No. 18-663

In the Supreme Court of the United States

FREDRIC RUSSELL MANCE, JR., ET AL., PETITIONERS

v.

WILLIAM P. BARR, ATTORNEY GENERAL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the longstanding requirement that federal firearm licensees directly transfer handguns only to residents of the State in which the licensee's place of business is located, 18 U.S.C. 922(a)(3) and (b)(3), is consistent with the Second Amendment and the equal protection component of the Fifth Amendment.

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OPINIONS BELOW

The initial opinion of the court of appeals (Pet. App. 44a-73a) is reported at 880 F.3d 183. The amended opinion of the court of appeals (Pet. App. 1a-43a) is reported at 896 F.3d 699. The opinion of the district court (Pet. App. 74a-110a) is reported at 74 F. Supp. 3d 795.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 2018. On August 17, 2018, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including November 19, 2018, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A. Legal Background

1. Congress and the States have long imposed certain conditions and restrictions on the commercial sale of firearms. In the latter half of the 1960s, Congress conducted a multi-year investigation of violent crime that revealed, among other things, a "serious problem of individuals going across State lines to procure firearms which they could not lawfully obtain or possess in their own State and without the knowledge of their local authorities." S. Rep. No. 1866, 89th Cong., 2d Sess. 19 (1966) (1966 Senate Report). The evidence before Congress showed that the "interstate, nonresident purchases of firearms for criminal purposes" caused "the laws of our States and their political subdivisions [to be] circumvented, contravened, and rendered ineffective." S. Rep. No. 1097, 90th Cong., 2d Sess. 77 (1968) (1968 Senate Report); see 1966 Senate Report 3 ("[T]he over-the-counter sale of firearms, primarily handguns, to persons who are not residents of the locale in which the dealer conducts his business" permitted dealers and purchasers to "circumvent[] State and local law.").

Sales to non-residents were "a serious contributing factor to crime." 1968 Senate Report 80. Testimony "indicate[d] that large numbers of criminals" purchased firearms out of state "in order to circumvent the laws of their respective jurisdictions." *Ibid.* For example, records showed that interstate transfers of handguns led to "[c]ircumvention of the laws of the District of Columbia" because many individuals with criminal records in the District of Columbia purchased handguns in a nearby Maryland county with "minimal" sales regulations. 1966 Senate Report 61. Similarly, Massachusetts authorities testified "that 87 percent of 4,506 crime

guns misused in that State were purchased outside of Massachusetts," thereby hampering the effectiveness of the State's "controls [on] the sale of firearms and primarily handguns." 1968 Senate Report 77. Michigan authorities testified that "90 out of every 100 crime guns confiscated in Detroit are not purchased and registered in Michigan and that the prime source of these crime guns is by purchases [in] neighboring Ohio, where controls on firearms are minimal." *Ibid.*

On the basis of this evidence, Congress found that "the existing Federal controls over [firearms] traffic d[id] not adequately enable the States to control this traffic within their own borders" and that "the sale or other disposition of concealable weapons * * * to nonresidents * * * has tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions." Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Crime Control Act), Pub. L. No. 90-351, Tit. IV, § 901(a)(1) and (5), 82 Stat. 225. Congress determined "that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, c[ould] this grave problem be properly dealt with, and effective State and local regulation of this traffic be made possible." § 901(a)(3), 82 Stat. 225.

To address these and other concerns, Congress enacted the Omnibus Crime Control Act. And, later in the same year, it enacted the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, the "principal purpose" of which was "to strengthen Federal controls over interstate and foreign commerce in firearms and to assist the States effectively to regulate firearms traffic within

their borders." H.R. Rep. No. 1577, 90th Cong., 2d Sess. 6 (1968) (1968 House Report).

2. The Omnibus Crime Control Act and the Gun Control Act both included statutory provisions "designed to prevent the avoidance of State and local laws controlling firearms by the simple expediency of crossing a State line to purchase one." 1968 House Report 14; see 1968 Senate Report 114.

One of those provisions, Section 922(b)(3) of Title 18, generally makes it unlawful for a federal firearms licensee, which includes any licensed importer, manufacturer, dealer, or collector of firearms, "to sell or deliver * * * any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in * * * the State in which the licensee's place of business is located." 18 U.S.C. 922(b)(3). The provision does not apply, however, to "the loan or rental of a firearm * * * for temporary use for lawful sporting purposes," 18 U.S.C. 922(b)(3)(B), and it permits sales of rifles or shotguns to out-of-state residents "if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States," 18 U.S.C. 922(b)(3)(A).

Section 922(a)(3), in turn, makes it unlawful for "any person, other than a [federal firearms licensee,] to transport into or receive in the State where he resides * * * any firearm purchased or otherwise obtained by such person outside that State," 18 U.S.C. 922(a)(3), unless the firearm was purchased or obtained in conformity with Section 922(b)(3), 18 U.S.C. 922(a)(3)(B).

Federal regulations closely track these statutory provisions. In particular, 27 C.F.R. 478.99(a) provides that a federal firearms licensee "shall not sell or deliver

any firearm to any person not licensed under this part and who the licensee knows or has reasonable cause to believe does not reside in * * * the State in which the licensee's place of business or activity is located." The regulations explain that an individual "resides" in any State in which he "is present * * * with the intention of making a home in that State," including a primary or secondary home. 27 C.F.R. 478.11. Like its statutory counterpart, the regulations include an exception for the sales or delivery of rifles or shotguns under certain conditions, as well as an exception for the loan or rental of a firearm for temporary use for lawful sporting purposes. *Ibid.* Together, these statutory and regulatory provisions have been described in this case as the "in-state sales requirement."

B. The Present Controversy

1. Petitioner Fredric Russell Mance, Jr. is a Texas resident and a federal firearms licensee who sells firearms at his business in Arlington, Texas. Pet. App. 2a. Petitioners Andrew Hanson and Tracey Hanson, husband and wife, reside in the District of Columbia. *Id.* at 76a. The Citizens Committee for the Right to Keep and Bear Arms is an advocacy organization that claims Mance and the Hansons as members. *Id.* at 77a.

In 2014, the Hansons traveled to Arlington, Texas, to Mance's place of business and identified two handguns they wished to purchase. Pet. App. 2a, 77a. The in-state sales requirement prohibited Mance from directly transferring the handguns to the Hansons, but it is undisputed that the Hansons could have arranged to purchase the guns through a federally licensed firearms dealer in the District of Columbia. *Id.* at 2a-3a. Charles Sykes, who is currently the only federally licensed firearms dealer in the District of Columbia, facilitates the

transfer of handguns from other dealers for a fee of $125 plus shipping costs. *Id.* at 77a.

The Hansons declined to purchase the handguns in this manner because they could not immediately take possession and did not want to pay the transfer fee. Pet. App. 3a, 77a. Instead, petitioners filed this suit, alleging that the in-state sales requirement—reflected in 18 U.S.C. 922(a)(3) and (b)(3), and 27 C.F.R. 478.99—violates the Second Amendment and the equal protection guarantee of the Fifth Amendment's Due Process Clause on its face and as-applied. Pet. App. 77a. Petitioners sought a declaratory judgment and injunctive relief prohibiting the government from enforcing the requirement. *Ibid.*

2. The district court granted petitioners' motion for summary judgment, holding that the in-state sales requirement is unconstitutional. Pet. App. 74a-110a.

The district court applied the Fifth Circuit's two-step approach to petitioners' Second Amendment claim. Under that approach, the court first asks whether the law "impinges upon a right protected by the Second Amendment—that is, whether the law regulates conduct that falls within the scope of the Second Amendment's guarantee," such that Second Amendment scrutiny is required at all. Pet. App. 87a-88a (quoting *National Rifle Ass'n of Am., Inc.* v. *ATF*, 700 F.3d 185, 194 (5th Cir. 2012), cert. denied, 571 U.S. 1196 (2014)). If so, the court then "determine[s] whether the law survives the proper level of scrutiny." *Id.* at 88a (quoting *National Rifle Ass'n*, 700 F.3d at 194). The court determined that Second Amendment scrutiny was required because it found no "founding-era thinking that contemplated that interstate, geography-based, or residency-based firearm restrictions would be acceptable." *Id.* at

90a. It decided that strict scrutiny applied because the in-state sales requirement "prevents all legally responsible and qualified individuals" from purchasing handguns outside their states of residence. *Id.* at 93a. And it concluded that the law failed strict scrutiny on the ground that the government failed to establish that the restriction was needed in light of the development, since 1968, of the national background check system for discovering any federal or state firearm disabilities. *Id.* at 94a-105a. For similar reasons, the court held that the in-state sales requirement would not satisfy even intermediate scrutiny. *Id.* at 105a-108a.

The district court also ruled that the in-state sales requirement violates petitioners' right to equal protection under the Fifth Amendment's Due Process Clause. Pet. App. 108a-110a. The court concluded that the in-state sales requirement is subject to strict scrutiny because it "interferes with the exercise of a fundamental right" and "impinges on residency." *Id.* at 109a. And relying entirely on its strict-scrutiny analysis under the Second Amendment, the court found that the challenged laws also violate the Fifth Amendment. *Id.* at 109a-110a.

3. a. The court of appeals reversed. Pet. App. 1a-43a. Addressing the Second Amendment claim, the court assumed, without deciding, that (1) the in-state sales requirement is not a "presumptively lawful regulatory measure" under this Court's decision in *District of Columbia* v. *Heller*, 554 U.S. 570, 627 n.26 (2008); (2) strict, rather than intermediate, scrutiny applied; and (3) petitioners properly presented both a facial and an as-applied challenge to the in-state sales requirement. Pet. App. 9a-11a. It then upheld the requirement under strict scrutiny. *Id.* at 11a-24a.

The court of appeals observed that "[a]ll parties to this suit concede that there is a compelling government interest in preventing circumvention of the handgun laws of various states," and it concluded "that the Government has demonstrated that the in-state sales requirement is narrowly tailored" to serve that need. Pet. App. 15a. The court explained that "[t]here are more than 123,000 [federal firearms licensees] nationwide," and it is "unrealistic to expect that each of them can become, and remain, knowledgeable about the handgun laws of the 50 states and the District of Columbia, and the local laws within the 50 states and the District." *Ibid.* Federal firearms licensees "are not engaged in the practice of law," the court explained, "and we do not expect even an attorney in one state to master the laws of 49 other states in a particular area." *Id.* at 16a-17a.

The court of appeals recognized that, since 1968, additional information about firearm purchasers has become available to federal firearms licensees through the federal background check system. Pet. App. 15a. But it noted that federal laws "do not require all information regarding compliance with the various state and local gun control laws to be included in databases" accessible by federal firearms licensees and, in fact, "[i]t is undisputed that, for various reasons, some [background-check] records are not timely provided, or are not provided at all." *Ibid.* The court rejected petitioners' contention that Congress could require States to inform out-of-state federal firearms licensees whether the would-be purchaser was qualified. See *id.* at 19a-20a ("The federal government cannot compel state law enforcement officials to provide, and timely update, information as to whether a particular person is authorized under state and local laws to purchase and possess a

particular handgun.") (citing *Printz* v. *United States*, 521 U.S. 898, 933-934 (1997)).

The court of appeals also rejected petitioners' claim that the in-state sales requirement was not narrowly tailored because federal law permits sales of rifles and shotguns to non-residents under certain conditions. Pet. App. 17a-19a. The court noted that many States regulate the sale of handguns more extensively than long guns. *Id.* at 18a. And it reasoned that, in any event, this Court has recognized in the First Amendment context, even where strict scrutiny applies, the government "need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns." *Id.* at 19a (quoting *Williams-Yulee* v. *Florida Bar*, 135 S. Ct. 1656, 1668 (2015)).

Finally, the court of appeals held that the in-state sales requirement does not violate the Due Process Clause's equal protection guarantee. Pet. App. 25a-26a. The court explained that the requirement "does not discriminate based on residency," but rather "imposes the same restrictions on sellers and purchasers of firearms in each state." *Ibid.*

b. Judge Owen concurred, agreeing with the panel that it was "prudent first to apply strict scrutiny to the in-state sales requirement" and agreeing that because the in-state sales requirement satisfies strict scrutiny, it was "unnecessary to resolve whether strict scrutiny [wa]s *required*." Pet. App. 37a; see *id.* at 26a-43a. Judge Owen emphasized the wide array of state handgun restrictions supporting Congress' decision to impose the in-state sales requirement. *Id.* at 38a-40a. And she noted that, contrary to the district court's understanding, the federal background check system "does not reflect whether a person seeking to purchase a

handgun" has satisfied all of a State's requirements, such as training and special permits, and "does not reflect whether a particular type of firearm is legal in a particular state." *Id.* at 41a.

4. By an eight-to-seven vote, the court of appeals denied petitioners' request for rehearing en banc. Pet. App. 111a-112a. Judge Higginson authored a concurrence in the denial of rehearing en banc, noting that petitioners "challenge[d] only the panel opinion's fact-bound narrow-tailoring analysis," which he suggested "does not warrant en banc review." *Id.* at 114a.

Judges Elrod, Willett, and Ho each authored dissents from denial of rehearing en banc. Pet. App. 119a-123a, 123a-128a, 128a-144a. Judge Elrod criticized the court for applying strict scrutiny rather than looking solely to "text, history, and tradition." *Id.* at 121a (quoting *Houston* v. *City of New Orleans*, 675 F.3d 441, 448 (5th Cir.) (Elrod, J., dissenting), opinion withdrawn and superseded on reh'g, 682 F.3d 361 (5th Cir. 2012) (per curiam)). Judge Willett argued that the Fifth Circuit should have heard the case en banc to clarify the doctrinal test that governs Second Amendment challenges. *Id.* at 124a-125a. And Judge Ho criticized the panel's strict-scrutiny analysis, suggesting that the in-state sales requirement is both over-inclusive and under-inclusive and therefore unconstitutional. *Id.* at 135a-143a.

ARGUMENT

Petitioners contend (Pet. 29-34) that the in-state sales requirement violates the Second Amendment and the Due Process Clause of the Fifth Amendment on its face and as applied to them. The court of appeals correctly determined that the in-state sales requirement is constitutional, and its decision does not conflict with any decision of this Court or another court of appeals.

Although petitioners contend that review is warranted to address certain methodological issues under the Second Amendment, this case would be a poor vehicle for addressing those issues because petitioners failed to develop those arguments in the courts below. Further review is not warranted.

1. a. The court of appeals correctly determined that the in-state sales requirement does not violate the Second Amendment. In *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), this Court held that the Second Amendment protects "the right of law-abiding, responsible citizens" to "possess and carry weapons in case of confrontation." *Id.* at 592, 635. At the same time, the Court stated that "nothing in [its] opinion should be taken to cast doubt" on certain well-established firearms regulations, including "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or," as most relevant here, "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-627 & n.26. And two years later, a plurality of the Court "repeat[ed]" *Heller*'s "assurances" that its holding "did not cast doubt on such longstanding regulatory measures as * * * 'laws imposing conditions and qualifications on the commercial sale of arms.'" *McDonald* v. *City of Chicago,* 561 U.S. 742, 786 (2010) (plurality opinion) (quoting *Heller,* 554 U.S. at 626-627).

The only two courts of appeals to have considered Second Amendment challenges to the in-state sales requirement have determined that it is consistent with this Court's decisions in *Heller* and *McDonald*. In *United States* v. *DeCastro*, 682 F.3d 160 (2012), cert. denied, 568 U.S. 1092 (2013), the Second Circuit concluded

that the in-state sales requirement is the sort of law that this Court recognized was "permissible" in *Heller*. *Id.* at 165 (citing *Heller*, 554 U.S. at 626-627). The court observed that the requirement may prevent someone from purchasing a firearm from an out-of-state seller and transporting it into their state of residence, "but it does nothing to keep someone from purchasing a firearm in her home state, which is presumptively the most convenient place to buy anything"; nor does it prevent anyone from purchasing a handgun "from an out-of-state supplier if the gun is first transferred to a licensed gun dealer in the purchaser's home state." *Id.* at 168. "In light of the[se] ample alternative means of acquiring firearms for self-defense purposes," the court concluded that the in-state sales requirement is the type of permissible regulation on commercial firearm sales that "does not impose a substantial burden on the exercise of * * * Second Amendment rights." *Ibid.*

In the decision below, the Fifth Circuit assumed that the in-state sales requirement did not qualify as the sort of well-established regulation of the commercial sales of arms recognized as permissible in *Heller* and *McDonald*, subjected the requirement to strict scrutiny as petitioners requested, and still concluded that the requirement passes constitutional muster. The court observed that all parties agreed that "there is a compelling government interest in preventing circumvention of the handgun laws of various states." Pet. App. 15a. And it concluded that, given the complexity and variety of regulations imposed by the states on handgun purchases, the in-state sales requirement is "narrowly tailored to assure that [a federally licensed firearms dealer] who actually delivers a handgun to a buyer can reasonably

be expected to know and comply with the laws of the state in which the delivery occurs." *Id.* at 17a.

b. Petitioners argue (Pet. 29-30) that whether "evaluated on the basis of text and history" or subjected to "heightened scrutiny," the in-state sales requirement cannot survive Second Amendment scrutiny. But, as noted, this Court has already determined that "laws imposing conditions and qualifications on the commercial sale of arms" may be consistent with the text and history of the Second Amendment. *Heller*, 554 U.S. at 626-627; see *Heller* v. *District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (*Heller II*) (Kavanaugh, J., dissenting) (explaining that "history and tradition show" that the permissible regulations listed in *Heller* "have co-existed with the Second Amendment right and are consistent with that right"). And the only court of appeals to pass on the question has held that the in-state sales requirement is such a permissible commercial-sale regulation. See *DeCastro*, 682 F.3d at 168.

In any event, petitioners did not advocate for an approach based only on text, history, and tradition in the court of appeals, but rather affirmatively argued that the case was "well-suited" for application of the two-step, scrutiny-based approach that prevails in the courts of appeals. Pet. C.A. Br. 19; see Pet. App. 7a-10a (applying that approach); see also Pet. App. 114a (Higginson, J., concurring in denial of reh'g en banc) (noting that, on rehearing, petitioners "challenge[d] only the panel opinion's fact-bound narrow-tailoring analysis"). As a result, this case would be a poor vehicle for considering whether and how a different interpretative approach would apply.

Indeed, the court of appeals applied the legal standard that petitioners themselves requested. In particular, the court assumed that strict scrutiny applied to the in-state sales requirement, Pet. App. 10a—even while one member of the panel suggested that, because the requirement imposes a condition on the commercial sale of firearms, rather than on their possession or use, it is not clear that strict scrutiny would be required, see *id.* at 36a-37a (Owen, J., concurring). And the court determined that the requirement survives even strict scrutiny because it is narrowly tailored to preventing the circumvention of state and local regulation of firearm sales.

As the court of appeals noted, there are more than 123,000 federal firearms licensees nationwide and the state regulations alone, collated together, span more than 500 pages. Pet. App. 15a-16a. Those laws change frequently, and vary drastically: different states have different laws concerning possession of firearms by felons and drug and alcohol abusers; different states impose different waiting periods (if any) prior to purchasing handguns and different limitations (if any) on the number of handguns purchased. *Id.* at 17a-18a. Because federal firearms licensees "are not engaged in the practice of law," the court reasoned that it would be "unrealistic to expect that each [federal firearm licensee] can become, and remain, knowledgeable about the handgun laws of the 50 states and the District of Columbia," as well as "the local laws within the 50 states and the District." *Id.* at 15a-17a.

Petitioners object (Pet. 30-34) to certain aspects of the court of appeals' application of strict scrutiny to the in-state sales requirement, and specifically in the circumstances of this case. But such a challenge to the "panel opinion's fact-bound narrow-tailoring analysis,"

Pet. App. 114a (Higginson, J., concurring in denial of reh'g en banc), does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law."). And although petitioners complain (Pet. 30) of the "severe burdens" that the in-state requirement imposes on District of Columbia residents, "it must be recognized that it is the *District's* restrictions that have led the lone [federally firearms licensee (FFL)] in the District to sell only handguns that are transferred from an out-of-District FFL." Pet. App. 24a (emphasis added). It is "not a result of the in-state sales requirement or any other federal law or regulation." *Ibid.*

Particularly given the series of assumptions that the court of appeals made in petitioners' favor, including whether they properly raised the facial aspect of their Second Amendment challenge at all, see Pet. App. 9a-10a, the absence of any conflict among the courts of appeals on the question presented, the uncertainty surrounding whether petitioners' proposed transaction would have complied with D.C. law, see *id.* at 23a, and the dearth of court of appeals opinions addressing the in-state sales requirement, petitioners' merits arguments provide no basis for this Court's further review of their Second Amendment claim.

2. The court of appeals also correctly determined that the in-state sales requirement does not violate the equal protection component of the Fifth Amendment's Due Process Clause. The district court determined that the in-state sales requirement drew an impermissible distinction on the basis of a firearm purchaser's residency. See Pet. App. 109a. But as the court of appeals

explained, the in-state sales requirement "does not discriminate based on residency" because it "does not favor or disfavor residents of any particular state." *Id.* at 25a-26a. Rather, the federal law imposes the same in-state requirement on residents and federal firearm licensees in all 50 States and the District of Columbia. See *Engquist* v. *Oregon Dep't of Agric.*, 553 U.S. 591, 601 (2008) ("Our equal protection jurisprudence has typically been concerned with governmental classifications that 'affect some groups of citizens differently than others.'") (citation omitted).

In their single paragraph devoted to this claim, petitioners do not dispute that "the law applies to everyone equally," and do not argue that the requirement fails rational-basis review. Pet. 34. Instead, they argue that "residency-based classifications, especially when used to restrict the exercise of fundamental rights, warrant strict scrutiny." *Ibid.* But petitioners conceded below that "non-state residents" do not "constitute a suspect class for purposes of equal protection" and that "equal protection analysis may not be reached where specific, substantive rights analysis is available." Pet. C.A. Br. 59, 60. Because the in-state sales requirement does not infringe on petitioners' fundamental right to keep and bear arms and there is no dispute in this Court that the law otherwise has a rational basis, petitioners' independent equal protection challenge also fails and provides no basis for further review.

3. Petitioners do not contend that the court of appeals' rejection of their Second Amendment or equal protection challenges to the in-state sales requirement conflicts with any decision of another court of appeals. Rather, they contend (Pet. 21) that the circuits are "intractably split" on a number of subsidiary methodological

questions about the proper manner of conducting Second Amendment review. But, as noted above, this case would be a poor vehicle for resolving any of those important issues in light of the fact that petitioners expressly urged the application the Fifth Circuit's two-step approach in this case and the Fifth Circuit applied the highest form of constitutional scrutiny to the in-state sales requirement under that approach.

In *New York State Rifle & Pistol Ass'n* v. *City of New York*, No. 18-280 (Jan. 22, 2019), this Court recently granted certiorari to resolve whether New York City's prohibition on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside the City violates the Second Amendment, the Commerce Clause, or the constitutional right to travel. See Pet. at i, *New York State Rifle & Pistol Ass'n*, *supra*, (No. 18-280). That case may provide the Court a better vehicle to provide further guidance on the broader methodological questions about which petitioners express concern. But given that the court of appeals applied the highest form of constitutional scrutiny to the in-state sales requirement, there is no need to hold the petition in this case for the Court's decision in *New York State Rifle & Pistol Ass'n*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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