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**DATE: NOVEMBER 28, 2022**

**Addressed To:**

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**Attn: Johnny Cardona, Esq.**

**Re: New Jersey Assembly Bill A4769/New Jersey Senate Bill S3214**

To all parties;

Safe Way Out is a New Jersey nonprofit that provides personal protection, security services, self defense training and counseling to survivors of domestic abuse situations throughout the state. In addition, Safe Way Out seeks to raise awareness around domestic violence generally. The services provided by Safe Way Out are at no cost to our clients. In many cases, these clients are indigent.

In June of this year, the United States Supreme Court struck down portions of New York's law concerning the licensing of private individuals to carry concealed weapons in public for self-defense. In particular, the Court struck down the portion of the law requiring applicants to demonstrate a justifiable need to obtain such a permit. That holding invalidated similar statutes in place in several other states including the State of New Jersey.

In response, in the referenced Assembly and Senate bills, New Jersey is proposing a law that would radically alter the regulations involving the issuance and use of permits to both possess and carry a handgun. This proposed law covers a wide array of topics including, but not limited

to, changes in the background check process; the establishment of so called “sensitive places” throughout the state where the legal carrying of firearms is prohibited; and, portions of the proposed law will substantially increase the costs to obtain a permit to possess and a permit to carry, require permit holders to obtain expensive insurance and expand the already comprehensive training requirements that exist today in New Jersey’s law.

Many civil rights organizations are currently publicly opposing the proposed law on the basis that it violates the 2<sup>nd</sup> Amendment to the United States Constitution. Those groups are all also preparing to file legal challenges once this bill is enacted. We are leaving the broader debate on the constitutionality of this bill under the 2<sup>nd</sup> Amendment to those other forums.

Instead, we would like to address with you only the latter elements listed above. Namely that the bill plainly seeks to bar applicants on a socioeconomic basis. The implication is to limit the ability of poorer classes of people in urban areas of the state from accessing a fundamental right guaranteed to all. Safe Way Out representatives appeared before the New Jersey Assembly Judiciary Committee on November 14<sup>th</sup>, 2022 to testify that the proposed bill has significant discriminatory implications for classes of people protected under the 14<sup>th</sup> Amendment.

We have prepared the attached memorandum to support our conclusions. We respectfully request that the **ACLU of New Jersey** and the **Essex, Passaic, Camden and Union County Public Defender’s Offices** join in 1) condemning the relevant portions of bill on the basis of its discriminatory impact and 2) in the event that this bill becomes law, to join in a separate litigation to challenge the law as racially and socioeconomically discriminatory. We believe that public defenders in New Jersey may have an interest in this matter.

We would prefer to have these issues addressed in the legislature prior to the bill’s passage. If this bill is enacted in its current form, we have a preliminary impact statement from one of our clients, a female person of color living in Camden who is presently under threat and will be unable to afford the fees and costs to protect herself under if these increases are put into place. We are a small organization and will need assistance in proceeding in this matter. We explain in the attached memorandum how challenges in other cases from 2<sup>nd</sup> Amendment groups may ultimately be successful on elements of the law like “sensitive place” designations but are unlikely to be successful or even properly address the portions of this law that most harms poor and vulnerable communities in New Jersey including at-risk citizens.

Sincerely,

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***Memorandum regarding the Discriminatory Impact of New Jersey  
Assembly Bill A4769 AcaAcaAcaAcs (ACS)  
Session 2022 – 2023***

***“Makes various revisions to requirements for obtaining a firearm purchaser  
identification card, permit to purchase a handgun, and permit to carry a  
handgun; codifies sensitive places in which firearms and destructive devices are  
prohibited”***

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**Prepared By:**

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## Background

In June of 2022, the U.S. Supreme Court ruled in favor of the petitioners in *NYSRPA v. Bruen*, finding that New York’s statutory requirement for applicants of concealed carry weapons permits to demonstrate a justifiable need violated the 2<sup>nd</sup> and 14<sup>th</sup> Amendments to the Constitution. *New York State Rifle and Pistol Association, Inc. et al. v. Bruen*, 142 S. Ct. 2111 (2022) (“*Bruen*”). For nearly a century prior to the *Bruen* decision, the State of New Jersey required separate licensing for the purposes of carrying a firearm outside one’s home. Under New Jersey’s current law, applicants must first obtain a firearms purchaser identification card which requires an extensive background check, the submission of two separate character references and payment \$26 in application fees along with separately paying the cost to be fingerprinted which costs approximately \$40. In addition, that applicant must purchase an additional \$2 permit to purchase a pistol.<sup>1</sup> When that permit is executed, the applicant is subjected to another background check as is required under Federal regulations.<sup>2</sup> To then apply for a Permit to Carry a Handgun (hereinafter referred to as “PTC”), the applicant must complete a separate application, supply three separate character references and pay an additional \$50 application fee.

The applicant must be fingerprinted again (roughly \$40) and complete enough firearms training to meet the basic police qualification standard. Just for the qualification, shooting ranges in New Jersey charge approximately \$150 which typically also includes instruction on New Jersey law with regards to use of force in defensive situations. The applicant must supply passport photos and produce three copies of the PTC application with each copy notarized, both steps subject to the customary fees for each of those services. The applicant also completes a consent form for a search of the applicant’s mental health records, waiving any right to confidentiality with respect to those records. Another more extensive background check is performed, including checking the applicant’s mental health records and if the application is approved by the applicant’s local chief law enforcement officer, that application is transmitted to the Superior Court.

While procedures vary slightly from jurisdiction to jurisdiction in New Jersey, the Superior Court typically forwards the application to the County Prosecutor’s Office for review and to determine whether there will be any objections. If there are none, the Superior Court judge will then approve the application with or without an in-person hearing. This is a summary of the current law and fees to obtain a PTC in New Jersey which presently costs in excess of \$300. The PTC application process results in a permit that is valid for two years and the entire process must be repeated every two years.

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<sup>1</sup> Procedures and fees for obtaining a New Jersey Firearms Purchaser Identification Card, Pistol Purchase Permit and Permit to Carry a Handgun can be found in N.J. Rev. Stat. § 2C:58-3 and N.J. Rev. Stat. § 2C:58-4 respectively. We summarize those here without reference to specific subsections for simplicity’s sake.

<sup>2</sup> Federal background checks are conducted pursuant to regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, 27 CFR 478.129 and under federal criminal statutes governing the transfer of firearms, 18 U.S. Code § 922.

In response to the Supreme Court’s ruling the New Jersey legislature has proposed *Assembly Bill A4769, 2022-2023 Reg. Sess. (NJ 2022)* (referred to herein throughout as “Bill A4769”) which includes a series of changes to this system that increases those fees, increases the rigor of the training requirement, and requires that the applicant obtain a liability insurance policy covering at least \$300,000 in damages. The statutory application fees alone increase from approximately \$120 to over \$350. The proposed bill lays out guidelines for added training requirements to be determined by the Superintendent of the New Jersey State Police. As of now it is unclear how much more that will cost for an applicant to obtain, but it is safe to estimate that the proposed bill at least doubles the cost of that training. No insurance company licensed in the State of New Jersey currently offers the type of coverage that New Jersey is mandating but the average cost for general liability insurance for businesses in the coverage limits required under this bill typically costs \$500 per year or more. The fees and costs recur on an annual, in the case of insurance premiums, or bi-annual basis in the case of application fees and associated costs.

The authors here could find no example in any other State of a statute applying such high fees and costs especially when considering the recurring nature of those fees and costs and the intervals in which those expenses recur. Under the current regime, New Jersey’s fees and costs are already among the highest in the nation.

We recognize here that the cost to administer a licensing scheme could vary from state to state and there could be a justifiable basis for the differences in those costs. It is conceivable that standards could be justifiably higher or lower in different parts of the country. For a comparison, we believe it makes sense to look at states that are proximate to New Jersey. Looking at Connecticut, New York and Pennsylvania, the annualized cost to obtain a concealed carry permit including all added costs outside of the license fee paid to the state are \$45.65, \$40 and \$4 respectively over a 5 year period.<sup>3</sup> Under Bill A4769, while the insurance costs are unclear, based on our best estimate, the annualized cost of permit over a five year period in New Jersey would be in excess of \$700 including insurance premiums or roughly 23 times as expensive as the average of New Jersey’s proximate cohorts.

## **Summary of Argument**

The topic of gun control is politically charged in the United States, and the public policy questions surrounding ensuring general public safety are numerous and vast. Our position herein is not to address the broader questions surrounding firearms regulation nor to speculate on the impact that the *Bruen* holding may have on future legislation. Regardless of the various opinions on the topic, *Bruen* addresses and clarifies certain fundamental rights and a constitutional framework for evaluating laws regarding the right to self-defense with a firearm outside of the home. In the future, lower Courts will shape exactly how that right is either expanded or restrained. The question we analyze more fully here is centered specifically on whether the rights established

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<sup>3</sup> 2AShield.com. *50 State List – Cost of Concealed Carry Permit by State*, January 12, 2022, <https://2ashield.com/50-state-list-cost-of-concealed-carry-permit-by-state/>

under the 2<sup>nd</sup> Amendment as more fully explored in *Bruen* should be available to all citizens regardless of socioeconomic class or race. As States act to change their laws in response to *Bruen*, our concern is that the tool kit of gun control in modern law becomes analogous to the legal structures used in the Reconstruction Era that were used to specifically target individuals on the basis of race. Irrespective of intent, the consequences of public policies like A4769 can be deleterious for the communities affected by these laws, that these potential laws will continue to make criminals out of those who may have chosen a legal path to gun ownership if such a path were in view for them. Moreover, we herein reason that the legislative record on Bill A4769 evinces a design to specifically frustrate the exercising of the rights at issue by members of specific communities in the State of New Jersey, targeting them along racial and socioeconomic lines. Further, the evidence we provide of legislative intent gives rise to a cause of action for racial discrimination. More importantly, the individual members of those racial groups most affected by policy choices like Bill A4769 are the most incapable of raising a defense of their rights, specifically: those who are left to make terrible choices, who live in dangerous communities and who, left with no legal avenue to protect themselves, end up absorbed into the criminal justice system themselves.

The debate on gun control and enhancing public safety will continue after *Bruen*. But the specific issue we are exploring here is central to the much larger debate of social justice and criminal justice reform in America. We call on organizations like the American Civil Liberties Union who are best positioned to protect the rights of highly marginalized members of our society who are left voiceless in this matter. We also call on the Offices of Public Defenders, in particular those Public Defenders who are in the jurisdictions named as areas of particular interest by the sponsors of Bill A4769 to join in their support of this effort, as Public Defenders in New York joined NYSRPA in *Bruen*, to draw attention to the very real implications of policies like this.

We readily admit that this is a nuanced topic that may challenge some conventional thinking on gun laws but, in our view, the very basic idea at the heart of this is clear: no person should be denied “equal protection of the laws.” U.S. Const. amend. XIV § 1.

## **Argument**

### **I. Summary of the holding and constitutional analysis under NYSRPA v. Bruen**

The Second Amendment (which is made applicable to the States through the Fourteenth Amendment) protects an individual’s right to “keep and bear arms for self-defense.” *Bruen*, 142 S. Ct. at 2125 (citing *D.C. v. Heller*, 128 S. Ct. 2783 [2008] and *McDonald v. City of Chicago*, 130 S. Ct. 3020 [2010]). “[The] definition of ‘bear’ naturally encompasses public carry.” *Id.* at 2134.

“[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct.” Id. at 2126, 2129-30. “To justify its [firearm] regulation, the government may not simply posit that the regulation promotes an important interest.” Id. at 2126. Rather, Defendants must demonstrate that the firearm “regulation is consistent with this Nation's historical tradition of firearm regulation.” Id. at 2126, 2130-31.

“[T]his historical inquiry . . . will often involve reasoning by analogy . . . .” *Bruen*, 142 S. Ct. at 2132. Such “analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” Id. at 2133. On the other hand, “courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted.” Id. at 2133 (internal quotation marks omitted).

The idea that legislatures would attempt to circumvent the core holding in *Bruen* did not escape the Court’s notice when Justice Thomas writing for the majority observed, “That said, because any permitting scheme can be put towards abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or *exorbitant fees* deny ordinary citizens their right to public carry.” 142 S. Ct. at 2138, n. 9 (emphasis added).

Our discussion here is not meant to address the public policy questions surrounding the issue of gun control nor the implications of *Bruen* with regards to future legislation enacted by the States. One need not take a particular position on the interpretation of 2<sup>nd</sup> Amendment rights in the US to recognize that *some* right exists to keep and bear arms. To the extent that the right exists and is legally enforceable, that right *should not* be calibrated on the basis of socioeconomic class such that those with financial means enjoy those rights more fully than those whose economic status may all but preclude their ability to exercise a right, however broadly *or* narrowly that right is defined by Courts and State and Federal laws. There are obvious racial implications to such a policy which we discuss further below and the history of such policies specifically to discriminate is also presented below.

Of particular concern however is the issue of “analogical reasoning” given the prevalence of racially targeted laws prior to the founding of the Nation, between the founding and the Civil War and immediately after the ratification of the 14<sup>th</sup> Amendment. A long academic debate will continue post *Bruen* as to the operative time period for finding historical pedigree under this analysis and the Court in *Bruen* left the question somewhat open as to whether that time period should be rooted in history and tradition at the time that the Bill of Rights was ratified in 1791 or whether analogues from the period surrounding the ratification of the 14<sup>th</sup> Amendment in 1868 should be considered. In *Bruen* they consider both, finding that “Historical evidence that long predates or postdates either [1791 or 1868] may not illuminate the scope of the right.” *Bruen*, 142 S. Ct. at 2136.

We assume that racially specific laws that were subsequently invalidated by the 14<sup>th</sup> Amendment would logically escape this historical analysis but the inclusion of the 1868 time period in *Bruen* leaves the possibility for *facially neutral* but *highly racially charged* laws to work their way into the history and tradition of firearms regulation in the United States for *Bruen* analysis purposes, as lower courts develop that understanding in subsequent case law. In the future as courts interpret and apply *Bruen*, including that portion of American history and tradition serves to well preserve *only* those elements of future gun control laws most likely to negatively impact the poor.

## **II. History of Racially Motivated Gun Laws in the United States both at the Founding and during the Reconstruction Era**

Prior to the Civil War, laws were enacted to specifically prevent the carrying or possession of firearms by specific racial, ethnic, and religious categories of people. Examples of that go back to the earliest English Colonies. In 1619, the Virginia Colony banned the possession or carrying of firearms by both slaves and freed blacks in act entitled “An Act for Preventing Negroes Insurrections.” 2 Statutes at Large; Being a Collection of All of the Laws of Virginia, from the First Session of the Legislature, in the Year 1619, 481 (W.W. Hening ed. 1823) These laws remained in effect until long after the founding of the United States and the adoption of the Bill of Rights. Maryland law held that “No negro or other slave within this province shall be permitted to carry any gun, or any other offensive weapon, from their master’s land, without license from their said master.” The General Public Statutory Law and Public Local Law of the State of Maryland, From the Year 1692-1839 Inclusive 31 (John D. Toy ed., 1840)

In the aftermath of the Civil War, and with the ratification of the 14<sup>th</sup> Amendment, laws specifically identifying racial or ethnic groups were invalidated. In the Reconstruction Era, southern states began enacting facially neutral laws with the obvious objective to prevent freed slaves from obtaining firearms. Steve Ekwall summarizes those laws in his publication, *The Racist Origins of US Gun Control: Laws Designed to Disarm Slaves, Freedmen, and African-Americans*:

-1870 Tennessee bans all inexpensive and affordable firearms. The bill was titled “An Act to Preserve the Peace and Prevent Homicide.”

- In 1879 Tennessee strengthened that law and banned the sale of all pistols, unless of course you were in the militia of which only whites were allowed membership.

- In 1882, Arkansas copied the Tennessee law and banned all inexpensive pistols.

- In 1893, Alabama passed a law imposing high taxes and transactional fees on the sale of all firearms to “put handguns out of the reach of blacks and poor whites.”

- In 1902, South Carolina banned the sale of all handguns excepting only members of the “militia”.

- In 1907, Texas copied the Alabama 1893 law to impose high taxes and transactional fees on all firearms.<sup>4</sup>

Laws like these examples became part of the broader Black Codes of the postbellum South. As noted in the Anti-Slavery Conference of 1867, blacks were “forbidden to own or bear firearms, and thus were rendered defenseless against assaults.” Reprinted in H. Hyman, *The Radical Republicans and Reconstruction*, 219 (1967). Thematic throughout the laws of that era is the use of facially neutral laws that use economic barriers to achieve a racially motivated design.

### **III. Summary of Amicus Brief filed on behalf of New York Public Defender’s Offices in *NYSRPA v. Bruen***

One of the *amicus* briefs submitted in *Bruen* that came in support of petitioners New York State Rifle & Pistol Association was from a collective of Public Defender’s Offices in both New York City and throughout the State of New York. Their perspective on the issue that we discuss broadly in this work is important. As they point out, “In 2020, while Black people made up 18% of New York’s population, they accounted for 78% of the state’s felony gun possession cases.” Brief of the Black Attorneys of Legal Aid, the Bronx Defenders, Brooklyn Defender Services, Et Al. as Amici Curiae for the Petitioners, *New York State Rifle & Pistol Club, Inc. v. Bruen*, at 14, 142 S. Ct. 2111, (2022) (“*Public Defenders*”)

In their brief, they provide numerous real-world examples of criminal cases defended by their offices or similar examples from the public record. We share one of their examples here:

“Mr. Benjamin Prosser is a young man who graduated from high school with honors. He was distinguished by a national foundation. And because of New York’s carry licensing requirement, he is now a “violent felon,” solely because he carried a firearm for self-defense without a license.

At the police precinct after his arrest, Mr. Prosser confessed to possessing the gun for self-defense. He had repeatedly been the victim of violent stranger assaults and robberies on the street. When he started a job that required that he travel two hours for work every day, he decided to carry a firearm. He did not possess it with any intent to engage in violence, but his experiences taught him that he needed a weapon to be safe.

In response, the prosecution charged him, like so many others, with N.Y. Penal Law § 265.03(3), a violent felony. After lengthy plea negotiations, the prosecution offered him a

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<sup>4</sup> <https://www.sedgwickcounty.org/media/29093/the-racist-origins-of-us-gun-control.pdf>

“deal” to a probation sentence on a plea to a lesser charge—also a violent felony—because he had previously been a victim of violence. Afraid of the 3.5-to-15-year mandatory sentencing range on the top count, Mr. Prosser accepted the offer. See generally Richard A. Oppel Jr., *Sentencing Shift Gives New Leverage to Prosecutors*, N.Y. Times (Sept. 25, 2011).

Because of New York’s carry licensing requirement, Mr. Prosser’s once-bright future will forever be marked with the scarlet letter of “violent felon.” He is barred from serving on a jury. N.Y. Jud. Law § 510(3). He is prohibited by federal law from possessing a firearm, 18 U.S.C. § 922(g), and is forever ineligible for a firearm license under New York’s law, N.Y. Penal Law § 400.00(1)(c). And he will face the worst kind of “‘civil death’ of discrimination by employers, landlords, and whoever else conducts a background check.” See Strieff, 136 S. Ct. at 2070 (Sotomayor, J., dissenting).

Mr. Prosser is grateful not to be incarcerated. However, he is also deeply disheartened, struggling with the idea of being another nameless casualty in a licensing system that was designed to preclude him from exercising his rights.” Id at 20-22. (Internal citations omitted)

We note here that defendants found to be in possession of weapons without a proper license face similar consequences here in New Jersey.<sup>5</sup> We would like to draw special attention to the fact that New York Public Defenders were not the only ones to join New York State Rifle & Pistol Association, Inc. in calling for the Court to strike down New York’s law on the basis of the disparate impact of these laws on specific racial groups.<sup>6</sup> And there were Public Defenders far beyond New York City and New York State who expressed similar views. Sharone Mitchell, Jr., the currently serving Public Defender in Cook County, Illinois wrote prior to the ruling in *Bruen* “I also think about the hundreds of young Black men my office represents every year, arrested and facing years in prison for simple possession of a gun because they were terrified, but didn’t have enough money, the wherewithal, or time to purchase a license.” Sharone Mitchell, Jr., *There’s No Second Amendment on the South Side of Chicago: Why public defenders are standing with the New York State Rifle and Pistol Association in the Supreme Court*, The Nation, November 12, 2021<sup>7</sup>

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<sup>5</sup> NJ Rev. Stat. § 2C:39-5(b) (2013) “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 third degree 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. Otherwise it is a crime of the second degree.”

<sup>6</sup> See also Brief of Black Guns Matter, A Girl & A Gun Women’s Shooting League and Armed Equality as Amici Curiae In Support of Petitioners, *Bruen*, 142 S. Ct. 2111 (2022)

<sup>7</sup> <https://www.thenation.com/article/politics/gun-control-supreme-court/>

In the application of *Bruen* to future challenges of state and federal law, there is a grave risk that the rights of only those portions of Americans least likely to face legal jeopardy for violating these laws will be protected, while those most likely to be incarcerated for violating these laws will continue to go unprotected in the wake of *Bruen*. “Virtually all [those] clients whom New York prosecutes for exercising their Second Amendment right are Black or Hispanic.” *Public Defenders* at 5. “For our clients, New York’s licensing regime renders the Second Amendment a legal fiction.” *Id.*

#### **IV. Summary of the requirements to establish a claim for violation of the equal protection clause of the 14<sup>th</sup> Amendment in respect of a facially neutral law**

The authors here do not seek to expound upon the broad body of law governing substantive due process and equal protection claims or the legal and academic history of those areas of the law. For the sake of brevity, we point out in summary that courts have long applied tiers of scrutiny to claims alleging a violation of party-in-interest’s right to due process, equal protection and fundamental rights.<sup>8</sup> In claims alleging racial discrimination and invoking a right to equal protection under the 14<sup>th</sup> Amendment, strict scrutiny should be applied by Courts in these instances, irrespective of the government’s motive.<sup>9</sup>

The Supreme Court has held in applying the equal protection clause of the 14<sup>th</sup> Amendment, in this case via the due process clause of the 5<sup>th</sup> Amendment as applied to the Federal government, that “Though the Due Process Clause of the Fifth Amendment contains an equal protection component prohibiting the Government from invidious discrimination, it does not follow that a law or other official act is unconstitutional solely because it has a racially disproportionate impact regardless of whether it reflects a racially discriminatory purpose.” *Washington v. Davis*, 426 U.S. 229, at 230 (1976) (“*Davis*”). There is little clarity in the law regarding how that discriminatory purpose (intent) must be established since rarely do decisionmakers or policymakers provide clear evidence of their frame of mind in enacting a policy or law. Justice Stevens wrote in his concurrence that “It is unrealistic to require the victim of alleged discrimination to uncover the actual subjective intent of the decision maker or, conversely, to invalidate otherwise legitimate action because an improper motive affected the deliberation of a participant in a decisional process.” *Id.* at 254 (J. Stevens concurring). Expanding on the holding in *Davis*, the Court held the following year that establishing intent would require a “sensitive inquiry into... circumstantial and direct evidence.” *Village of Arlington Heights v Metropolitan Housing Development Corp.*, 429 U.S. 252 at 266 (1977)

In the following sections we explore a preliminary review of both the disparate impact of Bill A4769 and provide direct and circumstantial evidence of legislative intent to discriminate. We

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<sup>8</sup> *United States v. Carolene Products Co.*, 304 U.S. 144 at. N. 4 (1938)

<sup>9</sup> *Adarand Constructors. Inc. v. Pena*, 515 U.S. 200 (1995)



provide only a superficial treatment here. We believe that more direct and circumstantial evidence can be found in a future, more thorough review of this matter.

**iii. *A cursory review of the disparate impact of the law under A4769***

Our objective here is to present some cursory statistical information. We do not endeavor to provide a complete sociological study of crime and socioeconomic conditions in the State of New Jersey. We do however believe that even a superficial review of this topic demonstrates the high likelihood that a more complete statistical study will reach the same conclusions.

We focus here on four major cities in New Jersey, namely Newark, Paterson, Elizabeth and Camden because these cities were described specifically in the legislative record on Bill A4769 (discussed further below in subsection iv):

**Summary of Select Economic and Demographic Data<sup>10</sup>**

	<u>Median Household Income</u>	<u>%Non-White</u>	<u>Total Population</u>	<u>Total Non-White Population</u>
<b>Newark</b>	35,659	88%	311,549	275,409
<b>Elizabeth</b>	46,891	79%	124,969	98,626
<b>Paterson</b>	34,086	68%	159,732	109,129
<b>Camden</b>	27,027	95%	77,344	73,554
<b>Total for Sampled Areas</b>	35,916	83%	673,594	556,718
<b>New Jersey</b>	85,000	47%	8,791,894	4,088,231

These cities are among the most diverse in the State of New Jersey, a broadly diverse state on its own. The cities in question are overwhelmingly comprised of non-white populations whose individual median household incomes are substantially lower than the total State median. At the same time, the cost of living in these cities is over 15% higher than the national average cost of living.<sup>11</sup> In addition, according to the Federal Bureau of Investigation, as of 2018, these four cities

<sup>10</sup> Source: 2010 United States Census, U.S. Department of Commerce, Bureau of the Census and the American Community Survey, 2006-2010 U.S. Department of Commerce, U.S. Census Bureau. Note we limit this survey to the 2010 Census because of the overlapping time period of the American Community Survey in that measurement period. ACS data is not available from the U.S. Census Bureau for the 2020 Census. Our goal here is to provide a basis for some preliminary findings and we believe this cursory information is suggestive and will warrant further study.

<sup>11</sup> Salary.com, Cost of Living in New Jersey: Cost of Living Index in Major Cities of New Jersey, as of November 2022, <https://www.salary.com/research/cost-of-living/nj>

alone account for approximately 30% of violent crimes reported across the State of New Jersey in that year.<sup>12</sup>

Our conclusion based on just this superficial data set is that these cities are communities comprised largely of people of color, whom based on their median household income, when considering the high cost of living, would be substantially deterred by the extreme costs imposed under Bill A4769, despite the fact the residents of these cities are severely affected by violent crime especially in comparison to the wealthier parts of the state where residents can readily absorb those permitting costs to obtain a firearms license. Simultaneously, the residents in those wealthier communities deal with very low crime rates. Livingston, New Jersey as a comparison point recorded only 23 violent crimes in 2018, in a town with a population of approximately 30,000, and no murders; where, for example, Camden, New Jersey, having a population of approximately 73,000, reported 1,198 violent crimes and 23 murders that year.<sup>13</sup>

#### ***iv. Assemblyman John McKeon's statement establishes legislative intent to discriminate***

In addressing the Supreme Court in *District of Columbia v. Heller* in their *amicus* brief, the Congress of Racial Equality wrote “Behind current gun control efforts lurks the remnant of an old prejudice, that the lower classes and minorities, especially blacks, are not to be trusted with firearms. Today, that thought remains among gun control advocates: if the poor or blacks are allowed to have firearms, they will commit crimes with them.” Brief of the Congress of Racial Equality as *Amicus Curiae* for the Respondent, 24, *District of Columbia v. Heller*, 554 U.S. 570, (2008) They go on to quote gun control proponent and journalist Robert Sherrill who speaking on the Gun Control Act of 1968 said that the act was “passed not to control guns but to control Blacks.” *Id.* at 24 (internal quotes omitted)

On October 17<sup>th</sup>, 2022 at the New Jersey Assembly Judiciary Committee while debating on Bill A4769, bill sponsor Assemblyman John McKeon said in making his case that “[in 1791] as it relates to self-defense, only very wealthy people had handguns.”<sup>14</sup> He continued, “and if you want to take it into a little bit more modern history, California [residents] had the ability back in the 1960’s to walk around with a concealed weapon. When Governor Ronald Reagan signed [the Mulford Act] because they were concerned that, frankly persons of color were in the communities and were taking law enforcement into their own hands.”<sup>15</sup>

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<sup>12</sup> Federal Bureau of Investigation, 2018 Crime in the United States Survey, Table 8 – New Jersey, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-8/table-8-state-cuts/new-jersey.xls> In 2018, according to the FBI, there were 17,861 violent crimes reports in the State of New Jersey in all municipalities where Newark, Camden, Elizabeth and Paterson account for 5,240 of those.

<sup>13</sup> *Id.*

<sup>14</sup> Audio Recording of the Meeting of the New Jersey Assembly Judiciary Committee, held on Monday, October 17<sup>th</sup>, 2022, New Jersey Legislature, <https://www.njleg.state.nj.us/archived-media/2022/AJU-meeting-list/media-player?committee=AJU&agendaDate=2022-10-17-10:00:00&agendaType=M&av=A> at time stamp -8:20.

<sup>15</sup> *Id.*

On October 26<sup>th</sup>, 2022, Assemblyman Joe Danielsen, co-sponsor of Bill A4769 in an interview with the Franklin Reporter & Advocate made the following statement, “Some of my own democrats have commented to me, this does nothing to stop the illegal gun trade, illegal possession, or criminal conduct. You’re right, this doesn’t. It was never supposed to address that. This is addressing legal, law abiding, responsible citizens.”<sup>16</sup>

On November 14<sup>th</sup>, 2022 members of the public appeared before the New Jersey Assembly Judiciary Committee to testify on Bill A4769 when that committee was reconvened to hear a revised version of the bill, in particular the authors here offered testimony specifically with regards to the severe economic limitations Bill A4769 would impose on certain socioeconomic categories of people and the high probability that this financial burden would disproportionately impact minority groups living in the State’s urban centers. In response to that testimony, Assemblyman Robert Auth inquired “you have mentioned that people in certain economic stratas[sic], in certain areas in our state are going to have a disproportionate ability to get a handgun [permit] with all the new requirements that are being imposed... well that seems patently unfair. So my question to you would be would it be something that the legislature should be looking at right now to create a program that would cover the cost for people under certain economic stratas[sic] so they were able to get a handgun [permit] to level the playing field like we do with so many other programs in the State?”<sup>17</sup>

In response to that line of questioning, in his closing remarks, Bill A4769 sponsor Assemblyman John McKeon said “In my opinion and maybe tone deaf isn’t the word as opposed to maybe a little bit disingenuous, do you really, do either of you, does anybody really want to put more guns in the hands of people that live in Paterson and Newark and Elizabeth and Camden, to say here that the money you are charging isn’t fair? That will make things safer? Please!”<sup>18</sup> He went on to say “how can anybody think putting guns in the hands of the people in the city, to make it easier, to want to provide a supplement like we would for food so they can have a concealed and carry weapon would be really something that you mean. I can’t believe that to be the case. And if it is, so be it.”<sup>19</sup>

On November 20<sup>th</sup>, the New Jersey Assembly was convened in its entirety for a reading and Assembly vote on the bill. In his prepared remarks, Bill A4769 sponsor McKeon revisited the issue saying “We talked about historical precedent, I don’t want to get too deep into it, I don’t

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<sup>16</sup> *Assemblyman Joe Danielsen Talks About His Gun Control Legislation*, The Franklin Reporter & Advocate, October 26, 2022, <https://www.youtube.com/watch?v=VrVaLO0Vs7o>

<sup>17</sup> Audio Recording of the Meeting of the New Jersey Assembly Judiciary Committee Meeting, held on Monday, November 14th, 2022, New Jersey Legislature, <https://www.njleg.state.nj.us/archived-media/2022/AJU-meeting-list/media-player?committee=AJU&agendaDate=2022-11-14-10%3A00%3A00&agendaType=M&av=A&fbclid=IwAR1GT4DQvdhmPpp3ztjrPOFxlZKUahw-D5yl93DoE51mwE1dkerRt0M0glo> at time stamp -1:38:48

<sup>18</sup> Id. at timestamp -10:06

<sup>19</sup> Id. at timestamp -3:07

want to quote Thomas Jefferson, but I do know back when the 2<sup>nd</sup> Amendment was made part of the Bill of Rights, that the only people that had handguns were real rich people.”<sup>20</sup>

By including statutory application fees and recurring expenses mandated by Bill A4769 so far outside the range of annualized fees and costs required in other jurisdictions that would be considered proximate peers both geographically in terms of demographics, we could simply infer that there is an obvious public policy objective to discourage potential applicants based on their socioeconomic status. But the testimony, deliberations and public statements of the sponsors of Bill A4769, on the legislative record, makes clear their state of mind in seeking to enact these elements of the bill: that law abiding citizens (who could otherwise meet all of the other background check requirements of the bill, in poor communities, comprised largely of minority groups protected under the 14<sup>th</sup> Amendment) should be restricted from access to a Constitutionally protected right because, in the opinion of Assemblyman McKeon, in 1791 only “real rich people” “had handguns.”<sup>21</sup>

Assemblyman McKeon’s statements were not made in private proceedings or discussions outside the legislative process. He provided direct evidence of his motivations as a sponsor of Bill A4769 and made the case for why these elements of Bill A4769 should be signed into law. The issues of the obvious disparate impact of this bill were raised throughout the committee process by both members of the public and opposing legislators.

We believe that this was not a mere “improper motive [affecting] the deliberation in a decisional process.” *Davis*, J. Stevens Concurrence at 254. The debate about the usage of high fees and insurance premiums as a mechanism to frustrate applicants who can not afford such fees and expenses was thematic throughout these months-long deliberations. Justice Stevens concurrence in *Davis* suggests a tort standard of sorts where the discriminatory outcome must be a logical consequence of policy in question. While Justice Stevens makes clear that providing the state of mind of key stakeholders is unnecessary, largely because doing so is often difficult for those seeking a remedy in controversies alleging discrimination, in this case the state of mind of those key decision makers is on the record.

We believe that taken in the totality of the direct and circumstantial evidence of intent to discriminate in conjunction with even our cursory evidence of the extreme likelihood of a disparate racial impact, this totality establishes the minimum for a *prima facie* equal protection claim.

## Conclusion

In response to the Supreme Court’s decision in *Bruen*, the Legal Aid Society warned the State of New York, “As lawmakers consider next steps in response to this decision, let us be

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<sup>20</sup> Full Assembly Meeting, held on Monday, November 20th, 2022, New Jersey State Assembly, uploaded by Hunter Anfuso, <https://www.youtube.com/watch?v=sdRhRku4La8> at timestamp 1:18:55

<sup>21</sup> *Id.*

abundantly clear: it would amount to a historic disservice to both public safety and the best interests of New Yorkers for Albany to reproduce a regulatory scheme that perpetuates the same disparate outcomes yielded under the previous law or to further criminalize gun ownership. Criminalization has never prevented violence and serves only to further marginalize and incarcerate people from BIPOC communities.” Legal Aid Society, *Statement on U.S. Supreme Court Ruling in NYS Rifle & Pistol Association et. al. v. Kevin P. Bruen*, June 23, 2022<sup>22</sup>

We believe that portions of Bill A4769 at issue here do not further a compelling state interest, that these relevant portions of Bill A4769 perpetuate a cycle of discrimination in the application of firearms related laws and regulations on protected classes of citizens in New Jersey who are most at risk of incarceration for exercising a right in the absence of undergoing a cost prohibitive and time-consuming licensing process. These provisions should be publicly condemned. If signed into law, we believe a cause of action exists to challenge the law on strictly 14<sup>th</sup> Amendment equal protection grounds to defend the rights of those most likely to be harmed by this proposed law, but least likely to be protected by other constitutional challenges from other litigants that will follow in its passage. We believe that while this issue significantly impacts those 14<sup>th</sup> Amendment protected classes of citizens in New Jersey, this case would bring light on broader social justice issues affecting similar categories of people throughout the United States.

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<sup>22</sup> <https://legalaidnyc.org/wp-content/uploads/2022/06/06-23-22-LAS-Statement-on-U.S.-Supreme-Court-Ruling-in-NYS-Rifle-Pistol-Association-et.-al.-v.-Kevin-P.-Bruen-FINAL.pdf>