); Statute of Northampton, 2 Edw. 3, c. 3 (an English law in force from 1328 through the founding of the United States prohibiting men to "ride armed by night nor by day, in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere"). Given that history shows that the scope of the Second Amendment does not preclude such restrictive regulation of public carrying, New Jersey's relatively modest licensing requirement does not limit a constitutional right.

2. *New Jersey's Justifiable Need Requirement is a Longstanding, Presumptively Lawful Regulation*

In *Heller*, the Supreme Court indicated another way that regulations may fall outside the scope of the Second Amendment when it held that certain "longstanding" regulatory measures on gun possession are "presumptively lawful." *Heller*, 554 U.S. at 626, 626 n. 26 (2008). New Jersey's law is itself longstanding and similar to several other states' equally well established requirements that handgun users prove a specialized need to carry a weapon for self-defense in public. Moreover, New Jersey's law fits well with the specifically enumerated "presumptively lawful" regulations in *Heller*. *See id*.

New Jersey's justifiable need requirement is indeed longstanding; it celebrates its 90th anniversary this year.

> The New Jersey Legislature has long been aware of the dangers inherent in the carrying of handguns and the urgent necessity for their regulation. . . . [In 1924] it directed that no persons (other than those specifically exempted such as police officers and the like) shall carry handguns except pursuant to permits issuable only on a showing of "need."

Siccardi, 59 N.J. at 553 (internal citations omitted). Though New Jersey's firearms laws have evolved over time, the justifiable need requirement has remained intact, culminating in the 1966 Gun Control Law that is the basis for New Jersey's present regulatory regime. *See id*. at 554.

Moreover, this kind of regulation is not special or unique to New Jersey. It is in fact borrowed from an even older New York statute. That state's 1913 Sullivan Law created a licensing requirement whereby the "applicant was required to demonstrate 'good moral character, and that proper cause exists for the issuance [of the license].' . . . One hundred years later, the proper cause requirement remains a feature of New York's statutory regime." *Kachalsky*, 701 F.3d at 85 (quoting 1913 Laws of N.Y., ch. 608, at 1627–30). Indeed, three additional and geographically diverse states—California, Delaware, Hawaii, Illinois, Massachusetts, Maryland, and Rhode Island—have had at least as strict a licensure regime in place post-*Heller*.[3] Based on these states, as of 2013, over 30% of America's population was subject to this form of licensure regime,[4] which traces its historical roots to 1913.

New Jersey's justifiable need regulation also fits well with the "presumptively lawful" regulations articulated in *Heller*, sharing a similar historical pedigree and public safety purpose. *Heller* held that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." 554 U.S. at 626-27. New Jersey adopted its justifiable need law forty-four years before "the first general ban on the possession of firearms by felons was enacted in 1968." Lund, *The Second Amendment*, *supra*, at 1357 (citing C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 698 (2009)). "[T]he traditional understanding of the right to arms did not authorize

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[3] For more on the details of these laws, see *Peruta v. Cnty. of San Diego*, 742 F.3d 1144 (9th Cir. 2014) (holding California's law in violation of the Second Amendment); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (upholding Maryland's law against a Second Amendment challenge); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (holding Illinois's more general prohibition on public carry of handguns to violate the Second Amendment).

[4] This figure is based on the 2013 population estimates in Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2013, U.S. Census Bureau, https://www.census.gov/popest/data/state/totals/2013/tables/NST-EST2013-01.xls (last visited Mar. 27, 2014). For more detail on states with "may-issue" permit regimes like New Jersey's, see *Drake*, 724 F.3d at 442 (Hardiman, J., dissenting). These states, plus Illinois, comprised 30.3% of the U.S. population in 2013.

much more than laws forbidding those convicted of crimes of violence to carry firearms outside their homes, and possibly also forbidding them to possess easily concealable weapons, at least for as long as the offender continued to present a credible threat of recidivism." Lund, *The Second Amendment*, *supra*, at 1357. Not only is New Jersey's justifiable need requirement older than a general ban on felons possessing firearms, it is substantially less burdensome on the right to defend oneself. A general ban on possession by a felon would allow the state to bar a tax-evader from protecting himself at home or his place of business or from hunting, none of which are rights burdened by the justifiable need requirement at issue here.

Heller also counted as "longstanding prohibitions" without any further historical analysis "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. at 627. The "sensitive place" restriction envisions the kind of locational restrictions, presumably for public safety purposes, embraced by New Jersey's handgun laws. And laws limiting conditions and qualifications on the sales of arms may be more draconian than New Jersey's law, which allows widespread purchase for use on private premises and in hunting.

Two other regulations considered lawful in *Heller* similarly corroborate the legitimacy of New Jersey's justifiable need requirement. In explaining that "the right secured by the Second Amendment is not unlimited," this Court noted that "19th-century courts . . . held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *Heller*, 554 U.S. at 626. As such, New Jersey's willingness to allow concealed carry for those who can demonstrate justifiable need is in fact less restrictive than a longstanding regulation whose legitimacy was endorsed by this Court.

Moreover, the *Heller* Court interpreted *United States v. Miller*, 307 U.S. 174 (1939), to hold that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes." 554 U.S. at 625. *Heller* then explicitly endorsed this as an "important limitation on the right to keep and carry arms." *Id*. at 627. Prior to *Miller*, "at most that there [was] a tradition of prohibitions on the *carrying* of certain arms, not on their *possession*." Lund, *The Second Amendment*, *supra*, at 1362 (emphasis supplied). The historical sources cited by the *Heller* majority to explain the *Miller* holding all speak to prohibitions on the carrying of "terrifying" weapons, not to restrictions on their mere possession. *See id*. at 1362-67. This suggests two important conclusions for evaluating New Jersey's law. First, the historical support for the presumptively lawful *Miller* restriction embraces New Jersey's regulatory distinction between private and public spaces. Second, insofar as *Miller* expanded a historical restriction on carrying to reach outright bans on unusual weapons, that new limitation on the Second Amendment—which the *Heller* Court treated as presumptively lawful—was only established in 1939, over a decade after New Jersey established its justifiable need law.

Following the examples and logic in *Heller*, New Jersey's justifiable need requirement should be treated as a presumptively lawful longstanding regulation. It is both older and less burdensome than the longstanding regulations considered lawful in *Heller*.

C. Even If New Jersey's Justifiable Need Requirement Does Affect Rights Protected by the Second Amendment, It is Not Impermissibly Restrictive

New Jersey's law is also permissible even if does impact Second Amendment-protected liberties. Indeed, this Court need not definitively resolve the scope question to uphold New Jersey's justifiable need requirement if the law would anyway be permissible. *See Drake*, 724 F.3d at 431. New Jersey's justifiable need requirement is not a substantial burden on the core

right to keep and bear arms and, thus, should be sustained. Even if this Court does find a substantial burden to the regulation, the law survives the appropriate means-ends analyses.

1. *The Justifiable Need Requirement Imposes No Substantial Burden on Second Amendment Rights So Should Be Upheld*

New Jersey's justifiable need requirement is lawful because its narrow scope and extensive exceptions ensure that it does not burden the core rights protected by the Second Amendment. The requirement applies only to handgun use, not long guns. It places no burden on the use of handguns at home, at one's place of business, or on any other private property. It avoids restricting handguns for target practice and hunting. It exempts those whose profession requires them to have a weapon. *See* Appendix 2, *infra*. And those who can "demonstrate a special danger to the applicant's life" will be issued a permit. N.J. Admin. Code § 13:54-2.4.

The only restriction imposed by the justifiable need requirement is on those who wish to carry a handgun in public to defend themselves based on "[g]eneralized fears" or a desire to "protect property alone." *In re Preis*, 118 N.J. at 571. Considering that general bans on carrying firearms and on concealable weapons existed when the Second Amendment was established, this relatively narrow restriction should not be seen as a substantial burden on its core right.

2. *If the Justifiable Need Requirement Does Pose a Substantial Burden on a Second Amendment Right, this Court Should Uphold It as a Reasonable Regulation*

If this Court determines that it is appropriate to advance to a means-ends evaluation of New Jersey's justifiable need requirement to determine its constitutionality, the proper standard to apply is a reasonability test. This standard comports with the longstanding tradition in the states and this Court's precedents in both First and Second Amendment contexts.

The right to keep and bear arms has a long tradition in the states, which have evaluated it according to a reasonableness test. "[F]orty-two states currently have constitutional provisions

guaranteeing an individual right to bear arms. . . . The state practice of judicial deference is uniform and the 'reasonable regulation' standard has been applied to a vast array of different types of gun control." Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 711 (2007). This reasonableness test was most clearly articulated by Missouri Supreme Court when it upheld a law forbidding intoxicated persons from possessing firearms to be consistent with the state's personal right to possess arms for self-defense. That court reasoned that "the act is but a reasonable regulation of the use of . . . arms, and to which the citizen must yield." *State v. Shelby*, 2 S.W. 468, 469 (Mo. 1886) (further holding that the "statute is designed to promote personal security, and to check and put down lawlessness, and is thus in perfect harmony with the constitution"). "In the decades since, the reasonable regulation test has spread throughout the states with constitutional provisions guaranteeing an individual right to bear arms." Winkler, *Scrutinizing*, *supra*, at 716. *Heller* emphasized interpreting the Second Amendment in accord with longstanding tradition, so it is sensible to import the states' longstanding reasonableness standard into federal constitutional jurisprudence.

Moreover, this reasonableness standard fits well with First Amendment jurisprudence. As this Court elaborated in a case involving restrictions on burning draft cards, regulations that only incidentally burden free speech are held to a relatively low standard of scrutiny. *See United States v. O'Brien*, 391 U.S. 367, 377 (1968) ("[A] government regulation is sufficiently justified if . . . it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest"). Applying this to a Second Amendment context, public safety laws that only incidentally burden self-defense should receive a deferential scrutiny so long as they are not unduly broad.

At the time of ratification, the framers of the Bill or Rights enshrined a right against the government disarming the populace for the sake of disarming them, as James II had done before the Glorious Revolution. *Heller*, 554 U.S. at 594; *see also* Malcolm, *To Keep and Bear Arms*, *supra*, at 97-119 (discussing the establishment of the English right in response to the Stuart kings, which became the foundation for the Second Amendment). Both for reasons of political economy and technological changes that ensure the government's martial superiority, governments now rarely, if ever, have an interest in disarming citizens for its own sake. This is quite distinct from the First Amendment context, where the government often does attempt to impose restrictions on speech in order to control content. *E.g. United States v. Alvarez*, 132 S. Ct. 2357 (2012) (invalidating a federal law criminalizing lying about receiving the Congressional Medal of Honor); *Texas v. Johnson*, 491 U.S. 397 (1989) (invalidating a Texas law criminalizing "desecrating a venerated object"). As such, the First Amendment's approximation of a reasonableness standard for incidental regulation does indeed make sense in a Second Amendment context where states are only incidentally burdening the right to armed self-defense in the interest of public safety.

If this Court evaluates New Jersey's justifiable need requirement by a reasonableness test, it is clearly lawful. The law protects law enforcement officers in the conduct of their duty, prevents public discomfort from an openly armed populace, and prevents altercations from becoming fatal. The law also includes myriad exceptions to ensure it is not burdensome on the core protected uses of handguns. These reasons are explored in greater detail below at Section II.C.3 in the context of a more exacting intermediate scrutiny analysis. Suffice it to say that New Jersey and several sister states have all established licensure regimes in order to provide modest and reasonable public safety protection while minimizing the incidental burden to self-defense.

3. *The Justifiable Need Requirement Satisfies Intermediate Scrutiny Because It Bears a Reasonable Fit to a Compelling Government Interest*

If this Court believes that New Jersey's law imposes a substantial burden on Second Amendment rights and that the traditional reasonableness standard for evaluating such regulation is inappropriate, then it ought to apply intermediate scrutiny, which New Jersey's law survives. The highest level of scrutiny applied by any circuit courts in evaluating gun regulations after *Heller* and *McDonald* has been some form of intermediate scrutiny. Even the strictest of the courts of appeal rightly reasoned that "modest burdens on the right" to keep and bear arms "may be more easily justified," and that "[h]ow much more easily depends on the relative severity of the burden and its proximity to the core of the right." *Ezell*, 651 F.3d at 708.

Intermediate scrutiny is applicable because the justifiable need requirement is neither terribly restrictive, *see supra*, Section II.C.1, nor does it touch the core of the Second Amendment right. This core was defined in *Heller* when the court noted it "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense *of hearth and home*." 554 U.S. at 635 (emphasis supplied). History confirms that the Second Amendment accords to public carrying of weapons a subordinate value since such conduct has traditionally been subject to substantial regulation. *See supra*, Section I.B; *see also Kachalsky*, 701 F.3d at 96 ("Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate"). Analogy to the First Amendment confirms that where conduct lies outside the core of a protected right, regulations that burden such conduct trigger an intermediate level of review. Because the First Amendment is centrally about protecting free public discourse, content-based restrictions in a public forum trigger strict scrutiny. *E.g.*, *Pleasant Grove v. Summum,* 555 U.S. 460, 469 (2009). Regulations of speech outside that core receive intermediate scrutiny, such as time, place, and

manner restrictions, *see Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), and regulations on commercial speech, *see Bd. of Trs. Of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 477 (1989) (recognizing that commercial speech occupies a "subordinate position" "in the scale of First Amendment values").

Strict scrutiny is not appropriate in this context. First, the long tradition of extensive regulation of firearms use outside the home suggests that the right permits extensive regulation, in contrast to strict scrutiny contexts such as content restraints on speech. Second, since most gun control measures are for the purpose of public safety and are subject to complex empirical debate about effectiveness and necessity, courts are ill-equipped to evaluate precisely how closely regulatory means link to the public safety ends or whether an alternative, less-restrictive control would be as effective. "Because of this uncertainty," requiring the government to prove "some substantial scientific proof . . . will likely be tantamount to per se invalidation," while an approach "to simply require a logically plausible theory of danger reduction that many reasonable people believe . . . would likely uphold virtually any gun control law, including a total ban on all guns." Volokh, *Implementing the Right to Keep and Bear Arms*, *supra*, at 1468.

This Court has established several versions of the intermediate scrutiny standard in the First Amendment context, but "they all require the asserted governmental end to be . . . 'significant,' 'substantial,' or 'important.'" *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010); *see also Fox*, 492 U.S. at 480 ("[W]e require the government goal to be substantial," and to "justify[] its restrictions" it "must affirmatively establish . . . reasonable fit"). "They generally require the fit between the challenged regulation and the asserted objective to be reasonable, not perfect." *Marzzarella*, 614 F.3d at 98 (citing *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 556 (2001); *Fox*, 492 U.S. at 480).

New Jersey's justifiable need regulation passes intermediate scrutiny because it serves a substantial interest and its means bear a reasonable fit to that end. As the Third Circuit concluded, "[t]he State of New Jersey has, undoubtedly, a significant, substantial, and important interest in protecting its citizens' safety." *Drake*, 724 F.3d at 437 (citing *United States v. Salerno*, 481 U.S. 739, 749 (1987) (characterizing "public safety" as "compelling interests")). Indeed, New Jersey's legislature has by statute enshrined firearms safety as a leading state priority. *See* N.J. Stat. Ann. § 2C:58-2.2a (West 2013) ("New Jersey's commitment to firearms safety is unrivaled anywhere in the nation").

The justifiable need requirement bears a reasonable fit to New Jersey's compelling interest of protecting public safety by reducing public gun violence. New Jersey has several important reasons to restrict the carrying of handguns in public. In the event of an altercation, the presence of firearms dramatically increases the chance of a fatality. "[G]uns are about five times more deadly than knives, given that an attack with some kind of weapon was occurred." *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (citing Franklin E. Zimring, *Firearms, Violence, and the Potential Impact of Firearms Control*, 32 J.L. Med. & Ethics 34 (2004)). Prevalence of guns in public also increases the risk that criminals will use more guns.

> "Two-thirds of prisoners incarcerated for gun offenses reported that the chance of running into an armed victim was very or somewhat important in their own choice to use a gun. Currently, criminals use guns in only about 25 percent of noncommercial robberies and 5 percent of assaults. If increased gun carrying among potential victims causes criminals to carry guns more often themselves, or become quicker to use guns to avert armed self-defense, the end result could be that street crime becomes more lethal."

Moore, 702 F.3d at 950-51 (Williams, J., dissenting) (quoting Philip J. Cook, Jens Ludwig & Adam M. Samaha, *Gun Control After Heller: Threats and Sideshows from a Social Welfare Perspective*, 56 UCLA L.Rev. 1041, 1081 (2009)). Moreover, public carrying of weapons can

attract additional criminality via theft. In upholding a "good reason" requirement similar to New Jersey's justifiable need requirement, the Fourth Circuit credited the State of Maryland's evidence that "criminals often target victims precisely *because* they possess handguns." *Woollard*, 712 F.3d at 879 (internal quotation omitted). That court also noted the benefits of "[c]urtailing the presence of handguns during routine police-citizen encounters." *Id*. at 880 ("If the number of legal handguns on the streets increased significantly, [police] officers would have no choice but to take extra precautions before engaging citizens, effectively treating encounters between police and the community that now are routine, friendly, and trusting, as high-risk stops."). More general econometric evidence suggests that more guns and public carrying correspond to greater rates of gun violence. *See* Ian Ayres & John J. Donohue III, *More Guns, Less Crime Fails Again: The Latest Evidence From 1977–2006*, 6 Econ. J. Watch 218, 231 (2009) ("[T]he best evidence to date suggests that [right-to-carry] laws at the very least increase aggravated assault"); Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086 (2001) (finding that "changes in gun ownership are significantly positively related to changes in the homicide rate").

That Petitioners dispute the strength of this evidence for public carrying restrictions does not defeat the reasonable fit between New Jersey's compelling public safety interest and its justifiable need requirement. *Cf. Skoien*, 702 F.3d at 937-939 (criticizing the kinds of evidence offered to support public carry restrictions). This Court need not resolve these complex empirical debates to uphold New Jersey's law under intermediate scrutiny. First, common sense confirms the reasonableness of the fit between the regulation and public safety—one does not need an econometric study to know that an altercation in which a gun is involved is more dangerous than one without a gun or to share police officers' concerns with interacting with a widely armed

public. Second, where the empirical question is itself a matter of debate, "courts must accord substantial deference to the predictive judgments of [the legislature]." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 665 (1994). "Sound policymaking often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable. . . . [The Legislature] is far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon an issue as complex and dynamic as that presented here." *Id.* at 665-66. As a matter of institutional competence, then, this Court should defer to New Jersey's legislature to determine which side of the empirical debate has the better case.

In sum, New Jersey's justifiable need requirement serves a compelling government interest of preserving public safety, and the state has strong evidence to show a reasonable connection between its method and that end. This Court should thus uphold the law under intermediate scrutiny.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully,

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Appendix 1: States with nineteenth century open and/or concealed weapon bans (either in the entire state or in city limits)

State	Concealed Carry Ban	Open Carry Ban
1. AL	✔	
2. AK	✔	
3. AZ	✔	✔
4. AR	✔	
5. CA		
6. CO	✔	
7. CT		
8. DE	✔	✔
9. DC		
10. FL	✔	
11. GA		✔
12. HI		
13. ID	✔	✔
14. IL	✔	
15. IN	✔-upheld in *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833)	
16. IA		
17. KS		✔
18. KY	✔- struck down in Bliss v. Commonwealth, 2 Litt. 90 (1822)	
19. LA	✔-upheld in *State v. Smith*, 11 La. Ann. 633 (1856)	
20. ME		✔
21. MD	✔	
22. MA	✔	✔
23. MI	✔	✔
24. MN		
25. MS		
26. MO	✔- upheld in *State v. Wilforth*, 74 Mo. 528 (1881)	✔
27. MT		
28. NE	✔	✔
29. NV		

30. NH		
31. NJ		✔
32. NM	✔	✔
33. NY	✔	
34. NC	✔	✔- upheld in State v. Huntly, 3 Ired. 418 (N.C. 1843)
35. ND	✔	
36. OH	✔	
37. OK	✔	
38. OR	✔	✔
39. PA		✔
40. RI	✔	
41. SC		
42. SD	✔	
43. TN	✔	✔-partially upheld in *Andrews v. State*, 50 Tenn. 165 (1871)
44. TX	✔	✔
45. UT		
46. VT		
47. VA	✔	✔
48. WA	✔	✔
49. WV	✔	✔-upheld in *State v. Workman*, 14 S.E. 9 (W. Va. 1891)
50. WI		✔
51. WY	✔	✔

Appendix 2: New Jersey's handgun control statute in detail

N.J. Stat. Ann. § 2C:58-3c (West 2013) provides the following restrictions on who may procure a firearms purchase or use permit:

> c. Who may obtain. No person of good character and good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:
>
> (1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in section 3 of P.L.1991, c. 261 (C.2C:25-19), whether or not armed with or possessing a weapon at the time of such offense;
>
> (2) To any drug dependent person as defined in section 2 of P.L.1970, c. 226 (C.24:21-2), to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an habitual drunkard;
>
> (3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;
>
> (4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;
>
> (5) To any person where the issuance would not be in the interest of the public health, safety or welfare;
>
> (6) To any person who is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm;

(7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2);

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et seq.) and whose firearm has not been returned; or

(9) To any person named on the consolidated Terrorist Watchlist maintained by Terrorist Screening Center administered by the Federal Bureau of Investigation.

N.J. Stat. Ann. § 2C:39-5 (West 2013) criminalizes unlawful possession of firearms as follows:

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in N.J.S.2C:58-5, is guilty of a crime of the second degree.

b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the second degree. (2) If the handgun is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person it is a crime of the third degree.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree. (2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

e. Firearms or other weapons in educational institutions.

(1) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer

of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

(2) Any person who knowingly possesses any weapon enumerated in paragraphs (3) and (4) of subsection r. of N.J.S.2C:39-1 or any components which can readily be assembled into a firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 or any other weapon under circumstances not manifestly appropriate for such lawful use as it may have, while in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution is guilty of a crime of the fourth degree.

(3) Any person who knowingly has in his possession any imitation firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, or while on any school bus is a disorderly person, irrespective of whether he possesses a valid permit to carry a firearm or a valid firearms purchaser identification card.

f. Assault firearms. Any person who knowingly has in his possession an assault firearm is guilty of a crime of the second degree except if the assault firearm is licensed pursuant to N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c. 32 (C.2C:58-12); or rendered inoperable pursuant to section 12 of P.L.1990, c. 32 (C.2C:58-13).

g. (1) The temporary possession of a handgun, rifle or shotgun by a person receiving, possessing, carrying or using the handgun, rifle, or shotgun under the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1) shall not be considered unlawful possession under the provisions of subsection b. or c. of this section.

(2) The temporary possession of a firearm by a person receiving, possessing, carrying or using the firearm under the provisions of section 1 of P.L.1997, c. 375 (C.2C:58-3.2) shall not be considered unlawful possession under the provisions of this section.

N.J. Stat. Ann. § 2C:39-6 (West 2013) provides the following exemptions to the statutory permit requirement:

a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:
(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;
(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;
(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park police officer, or State conservation officer;
(5) Except as hereinafter provided, a prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a corrections officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;
(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;
(7)(a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;
(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c. 439 (C.40A:14-146.14);
(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection (b) of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;
(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c. 409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and

successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;
(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c. 284 (C.52:17B-170) subject to the regulations promulgated by the commission;
(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area;
(11) A county corrections officer at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:
(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or
(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:
(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;
(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;
(3) (Deleted by amendment, P.L.1986, c. 150.)

(4) A court attendant serving as such under appointment by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;
(5) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;
(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;
(7) A humane law enforcement officer of the New Jersey Society for the Prevention of Cruelty to Animals or of a county society for the prevention of cruelty to animals, while in the actual performance of his duties;
(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;
(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;
(10) A campus police officer appointed under P.L.1970, c. 211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;
(11) (Deleted by amendment, P.L.2003, c. 168).
(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c. 291 (C.27:25-15.1);
(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;
(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;
(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;
(16) A housing authority police officer appointed under P.L.1997, c. 210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or
(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c. 362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to

carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.
(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.
(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.
(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.
(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when

moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:
(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;
(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;
(3) A person transporting any firearm or knife while traveling:
(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or
(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or
(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;
(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signaling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the

course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.
The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.
Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health .

i. (1) Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a crime, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than $100.
(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in N.J.S.2C:39-5 shall be construed to prevent a health inspector or investigator operating pursuant to the provisions of section 7 of P.L.1977, c. 443 (C.26:3A2-25) or a building inspector from possessing a device which is capable of releasing more than three-quarters of an ounce of a chemical substance, as described in paragraph (1), while in the actual performance of the inspector's or investigator's duties, provided that the device does not exceed the size of those used by law enforcement.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.
Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a

"firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c. 56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c. 255 (C.43:16A-6), section 7 of P.L.1944, c. 255 (C.43:16A-7), section 1 of P.L.1989, c. 103 (C.43:16A-6.1) or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of four or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is 75 years of age or younger, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State or county corrections officer; a full-time county park police officer; a full-time county prosecutor's detective or investigator; a full-time federal law enforcement officer; or is a qualified retired law enforcement officer, as used in the federal "Law Enforcement Officers Safety Act of 2004," Pub.L. 108-277, domiciled in this State from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.
(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:
(a) The name and address of the retired officer;
(b) The date that the retired officer was hired and the date that the officer retired;
(c) A list of all handguns known to be registered to that officer;
(d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and
(e) A statement that the officer retired in good standing.
(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.
(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.
(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of such a hearing shall be in accordance with law and the rules governing the courts of this State.
(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

N.J. Admin. Code § 13:54-2.2 forbids unpermitted handgun carrying by providing that:

No person, except as provided in N.J.S.A. 2C:39-6, shall carry, hold or possess a handgun without first having obtained a permit to carry the same in accordance with the provisions of this chapter.

N.J. Admin. Code § 13:54-2.4d governs the material that must accompany a permit application:

Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. In the case of employees of private detective agencies, armored car companies and private security companies, that:

i. In the course of performing statutorily authorized duties, the applicant is subject to a substantial threat of serious bodily harm; and

ii. That carrying a handgun by the applicant is necessary to reduce the threat of unjustifiable serious bodily harm to any person.